

Re RBC Dominion Securities

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules
and the Universal Market Integrity Rules**

and

RBC Dominion Securities Inc.

2024 CIRO 76

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: September 20, 2024 in Toronto, Ontario (by videoconference)

Decision: September 20, 2024

Reasons for Decision: October 28, 2024

Hearing Panel

Thomas J. Lockwood, K.C., Chair, Colleen Wright and Vanessa Gardiner

Appearances

Sylvia Samuel, Senior Enforcement Counsel

Ryan A. Morris, for RBC Dominion Securities Inc.

David Barbaree, Senior Counsel, RBC Dominion Securities Inc.

Natalie Coutu, Managing Director, CCO of Capital Markets Compliance (Canada), RBC Capital Markets

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Application for Settlement Hearing, dated September 11, 2024, Enforcement Staff of the Canadian Investment Regulatory Organization (“CIRO”) gave notice that a hearing would be held before a hearing panel on September 20, 2024, to consider a request to accept a settlement agreement between Enforcement Staff and RBC Dominion Securities Inc. (the “Settlement Agreement”), pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the “Investment Dealer Rules”).

¶ 2 The Notice of Application advised that the hearing was not open to the public, but that the public would be notified if the Hearing Panel accepted the Settlement Agreement.

¶ 3 At the Settlement Hearing, the Hearing Panel considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement based on the material before us.

¶ 4 After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on September 20, 2024. At that time, we advised that written Reasons would follow our decision. These are our Reasons.

II. SETTLEMENT AGREEMENT

¶ 5 The Settlement Agreement is attached hereto and marked as Appendix A. In the Settlement Agreement, the Respondent admitted that, on September 18, 2023, it engaged in trades of shares of Baytex Energy Corp.

(“BTE Trades”). The BTE Trades occurred other than by an entry of an order on a marketplace, and the Respondent did not seek a regulatory exemption from CIRO for the BTE Trades to be done off-market.

¶ 6 CIRO’s Universal Market Integrity Rule (“UMIR”) 6.4(1) requires that all trades in securities occur by means of an entry of an order on a marketplace. UMIR 6.4(2) provides certain exemptions. In addition, a Dealer Member may seek an exemption pursuant to UMIR 6.4(2)(b) or UMIR 11.1 (General Exemptive Relief). The Respondent did not seek an exemption from CIRO, nor was the transaction covered by any other exemption available pursuant to UMIR 6.4(2).

¶ 7 The allotment of BTE shares to Canadian clients was in excess of 4.5 million shares, accounting for \$204,619.50 (US) in revenue for the Respondent.

¶ 8 The Respondent was previously fined \$500,000 for a similar incident in 2019.

¶ 9 The sanctions proposed in this Settlement Agreement were a fine in the amount of \$1,000,000, costs in the amount of \$15,000, and a training program on UMIR 6.4 requirements for those involved in the impugned transactions.

III. PRINCIPLES AND FACTORS REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 10 Investor protection and fair and efficient capital markets are the primary goals of securities regulation. Settlements play an important and necessary role in meeting these objectives.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 and 68

¶ 11 In our view, the role of a hearing panel in a settlement hearing is not the same as its role in making a penalty determination after a contested hearing. In a contested hearing, the hearing panel attempts to determine the correct penalty. In a settlement hearing, the hearing panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the settlement agreement. In our view, a hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 12 When determining whether a penalty agreed upon by the parties is appropriate, the hearing panel may also consider the CIRO Sanction Guidelines (“Guidelines”), which came into effect on February 1, 2024.

¶ 13 The Guidelines set out general principles which should be considered in connection with a proposed settlement agreement, as well as some key factors commonly reviewed when considering the appropriateness of the sanctions.

¶ 14 The Guidelines’ principles state that sanctions should be significant enough to prevent and discourage future misconduct by a particular respondent (specific deterrence) and to deter others from engaging in similar mistakes (general deterrence). General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a registrant’s specific misconduct but is also in line with industry expectations.

IV. CONSIDERATIONS IN THE PRESENT CASE

¶ 15 The misconduct relates to a single transaction. On the other hand, the Respondent’s prior discipline experience should have made it aware that its execution of the BTE Trades was improper and in contravention of UMIR 6.4(1).

¶ 16 The failure to disclose the BTE Trades on a marketplace created a lack of transparency that is harmful to market integrity and the orderly operation of the marketplace.

¶ 17 As required, immediately upon realization of the infraction, the Respondent filed a Gatekeeper Report, which acknowledged the facts underlying the regulatory contravention.

¶ 18 In addition, the Respondent has revised its supervision systems to address the issues identified in the Settlement Agreement. It has also provided additional training to employees.

¶ 19 CIRO guidance existed explaining the procedure to be followed to request an exemption, pursuant to UMIR 6.4(2). The Respondent is familiar with this process, having made 5 such requests between February and September 2023.

