Re More

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Nicola Carolyn More

2014 IIROC 36

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

Heard: June 23, 2014 in the City of Vancouver, Province of British Columbia
Decision: July 10, 2014

Hearing Panel:
John Rogers, Chair, Barbara Fraser and Michael Johnson
Appearances:
Diana Iannetta, Enforcement Counsel.
David Mitchell for Nicola Carolyn More ("Respondent")
The Respondent did not attend the settlement hearing.

REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on June 23, 2014 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement ("Settlement Agreement") dated the 13th day of May, 2014 negotiated between the Enforcement Department of IIROC ("IIROC Staff") and the Respondent in accordance with Rule 20.35 of Part 10 of the IIROC Dealer Member Rules (the "Rules") and Rule 15 of the Dealer Member Rules of Practice and Procedure.

¶ 2 At the commencement of the hearing, Respondent's counsel advised the Hearing Panel that the Respondent had intended to attend the settlement hearing but was not able to do so due to the labour disruption in British Columbia public schools.

Issue for Determination

¶ 3 The issue before the Hearing Panel upon the conclusion of the settlement hearing was to exercise the powers granted to it pursuant to Rule 20.36 and to determine whether to accept or to reject the Settlement Agreement.

Statement of Facts

¶ 4 The Settlement Agreement contains certain facts agreed to by IIROC Staff and the Respondent for the purpose of the Settlement Agreement. These facts might be summarized as follows:

1. ***The Parties Involved***:

   The Respondent

   i. The Respondent was first registered in the securities industry with the Investment

Dealers Association of Canada in 1996 as an Investment Advisor with Pacific International Securities Inc. In November 2002, she commenced her employment with Canaccord Genuity Corp. ("Canaccord") as a Registered Representative, and in February 2012 the Respondent voluntarily resigned from Canaccord and became employed as a Registered Representative with Jordan Capital Markets Inc. ("Jordan"). In November 2013, the Respondent voluntarily resigned her employment with Jordan and is not currently registered with IIROC or employed in the securities industry.

ii. From the commencement of her employment with Jordan in February 2012 until her resignation from Jordan in November 2013, the Respondent was under close supervision without incident.

iii. The activity leading to the contraventions of the IIROC Rules to which the Respondent has admitted occurred while she was employed at Canaccord.

JM

iv. Between 2002 and 2008 the Respondent worked as an assistant to her brother, JM, who was also a Registered Representative at Canaccord. In August 2008, JM ceased his employment with Canaccord and the Respondent became the responsible Registered Representative for JM's client accounts.

Mainland Resources Inc.

v. Mainland Resources Inc. ("MNLU") was an oil and gas exploration company incorporated in the state of Nevada, whose shares were traded on the OTC BB. Between March 2008 and September 2008, the shares of MNLU trading on the OTC BB rose in price from $2.00 to $6.70. Between September 2008 and March 3, 2010, this share price dropped steadily to $0.17 per share.

vi. In December 2009 following his resignation from Canaccord, JM became a director of MNLU and retained that position until March 3, 2010.

BP

vii. In June 1993, BP was the subject of a British Columbia Securities Commission Order which, among other things, prohibited him from becoming an officer or director of any reporting issuer for a period of 15 years. The Respondent was aware of this prohibition.

viii. In June 2009, the U.S. Securities and Exchange Commission ("SEC") found that BP had violated certain provisions of the Securities Exchange Act of 1934 in connection with unregistered sales of a stock from his personal account. The SEC ordered BP to cease and desist from such violations and to disgorge ill-gotten gains of over $2 million.

2. ***The Imputed Activity Agreed to by the Respondent:***

i. In September 2008, the Respondent disclosed confidential client information to JM including client account debits and security positions. In addition during this time, the Respondent accepted unauthorized trading instructions from JM with respect to the shares of MNLU, such instructions including a directive that the Respondent was to sell anything other than MNLU in a client's account.

ii. In October 2008, the Respondent emailed JM confidential client information regarding debits in client accounts advising JM that "All mainland positions they are threatening selling out tomorrow". In addition during this period, the Respondent and JM exchanged text messages about the status of a client's account with respect to the holding of shares of

MNLU, one of which messages from JM stated "NO ONE sells". And the Respondent accepted unauthorized trading instructions for two purchases of shares of MNLU in a client's account.

iii. In November 2008, the Respondent accepted unauthorized trading instructions from JM for two purchases of shares of MNLU in a client's account.

