

# Re Sole

IN THE MATTER OF:

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

**and**

**Robert Edward Sole**

2018 IIROC 19

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

Heard: April 11, 2018 and May 3, 2018  
Decision: June 5, 2018

**Hearing Panel:**

Louise Barrington, David E. Lang and Debbie Archer

**Appearance:**

April 11, 2018: Lorne Herlin, Senior Enforcement Counsel

May 4, 2018: Charles Corlett, Director, Enforcement - Litigation

The Respondent was not present and did not appear through counsel.

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## DECISION ON THE MERITS AND PENALTY REASONS FOR DECISION

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**The Issues**

¶ 1 This disciplinary hearing was held pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules (the "Consolidated Rules") of Investment Industry Regulatory Organization of Canada ("IIROC"). A Notice of Hearing dated February 5, 2018 was issued by IIROC to Robert Edward Sole.

¶ 2 The issues at the hearing concerned the following three contraventions, as set out in the Statement of Allegations attached to the Notice of Hearing:

- 1) Between August 2016 and September 2016, the Respondent, Robert Edward Sole ("the Respondent"), entered orders on IIROC-regulated marketplaces while his access to IIROC-regulated marketplaces was suspended, contrary to Dealer Member Rule 29.1 and/or Consolidated Rule 1400 (effective as of September 1, 2016).
- 2) Between August 2016 and September 2016, the Respondent engaged in an outside business activity without obtaining the approval of his Dealer Member, contrary to Dealer Member Rule 18.14.
- 3) In October 2017, the Respondent failed to cooperate with Enforcement Staff, who were conducting an investigation, contrary to Section 8104 of the Consolidated Rules.

¶ 3 Mr. Herlin, Senior Enforcement Counsel for IIROC, submitted as Exhibit 1 in these proceedings the

affidavit of Ivona Zegrean, an IIROC staff member, attached to which and marked as Exhibit 4 was an affidavit of service sworn by a process server Rose Campbell. Ms. Campbell's affidavit stated that she personally served Robert Sole with a cover letter, IIROC Notice of Hearing and Statement of Allegations. She stated that she was able to identify the person served "by means of verbal identification".

¶ 4 This rather vague statement as to the identity of the person served was supported by other evidence contained in Ms. Zegrean's affidavit, including an email exchange between the Respondent and IIROC staff showing that the Respondent had previously received and reacted to materials served by Ms. Campbell at the address and in the manner stated in her affidavit. The tribunal is therefore satisfied that the Respondent received the Notice of Hearing and Statement of Allegations. Consequently, the Respondent should have been aware of its contents, including both his obligation under Section 8415 of the Rules of Practice and Procedure of the Consolidated Rules to serve a response to the allegations, and the consequences of failing to do so.

¶ 5 The Respondent did not appear at the hearing, nor was he represented by counsel. The tribunal waited until 10:20 a.m. before proceeding, at which time Mr. Herlin reminded the tribunal that under section 8415(4) of the Rules of Practice and Procedure, if a respondent fails to serve a response at the hearing, the Hearing Panel may proceed with the hearing without further notice to the respondent, may accept as proven the facts and contraventions set out in the Statement of Allegations, and may order sanctions and costs against the respondent. The Hearing Panel decided to hear the evidence presented on behalf of IIROC.

¶ 6 Mr. Herlin produced a further rather voluminous affidavit, sworn by IIROC Senior Investigator Yu Chen containing evidence relating to the three contraventions alleged, as well as to previous related disciplinary proceedings against the Respondent. Mr. Chen also was present at the hearing and testified briefly.

¶ 7 Although the tribunal does have the discretion to accept as proven the allegations set out in the Notice of Hearing, we also relied upon the affidavit evidence of Mr. Chen (marked as Exhibit 2 in this hearing) and on the many documents attached to this affidavit.

¶ 8 According to the Statement of Allegations, in a settlement agreement dated July 11, 2016 and approved on July 28, 2016 by an IIROC Hearing Panel, the Respondent admitted that he had placed orders that he did not intend to execute on IIROC-regulated marketplaces. In the settlement agreement, the Respondent admitted to having entered non-bona fide orders during the pre-opening of the TSX Venture Exchange in order to affect the Calculated Opening Price of securities to his own advantage, a practice known as "spoofing". He also admitted to simultaneously placing non-bona fide orders on one side of the market with bona fide orders on the other side in order to induce other market participants to trade at an artificial price, in a practice known as "layering".

¶ 9 As part of the settlement agreement, Mr. Sole agreed to pay a fine of \$10,000 and costs of \$1,000 to IIROC, and to a suspension of his access to IIROC regulated marketplaces from August 15, 2016 to September 15, 2016.