¶ 20 The circumstances of the present case and contravention are similar to those in *Re RBC Dominion Securities et al* 2019 IIROC 30. The current contravention involved essentially repeat conduct relatively close in time to the past case. The increased agreed-upon fine reflects this aggravating circumstance.

¶ 21 There was a financial benefit to the Respondent in engaging in the BTE Trades. However, the monetary sanctions are sufficiently large to exceed the fine paid in the previous case plus any revenue related to the sales to Canadian clients. We believe that the sanctions imposed will serve the goals of specific and general deterrence, while reflecting that the primary purpose of sanctions is prevention of misconduct and investor protection.

V. DECISION

¶ 22 After a thorough review of the principles and factors by which we should be guided, and the facts of this case as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

DATED at Toronto, Ontario this 28th day of October 2024.

“Thomas J. Lockwood”

Thomas J. Lockwood, Chair

“Colleen Wright”

Colleen Wright, Industry Representative

“Vanessa Gardiner”

Vanessa Gardiner, Industry Representative

**Appendix “A”
Settlement Agreement**

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules
and the Universal Market Integrity Rules**

and

RBC Dominion Securities Inc.

SETTLEMENT AGREEMENT

I. PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization (“CIRO”)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 RBC Dominion Securities Inc. (the “Respondent” or “RBC DS”).

II. 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.

III. 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 On September 18, 2023, RBC DS engaged in trades of shares of Baytex Energy Corp. (BTE) on behalf of Canadian investors (the "BTE Trades"). The BTE Trades occurred other than by the entry of an order on a marketplace, and RBC DS did not seek a regulatory exemption from CIRO for the BTE Trades to be done off-market.

Background

¶ 5 RBC DS is a Dealer Member and an affiliate of RBC Capital Markets LLC ("RBC LLC").

¶ 6 RBC LLC is a U.S. broker-dealer and an indirect subsidiary of Royal Bank of Canada.

¶ 7 By bid letter dated September 18, 2023, RBC DS agreed to purchase 51,161,332 common shares of BTE from Rocky Creek Resources, LLC, JSTX Holdings, LLC, and Juniper Capital III GP, L.P. (the "Selling Shareholders") on September 18, 2023 (the "BTE Deal").

¶ 8 BTE is an inter-listed security, which trades on the Toronto Stock Exchange and the New York Stock Exchange.

The Regulatory Landscape

¶ 9 UMIR 6.4(1) requires that all trades in securities occur by means of entry of an order on a marketplace.

¶ 10 UMIR 6.4(2) provides certain exemptions to the requirement that all trades take place by way of entry of an order on a marketplace.

¶ 11 In addition, a Dealer Member may seek an exemption pursuant to UMIR 6.4(2)(b) or UMIR 11.1 (General Exemptive Relief) for trades other than by entry of an order on a marketplace.

BTE Deal – Transaction Summary

¶ 12 The BTE Deal involved two transactions: the purchase from the Selling Shareholders (the take-on) and the ultimate sale to clients (the unwinding).

¶ 13 The BTE Deal was initially to be executed by RBC DS and printed on the marketplace. However, shortly before the BTE Deal was finalized on September 18, 2023, it was determined in consultation with the Selling Shareholders that the purchase from the Selling Shareholders (take-on trade) would be priced in USD and executed as a block trade by RBC LLC.

¶ 14 The BTE shares were transferred from RBC LLC's account to RBC DS's account by journal entry.

¶ 15 Ten Canadian clients of RBC DS participated in the unwinding transaction.

¶ 16 The transfer of shares from RBC LLC to RBC DS and the sales to Canadian clients were done off-market, but RBC DS did not seek a regulatory exemption from CIRO pursuant to UMIR 6.4 (2)(b) or UMIR 11.1 nor was the transaction covered by any other exemption available pursuant to UMIR 6.4(2).

¶ 17 Accordingly, the transfer of shares from RBC LLC to RBC DS and the sales to Canadian clients was in contravention of UMIR 6.4.

Post Transaction Events

¶ 18 On September 20, 2023, several Dealer Members contacted CIRO's Market Policy department to inquire about the BTE Deal and why the unwinding trade did not appear to be printed on a marketplace.

¶ 19 On the morning of September 21, 2023, the Chief Compliance Officer of RBC DS was made aware of the unwinding trade of the BTE Deal and that shares sold to Canadian clients did not get printed on a marketplace. RBC DS Compliance immediately began gathering information about the BTE Deal in anticipation of filing a Gatekeeper Report.

¶ 20 On September 22, 2023, RBC DS filed a Gatekeeper Report indicating that it had not sought a regulatory exemption from CIRO prior to executing the BTE Trades.