iv. In December 2008, the Respondent disclosed to JM the amount of a debit in two client accounts and accepted unauthorized trading instructions for the sale of shares of MNLU in a client's account.

v. In February 2009, the Respondent and JM exchanged text messages which included references to BP and MNLU; during which exchange the Respondent advised JM about another Canaccord broker's bids on MNLU. As well during this period, the Respondent disclosed to JM by email the total of her clients' holdings in shares of MNLU that were marginable and accepted unauthorized trading instructions from JM for shares of MNLU.

vi. In March 2010, the Respondent emailed BP and advised him that she had no orders outstanding for the shares of MNLU.

vii. In May 2010, the Respondent:

1. On May 3, 2010 sent to JM by email an MNLU Position Report disclosing all of her client accounts which held shares of MNLU, which report included:
    a. Client names;
    b. Client account numbers;
    c. Client telephone numbers;
    d. Number of shares of MNLU held; and
    e. Average cost of MNLU shares held.
2. On May 13, 2010 sent to JM by email a similar MNLU Position Report containing the same information;
3. On May 27, 2010 erroneously sent by email to BP a similar MNLU Position Report containing the same information.

viii. The Respondent acknowledges that at the time that the above disclosures and trading instructions for client accounts were received from JM:

1. JM was no longer an IIROC registrant;
2. JM no longer had trading authority over these client accounts;
3. There was no written agreement from these clients authorizing the disclosure of their information to JM;
4. There was no written authorization from these clients to accept trading instructions from JM; and
5. There was no authorization from Canaccord to accept trading instructions for these client accounts from JM.

3. ***Mitigating Factors:***

i. The client accounts involved were accounts for which JM was responsible while he was a Registered Representative and it was the Respondent's belief that she was acting in the best interests of the account holders by continuing to consult with JM about their affairs;

ii. Some of these clients were relatives or close friends of JM or the Respondent;

iii. None of these clients have advised Canaccord that the imputed transactions were unauthorized nor have they registered complaints;

iv. The Respondent's disclosure of May 27, 2010 to BP, although grossly negligent, was not intentional;

v. The Respondent has no prior disciplinary record;

vi. Prior to her resignation from Jordan in November 2013, the Respondent was under close supervision for a period of 21 months; and

vii. The Respondent has cooperated with IIROC Staff throughout their investigation.

Admitted Contravention

¶ 5 In the Settlement Agreement, the Respondent has admitted that:

1. From September 2008 to February 2009, the Respondent accepted trading instructions in respect of certain client accounts from a person not authorized in writing to provide such instructions for those accounts, contrary to IIROC Dealer Member Rule 200.1(i)(3); and

2. From September 2008 to May 2010, the Respondent disclosed client information to individuals not authorized to receive it, contrary to IIROC Dealer Member Rule 29.1.

Agreed Upon Terms of Settlement

¶ 6 As a result of the admitted contraventions of IIROC Dealer Member Rules, the Respondent has agreed to:

1. Pay a fine in the amount of $30,000;

2. Re-write the Conduct and Practices Handbook course prior to approval of any registration with IIROC;

3. Be subject to strict supervision for a period of three months as a condition of approval of such registration; and

4. Pay costs to IIROC in the amount of $5,000.

Decision

¶ 7 The Hearing Panel, after considering the submissions of counsel, unanimously determined to accept the Settlement Agreement. The Hearing Panel made an Order accepting the Settlement Agreement on June 23, 2014 and advised that these written reasons would follow in due course.

Reasons

Appropriateness of Sanctions

¶ 8 Rule 20.36 empowers a Hearing Panel upon the conclusion of a settlement hearing to either accept or reject the settlement agreement under consideration. Neither in Rule 20.36 nor elsewhere in the Rules is there guidance as to what criteria a Hearing Panel should use in making this decision.

¶ 9 However, in *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, the Hearing Panel enunciated the general principal that provided that the sanctions included within the settlement agreement under consideration fall within a "reasonable range of appropriateness", the sanctions and the settlement agreement should be accepted.

¶ 10 This general principal was considered in *Re: Martens* 2013 LNIIROC 40 where the Hearing Panel observed that in considering the appropriateness of proposed sanctions, the Hearing Panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

¶ 11 The Hearing Panel in *Re: Martens* at para 7, p. 5 noted that as a part of its deliberations, a Hearing Panel

should determine whether or not the proposed sanctions "strike a reasonable balance between fairness to the Respondent in the circumstances but at the same time encouraging the prevention of a repetition of the acknowledged offense; and the need to protect the investing public, the industry membership, the integrity of the disciplinary process, and the integrity of the securities market".