¶ 10 According to Mr. Chen's affidavit and the documents annexed to it, the Respondent continued to be in the employ of his Dealer Member, W.D. Latimer, throughout the period of his suspension and until he resigned on September 30, 2016. On August 24, 2016, while suspended and without notifying his employer, he took employment working as a trader with a proprietary firm. Using the direct electronic access of the proprietary firm, the Respondent accessed IIROC-regulated marketplaces while suspended. Attached to Mr. Chen's affidavit as Exhibits 12 and 13 were trading records of 48 Buy Trades and 59 Sell Trades transacted by "ROBESOLE", whose birthdate and home address correspond to those of the Respondent.

¶ 11 IIROC directed the Respondent to attend an interview on October 26, 2017 to answer questions with respect to an investigation commenced into his activities while under suspension. Mr. Chen stated that the Respondent emailed him on September 27, 2017, informing him that he was no longer in the financial industry and would not attend the October 26, 2017 interview. Mr. Chen emailed the Respondent on October 2, 2017, informing him that he remained under IIROC's jurisdiction for six years after the date on which he ceased to be a registered person, and that he was required to attend the October 26, 2017 interview (paras 37 to 41.) The Respondent failed to respond and did not attend the October 26, 2017 meeting. These email exchanges were

produced as exhibits to Mr. Chen's affidavit.

¶ 12 In his affidavit, Mr. Chen also showed that the Respondent had not paid the agreed \$11,000 fine and costs (para 18 and Exhibit 7 to his affidavit).

¶ 13 Having accepted the evidence proffered by IIROC, and in the absence of any response or attendance by the Respondent, the tribunal finds that IIROC has proved all three contraventions as set out in paragraph 2 of this Decision.

### **Sanctions and Costs**

¶ 14 Having found that Mr. Sole has contravened IIROC Rules, the Hearing Panel may order sanctions under Section 8214 of the Consolidated Rules, and may assess and order reasonable and appropriate costs of investigation and prosecution of this case. The purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.

¶ 15 In the present case, the Hearing Panel has determined that the conduct of Mr. Sole has contravened fundamental principles of securities regulation, namely, the protection of market integrity and the duty to cooperate with the regulator. Having agreed to a suspension and fine resulting from a prior disciplinary action, Mr. Sole then deliberately disregarded his suspension by obtaining employment at a proprietary trading firm without informing his employer of this outside activity. He then committed a further violation by failing to cooperate with the ensuing IIROC investigation.

¶ 16 Having accepted the evidence proffered by IIROC, and in the absence of any response or attendance by the Respondent, the tribunal finds that IIROC has proved all three contraventions as set out in paragraph 2 of this Decision. The Hearing Panel has determined that the Respondent wilfully disregarded the terms of the settlement agreement arising out of his prior market manipulations. He exacerbated his offence by engaging in the outside business activities, without the knowledge of his employer, to wrongfully access the IIROC-regulated marketplace while under suspension. He brazenly flaunted the Rules governing his professional activities, and then failed to cooperate with the ensuing investigation as required by the Rules.

¶ 17 On behalf of IIROC, Mr. Corlett attended to present oral and written submissions with respect to sanctions and costs. Both Mr. Herlin and Mr. Corlett referred the Hearing Panel in their respective written submissions to a number of cases dealing with the appropriate sanctions for a range of violations of the Rules. Mr. Corlett submitted a Bill of Costs on behalf of IIROC which was marked as Exhibit 3 in these proceedings.

¶ 18 IIROC seeks a decision imposing a fine of \$80,000 and a permanent bar to approval in any capacity with IIROC.

¶ 19 The purpose of sanctions in the regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. To this end, the Hearing Panel needs to strike a balance between a Regulated Person's specific misconduct and industry expectations. Principles and key factors set out in the Sanction Guidelines<sup>1</sup> promote consistency, fairness and transparency by providing a framework to guide tribunals in exercising discretion to arrive at appropriate sanctions. This Hearing Panel, in assessing appropriate sanctions, has considered the following principles and factors:

- To protect the investing public, strengthen market integrity, and improve business standards and practices
- Prior disciplinary record as an aggravating factor
- For multiple violations, cumulative sanctions should reflect the totality of the misconduct
- Suspension to be considered where there has been one or more serious contraventions, respondent has prior disciplinary history, contraventions involved some measure of harm to the

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<sup>1</sup> February 2, 2015 version

integrity of marketplace

- Permanent bar may be appropriate where there is reason to believe the respondent cannot be trusted to act in an honest and fair manner in their dealings
- A fine may be appropriate in addition to a permanent bar where there is harm to the integrity of the securities industry
- Inability to pay is a factor only when raised by the Respondent
- Refusal or neglect to cooperate with IIROC enforcement staff is to be taken seriously.