Financial Benefit

¶ 21 In total, 51,161,332 BTE shares were purchased by RBC LLC from the Selling Shareholders at the take-on price of US\$4.125. The unwinding price to Canadian clients was US\$4.17.

¶ 22 The allotment to Canadian clients (4,547,100 BTE shares) represented 8.9% of the total shares sold pursuant to the BTE Deal, accounting for US\$204,619.50 (4,547,100 shares at US\$4.17) in revenue for RBC DS.

Controls and Prevention

¶ 23 The BTE Trades occurred notwithstanding the following controls then in place at RBC DS.

Training

¶ 24 As part of annual compliance training conducted in 2019, RBC DS's Sales and Trading employees received training on UMIR 6.4 requirements.

Policies and Procedures

¶ 25 RBC DS's Sales and Trading Policy indicated that all trades are to occur on a marketplace unless a regulatory exemption is sought and obtained or one of the exemptions enumerated in UMIR 6.4 applies. RBC DS's Sales and Trading Policy also provided guidance on off-market transactions and how to seek a regulatory exemption.

Additional Controls – Post BTE Trades

a. Process Changes

¶ 26 After the BTE Trades, RBC DS's policies and procedures were updated as follows:

- (i) On September 29, 2023, RBC DS's compliance department initiated a review of controls related to off-market transactions of listed securities.
- (ii) Starting in January 2024, the risk approval process for block trades involving inter-listed securities reminds all employees to consider whether an exemption is required if the trade is not on the marketplace.
- (iii) The Equity Capital Markets audit process for block trades involving inter-listed securities includes a reference check to the risk approval email.
- (iv) In May 2024, RBC DS's Equity Sales and Trading Policy was updated to include sections that expand on the principal take-on exemption requirement and exemption process.
- (v) The compliance department should be engaged throughout the transaction and should be part of a distribution list for all block trades at the outset. Compliance should, therefore, be notified of trades that are contemplated to occur off-market.

b. Training

¶ 27 In October 2023, meetings were held with all Equity Capital Markets and risk partners to communicate the protocol and regulatory requirements around block trades.

¶ 28 As part of annual compliance training conducted in November 2023, RBC DS's Sales and Trading employees received training on UMIR 6.4 requirements.

¶ 29 In late January 2024, Trade Supervision and members of the Trade and Sales team, discussed the requirements of block trades.

Additional Factors

¶ 30 RBC DS was familiar with the process of requesting pre-approval for an exemption from UMIR 6.4(1). Between February and September 2023, RBC had made such requests on five different occasions.

Previous Similar Discipline

¶ 31 RBC DS was previously fined \$500,000 for a similar incident in 2019.¹ In that case, a hearing panel accepted a settlement between IIROC Staff and RBC DS, Scotia Capital Inc., and TD Securities Inc. whereby the respondents admitted to trading in a security by means other than the entry of an order on a marketplace, contrary to UMIR 6.4(1).

Internal Discipline

¶ 32 The employees responsible for approving the execution of the BTE Trades off-market were subject to internal discipline pursuant to RBC DS's Global Capital Markets Breach Committee Sanction Guidelines in addition to the verbal warnings issued to these individuals.

IV. PART IV – CONTRAVENTIONS

¶ 33 By engaging in the conduct described above, the Respondent committed the following contraventions of CRO requirements:

- (i) On September 18, 2023, RBC Dominion Securities Inc. traded in securities by means other than the entry of an order on a marketplace, contrary to UMIR 6.4.

V. PART V – TERMS OF SETTLEMENT

¶ 34 The Respondent agrees to the following sanctions and costs:

- (i) A fine of \$1,000,000;
- (ii) Costs of \$15,000;
- (iii) RBC DS will deliver a training program to individuals involved in the BTE Deal to ensure full understanding of UMIR 6.4 requirements.

¶ 35 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.

VI. PART VI – STAFF COMMITMENT

¶ 36 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.

¶ 37 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.

VII. PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

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

¶ 39 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.

¶ 40 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.

¶ 41 If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CRO and any applicable legislation to any further hearing, appeal and review.

¹ Re RBC Dominion Securities et al. 2019 IIROC 30

¶ 42 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.

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

¶ 44 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO 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.

¶ 45 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.

¶ 46 This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

VIII. PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this "12" day of September 2024

RBC Dominion Securities Inc.

Per

"Witness" _____

"Witness" _____

Witness

Name: "Derek Flood"

I have authority to bind the corporation

DATED this "13" day of September 2024

"Witness" _____

Witness

Sylvia Samuel

Enforcement Counsel on behalf of Enforcement Staff
of the

Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this "20" day of "September", 2024 by the following Hearing panel:

Per: "Thomas Lockwood"
(Chair)

Per: "Vanessa Gardiner"

Per: “Colleen Wright”

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ⁱ The Canadian Investment Regulatory Organization (“CIRO”) 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.

Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO’s continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.