Disciplinary Sanction Guidelines

¶ 12 In her submissions, Enforcement Counsel referenced IIROC Disciplinary Sanction Guideline 3.9 entitled "Unauthorized Third Party Instructions – Dealer Member Rule 200.1(i)(3)" and noted that:

1. The contraventions agreed to by the Respondent in this matter involved ten trades in one security over a six month period and there is no evidence of client losses;
2. There is no evidence of verbal authority being granted by the clients to the imputed trades; however, the clients were all former clients of JM, some were close relatives or friends of the Respondent and JM, and there were no client complaints with respect to these trades; and
3. The Respondent believed that she was acting in the best interests of her clients by continuing to consult with her brother, JM, following his departure from Canaccord;

¶ 13 Enforcement Counsel noted that where the contraventions involve no elements of deception or misrepresentation to clients, that this Guideline recommends a minimum fine of $5,000 and a requirement to re-write the Conduct and Practices Handbook.

¶ 14 With respect to the admitted unauthorized disclosures, Enforcement Counsel referred the Hearing Panel to IIROC Disciplinary Sanction Guideline 2.2 entitled "Unauthorized or Improper Disclosure and/or Use of Client Information – Dealer Member Rule 29.1" and noted that:

1. Without authorization the Respondent disclosed client information to JM on eight occasions between September 2008 and May 2010 and to BP on two occasions in March and May, 2010;
2. All the disclosures to JM were intentional, one of the disclosures to BP was intentional and one was unintentional and grossly negligent;
3. There is no evidence that these disclosures were committed in connection with other offences; there is no evidence that the Respondent attempted to conceal her activities from Canaccord; there is no evidence of discernable client harm; and there is no evidence that the Respondent profited from this activity; and
4. There is no evidence of documented client consent to the disclosures, although the Respondent believed that she was acting in the best interest of her clients with respect to her disclosures to JM.

¶ 15 In the matter at hand, Enforcement Counsel submitted that the relevant sanctions under Sanction Guideline 2.2 for the consideration of the Hearing Panel were a minimum fine of $15,000; disgorgement of commissions and/or profits earned as a result of the disclosures; a successful completion of the appropriate industry program within six months; and a period of close supervision for 12-24 months.

Relevant Precedents

Unauthorized Third Party Instructions

¶ 16 Enforcement Counsel submitted the following decisions of IIROC Hearing Panels dealing with sanctions involving unauthorized third party instructions: *Re Blackmont Capital Inc.* 2010 LNIIROC 57; *Re Teng* 2012 LNIIROC 51; and *Re Higgs* 2010 LNIIROC 3.

¶ 17 In *Blackmont Capital Inc.*, following a disciplinary hearing at which the Hearing Panel found that the respondent, Duke, had acted contrary to Rule 200.1(i)(3) by effecting unauthorized trades in four client accounts over a four year period based upon the instructions of third parties, the Hearing Panel imposed a fine of $20,000. In determining this fine, the Hearing Panel took into consideration that there was, in fact, verbal

authority for these trades, that there was no evidence of losses, and that there were no client complaints.

¶ 18 The *Teng* decision involved the acceptance of a settlement agreement which disclosed that the respondent had taken instructions from and provided confidential information to a third party who did not have a duly executed power of attorney or written trading authorization over the relevant accounts. The trading involved 107 orders in the client accounts for a single security over a four month period. The respondent was initially disciplined by his employer which imposed a fine of $25,000, placed him under strict supervision for a six month period and issued a letter of reprimand. Although expressing reservations that the agreed upon sanctions were too low, the Hearing Panel accepted the settlement agreement agreeing to sanctions of a fine of $10,000, a one year suspension and the obligation to rewrite and pass the Conduct and Practices Handbook course.

¶ 19 In *Higgs* the Hearing Panel accepted a settlement agreement which imposed a fine and costs of $40,000 and a 15 month suspension for effecting trades in a client account based upon unauthorized instructions of a third party and involving a "large number of transactions" over a thirteen month period.

Unauthorized Disclosure of Client Information

¶ 20 Enforcement Counsel referred the Hearing Panel to *Re Gill* [2000] I.D.A. C.D. No. 57, which decision resulted from a disciplinary hearing where the respondent was found liable on all seven counts, one of which involved a single disclosure by the respondent of confidential client information. Out of a total of $38,000 in fines for all seven counts, the Hearing Panel imposed a fine of $7,500 for the count involving the disclosure of confidential client information. In addition, for all of the counts the Hearing Panel imposed a one year suspension and the obligation on the respondent to rewrite and pass the Conduct and Practices Handbook course.