¶ 20 We now turn to a consideration of the appropriate sanctions for Mr. Sole's behaviour. As Mr. Corlett acknowledged in his submissions, the first two contraventions -- accessing the market while suspended and unauthorised outside business activity -- are in fact two violations stemming from the same activity. Both violations arose directly from Mr. Sole's disregard for the settlement agreement negotiated with respect to his prior violations. (The fine and costs in the original case remain outstanding.) In other words, it was the defiance of his suspension by unauthorised outside business activity, which gave rise to both violations.

¶ 21 Counsel for IIROC proposed as sanctions the imposition of a fine of \$80,000 and a permanent bar to approval by IIROC in any capacity, plus a contribution of \$10,000 to IIROC's costs of these proceedings.

¶ 22 Mr. Corlett referred the Hearing Panel to the case of Sean Conacher<sup>2</sup> who accepted settlement agreement imposing a fine of \$15,000 for execution of trades which did not comply with applicable regulatory requirements. In that case, as in the present one, there was no allegation of manipulative trading or other misconduct; in neither case was there any harm to clients. In the case of *Trueman*<sup>3</sup>, a respondent who had provided portfolio management services to family and friends in contravention of Dealer Member Rule 18.14, agreed to the imposition of a fine of \$25,000. In *Re Blackmore*, where the respondent admitted to unauthorised outside activity, but again there was no injury to clients, the agreed fine was \$30,000.<sup>4</sup> Mr. Corlett took the position that in the circumstances a single fine would suffice to sanction both contraventions arising from the same activity.

¶ 23 As to the third contravention, the obligation to cooperate with an IIROC investigation does not end when an Approved Person ceases to be registered. IIROC retains jurisdiction for six years following the termination of registration, and the former Approved Person remains subject to the obligation to cooperate imposed by the Rules.<sup>5</sup> Failing to cooperate with the IIROC investigation is viewed very seriously.

¶ 24 We accept and endorse Mr. Corlett's submission that for the public to have confidence in the integrity of capital markets, Regulated Persons must act with integrity, cooperate with regulatory requirements, and cooperate with regulatory investigations. Sanctions should be aimed at promoting that confidence, strengthening market integrity and sending a strong regulatory message that high standards of conduct are expected of Regulated Persons. Sanctions should reinforce the perception that unacceptable conduct will be taken seriously and can result in serious consequences.

¶ 25 Counsel for IIROC provided a review of 24 cases between 2002 and 2017, in which all but two Hearing

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<sup>2</sup> Conacher, March 29, 2018

<sup>3</sup> *Re Trueman* 2016 IIROC 29

<sup>4</sup> *Re Blackmore* 2014 IIROC 43

<sup>5</sup> See *Re Trites*, 2010 IIROC 48, in which the Hearing Panel wrote, "We do not consider that it is generally worse to fail to attend an interview in an investigation involving serious allegations than in an investigation involving less serious allegations. The gravamen of the misconduct is not respecting that, as a participant or former participants in a regulated industry, one must comply with the obligation to cooperate with the regulator's investigation, regardless of how one regards the allegations."

Panels<sup>6</sup> imposed a fine of \$50,000 and a permanent bar from approval with IIROC in any capacity as the sanction for failure to cooperate.

¶ 26 The Hearing Panel accepts that the proposed sanctions are reasonable and adequate to accomplish these purposes.

¶ 27 Finally, Mr. Corlett submitted a Bill of Costs<sup>7</sup> for these proceedings totalling \$30,550. In keeping with the principle that costs awarded should be proportionate to the value of the sanction, he claims only \$10,000 from Mr. Sole as a contribution to these costs. The hearing panel considers this to be a reasonable figure.

¶ 28 In conclusion, we are satisfied that the sanctions sought by IIROC are appropriate. Therefore we order the following sanctions:

- (a) a fine of \$80,000 to be paid by Mr. Sole to IIROC for the three contraventions set out above;
- (b) a permanent bar on registration of Mr. Sole in any capacity with IIROC; and
- (c) a contribution to IIROC's costs of these proceedings in the amount of \$10,000 to be paid by Mr. Sole to IIROC.

Dated at Toronto, Ontario this 5<sup>th</sup> day of June, 2018.

Louise Barrington

Chair

David E. Lang

Debbie Archer

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<sup>6</sup> In *Re MacArthur* 2017 IIROC 29, a \$50,000 fine and bar plus costs were the total sanction for three offences, failure to use due diligence, engaging in unauthorised trading, and failure to cooperate with IIROC's investigation. In *Re Scerbo* 2017 IIROC 57, a single fine of \$400,000 and permanent bar were imposed for misappropriation of funds and failure to cooperate with IIROC.

<sup>7</sup> Bill of Costs dated 10 April 2018, marked as Exhibit 3.