Conclusion

¶ 21 Based upon a consideration of the submissions of counsel, the IIROC Dealer Member Disciplinary Sanction Guidelines, and previous decisions of Hearing Panels, we determined that terms of the Settlement Agreement include sanctions that fall within a reasonable range of appropriateness and we, therefore, accepted the Settlement Agreement.

Dated at the City of Vancouver, Province of British Columbia this 10th day of July 2014

John Rogers, Chair

Barbara Fraser

Michael Johnson

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Nicola Carolyn More (the "Respondent" or "More"), consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Ms. More.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C ("the Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contravention of IIROC Rules, Regulations or Policies:

i. From September 2008 to February 2009, the Respondent accepted trading instructions in respect of certain client accounts from a person not authorized in writing to provide such instructions for those accounts, contrary to IIROC Dealer Member Rule 200.1(i)(3); and

ii. From September 2008 to May 2010, the Respondent disclosed client information to individuals not authorized to receive it, contrary to IIROC Dealer Member Rule 29.1

6. Staff and the Respondent agrees to the following terms of settlement:

   a) A fine of $30,000;

   b) A requirement that the respondent successfully complete the Conduct and Practices Handbook (CPH) course prior to re-approval; and

   c) A requirement that the respondent be placed under strict supervision for a period of three (3) months upon re-approval.

7. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Overview

9. Over the course of 19 months, More accepted trading instructions from her brother, from whom her clients were transferred when he ceased to be a registrant, without any written authorization from the clients or her firm to do so.

10. More also disclosed confidential client information relating primarily to the number of shares held by her clients in an Over-the-Counter Bulletin Board ("OTC BB") stock to her brother.

11. More states she erroneously disclosed the same confidential information to another individual who was a promoter and had a serious regulatory history. More's actions in disclosing this information were grossly negligent.

B. Registration History

12. More was first registered with the IDA in 1996 and became a registrant of IIROC on June 1, 2008. Her registration history is as follows:

Date	Dealer Member	Registration Category
February 2012 – November 2013	Jordan Capital Markets Inc.	Registered Representative ("RR")
November 2002 – February 2012	Canaccord Genuity Corp.	RR
May 1994 – November 2002	Pacific International Securities Inc.	Investment Advisor

13. The conduct at issue took place while More was employed with Canaccord Genuity Corp. ("Canaccord").

In February 2012, More voluntarily resigned from Canaccord and joined Jordan Capital Markets Inc. ("Jordan Capital"). More voluntarily resigned from Jordan Capital in November 2013. More is not currently an IIROC registrant and is not presently employed.

14. From February 2012 until her departure in November 2013, More was under close supervision, without incident. This close supervision was imposed by IIROC as a term and condition of her registration.

C. Background

15. Between 2002 and 2008, More was an RR and worked as an assistant to her brother JM, who was also an RR at Canaccord.

16. In August 2008, JM left Canaccord and was no longer registered as an RR effective that date. More became the RR responsible for JM's accounts.

Mainland Resources

17. Mainland Resources Inc. ("MNLU") is an oil and gas exploration company incorporated in Nevada. MNLU is quoted on the OTC BB.

18. Between March 2008 and September 2008 MNLU shares rose in price from $2.00 to $6.70. From September 2008 to June 2011 the share price steadily dropped to $0.17.

19. Between December 2009 and March 3, 2010, JM was a Director of Mainland.

Unauthorized Trades and Disclosures of Confidential Client Information

20. During the material time, More accepted and executed trade instructions from JM for various client accounts. At the time the instructions were received:

    (i) JM was no longer an IIROC registrant;

    (ii) JM did not have trading authority over the client account(s);

    (iii) There was no written authorization from the clients to accept trading instructions from JM; and

    (iv) There was no authorization from Canaccord to accept trading instructions from JM.

21. The accounts at issue were accounts for which JM was previously the responsible RR.

22. During the material time, More also disclosed confidential client information to JM both in person and via email. The majority of the confidential client information disclosed related to MNLU. JM was the investment advisor at the time that some of More's clients purchased MNLU.

23. There was no written agreement from the clients allowing for this disclosure of their information to JM.

24. The clients at issue were all former clients of JM. Some of these clients were relatives or close friends of JM and the respondent.

25. During the same period, More also disclosed confidential client information to an individual, BP, via email. The confidential information disclosed related to MNLU.

26. In June 1993, BP was the subject of a British Columbia Securities Commission ("BCSC") Order which, among other things, prohibited him from becoming an officer or director of any reporting issuer for a period of 15 years. More was aware of this at all material times.

27. In June 2009, the U.S. Securities and Exchange Commission ("SEC") found that BP had had violated the U.S. Securities Act in connection with unregistered sales of a stock from his personal account. The SEC ordered BP to cease and desist from violations of certain sections of the Securities Act and Securities Exchange Act and disgorge ill-gotten gains of over $2 million.

2008

September

28. In September 2008, More disclosed confidential client information to JM, including client account debits and security positions.

29. In that same month, More accepted trade instructions from JM for two sell transactions for two separate client accounts. For the first transaction, JM instructed More to sell anything other than MNLU in a client's account. For the second transaction, JM instructed More to buy shares of MNLU.

October

30. In October 2008, More emailed JM confidential client information regarding debits in client accounts. In addition, More advised JM:

> "*All mainland positions they are threatening selling out tomorrow*."

31. More and JM also exchanged text messages about the status of a client's account, and discussed that client's holdings in Mainland:

> JM: "*how much mnlu do they have"*
>
> NM: *"62000"*
>
> JM: *"I can't handle that amount"*
>
> NM: *"OH I know that! I'm just giving you the heads up."*
>
> JM: *"NO ONE sells"*
>
> JM: "*if they did want to sell then we would have pulled all bids and it would be 0.50"*

32. In that same month, More accepted trade instructions from JM for two purchases of MNLU in a client's account.

November

33. In November 2008, More accepted and executed trade instructions from JM for two purchases of MNLU in a client's account.

December

34. In December 2008, More disclosed to JM the amount of a debit in two client accounts.

35. In that same month, More accepted trade instructions from JM for a sale of MNLU in a client's account.

2009

February

36. In February 2009, More and JM exchanged text messages which included references to BP and MNLU.

37. In one of those messages, More told JM about another Canaccord broker's bids on MNLU.

38. On February 4, 2009, More emailed JM and disclosed the total of her client holdings in MNLU that were marginable.

39. In that same month, More accepted trade instructions from JM for a purchase and sale of MNLU in a client's account, and also to pull an order on a client account.

2010

40. In 2010, More disclosed confidential client information relating to MNLU to JM and BP.

March

41. In March 2010, More emailed BP and advised him that she had no orders outstanding on MNLU.

May

42. On May 3, 2010, More emailed JM an MNLU Position Report which showed all of her client accounts which held MNLU. The Position Report included the following confidential client information:

    a) Client names;

    b) Client account numbers;

    c) Client telephone numbers;

    d) Number of shares held in MNLU; and

    e) Average cost of the MNLU shares held.

43. On May 13, 2010, More again emailed an MNLU Position Report to JM containing the same confidential client information.

44. On May 27, 2010, More states that she erroneously emailed BP an MNLU Position Report, containing the same confidential client information she had previously sent to JM, which showed all of her client accounts which held MNLU. More's actions in this regard were grossly negligent. As a result of her negligence, confidential client information was sent to someone who has a serious regulatory history.

Mitigating Factors

45. More states that at all times that she was acting in the best interests of her clients following JM's departure at the end of August, 2008.

46. None of the clients involved in the transactions discussed above have advised Canaccord that the transactions were unauthorized. No client complaints were received.

47. The Respondent has cooperated with IIROC throughout its investigation.

IV. TERMS OF SETTLEMENT

48. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
The Settlement Agreement is subject to acceptance by the Hearing Panel.

49. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

50. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

51. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

52. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

53. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

54. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

55. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

56. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

57.

AGREED TO by the Respondent at the City of “North Vancouver" in the Province of "B.C", this "23rd" day of "April", 2014.

"WITNESS" **"NICOLA MORE"**

RESPONDENT

AGREED TO by Staff at the City of "Toronto" in the Province of "Ontario", this "13th" day of "May", 2014.

"WITNESS" **"DIANA IANNETTA"**

Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of "Vancouver" in the Province of "BC", this "23rd" day of "June", 2014, by the following Hearing Panel:

Per: "John Rogers"

Panel Chair

Per: "Barbara Fraser"

Panel Member

Per: "Michael Johnson"

Panel Member