

# Re Blackmore

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of  
Canada (IIROC)**

**and**

**Jay Alan Blackmore**

2014 IIROC 43

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

Heard: August 25, 2014  
Decision: August 25, 2014  
Released: September 22, 2014

**Hearing Panel:**

Garrett Wilson, Q.C., Chair, Eric Wray and David R. Johnson

**Appearances:**

David McLellan, Enforcement Counsel

Wilson Olive, Q.C., counsel for Jay Alan Blackmore

Jay Alan Blackmore, in person

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## REASONS FOR DECISION

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¶ 1 The Hearing Panel was established and convened pursuant to IIROC Rules 15 and 20.36 to consider a Settlement Agreement between IIROC and Mr. Blackmore. Both Mr. McLellan and Mr. Olive conceded that the Panel had been properly appointed, that all required or material notices and services had been effected or waived and that the Panel had jurisdiction to proceed.

¶ 2 Pursuant to IIROC Rule 20.50 (1) (a), the Hearing was held in the absence of the public.

¶ 3 The Settlement Agreement presented to us had been executed by IIROC and Mr. Blackmore on August 14, 2014. It contains the following agreed statement of facts:

**(ii) Factual Background**

**Overview**

9. The Respondent, Jay Alan Blackmore (“Blackmore”), engaged in outside business activities without his firm’s approval by facilitating off-book investments by 5 clients totaling \$780,000.

**Registration History**

10. Blackmore became licensed in the securities industry as a Registered Representative (“RR”) in 2003. At all material times, he was employed as a RR in a branch of BMO Nesbitt Burns Inc. (“NB”) located in Regina, Saskatchewan.

11. On or about April 10, 2013 Blackmore ceased employment with NB.

## **CGI Merchant Group LLC**

12. Blackmore was involved with a corporation named CGI Merchant Group LLC (“CGI”).

13. In or about early 2013, CGI was attempting to secure financing for two separate real estate development projects located in Florida: the “Office Commons” project; and the “1100 Biscayne Blvd.” Project (together, the “Projects”).

14. While still employed as an RR with NB, Blackmore approached a number of his clients concerning a possible investment in the Projects.

15. Between approximately January and April, 2013, Blackmore facilitated investments by five of his clients in the Projects through private placements as follows:

- a) Four clients lent a total of \$630,000 to CGI Commons Invest Co, LLC, a corporation related to CGI, in exchange for subordinated debt issued in connection with the Office Commons Project;
- b) One client lent \$150,000 to a corporation related to CGI, in exchange for subordinated debt issued in connection with the 1100 Biscayne Blvd project.

16. These transactions were all conducted off-book while Blackmore was a Registered Representative and employee of NB. Blackmore did not properly disclose to his firm that he was engaging in this outside business activity.

17. In addition, Blackmore, through a corporation controlled by him, held a contractual interest in the corporations which were funding the Projects. He therefore had a personal financial interest in the success of the Projects and personally benefitted from having his clients invest in the Projects.

18. The facilitation of securities transactions for these clients off-book without the approval of his firm, and in relation to an outside investment in which he held a personal financial interest, constitutes conduct unbecoming of a registrant.

## **Contravention**

¶ 4 Based upon the above Statement of Facts, IIROC has alleged, and Blackmore, as Respondent, has admitted the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

*Between approximately January and April, 2013, the Respondent engaged in outside business activities by facilitating off-book investments in private placements by five clients, without the approval of his firm and contrary to Dealer Member Rule 29.1*

## **Terms of Settlement**

¶ 5 Pursuant to IIROC Rule 20.35, IIROC and Blackmore have agreed to the following terms of settlement:

- (a) A fine in the sum of \$30,000.00; and
- (b) A 45 day suspension of registration with IIROC in any capacity;
- (c) Blackmore (Respondent) to pay costs to IIROC in the sum of \$2,500.00.

## **Submissions**

¶ 6 On behalf of IIROC, Mr. McLellan urged us to accept the Settlement Agreement as negotiation between the Parties. He referred us to the penalties that are authorized by IIROC's Rules, to a selection of decisions of other Hearing Panels in similar cases, and to the IIROC Dealer Member Disciplinary Sanction Guidelines, a compilation of sentencing ranges drawn from an extensive review of the history of disciplinary actions in the investment industry. The Terms proposed in this case fall within the established range.

¶ 7 On behalf of his client, Mr. Olive introduced two features not explicitly stated in the Agreed Statement of Facts; Mr. Blackmore has some twenty-five to thirty years experience in the investment industry, but is not currently working. And, although he agreed that Mr. Blackmore had failed to properly secure his firm's approval, he had made his firm aware of his outside activities.

¶ 8 At this point, Mr. McLellan quite properly drew our attention, and Mr. Olive's attention, to IIROC Rule 15.3 which provides, in part;

*Unless the parties consent, facts not contained in the Settlement Agreement cannot be referred to or disclosed to the Hearing Panel.*

¶ 9 Mr. McLellan advised us that he was willing to consent to the introduction of the facts described in Paragraph 24, but nothing further. Mr. Olive accepted the constraint and desisted from any further discussion of the facts but strongly urged us to accept the Settlement Agreement.

¶ 10 Submissions of counsel concluded at this point and the Panel retired to consider the Settlement Agreement.

### **Consideration**

¶ 11 The “Main Concerns When Determining An Appropriate Penalty” for contraventions of the investment industry rules, as originally set out in *Re Derivative Services Inc.*, a 2000 decision, have been adopted in the Dealer Member Disciplinary Sanction Guidelines and accepted so frequently by Hearing Panels that they have become incontrovertible principles. We have no difficulty in accepting them as governing our consideration of this Settlement Agreement. Those principles are:

1. *Protection of the investing public,*
2. *Protection of the Investment Industry Regulatory Organization membership,*
3. *Protection of the integrity of the Investment Industry Regulatory Organization's process,*
4. *Protection of the integrity of the securities markets, and*
5. *Prevention of a repetition of conduct of the type under consideration.*

¶ 12 This Settlement Agreement has been negotiated, and its terms agreed upon, between two experienced and capable counsel, far better able to protect the interests of their respective clients than we, a third party tribunal. However, we see our responsibility to be to the party unrepresented during the negotiations between counsel to the parties, IIROC and Mr. Blackmore, that is the public interest.

¶ 13 Mr. Blackmore has admitted to a contravention of Rule 29.1, two segments of which requires that all persons subject to the Rules, including Registered Representatives:

- (1) *shall observe high standards of ethics and conduct in the transaction of their business, and*
- (2) *shall not engage in any business conduct or practice which is unbecoming to the public interest.*

¶ 14 The core element, the *sine qua non*, in Mr. Blackmore having conducted off-book business activities without the approval of his firm is deceit. Deceit, in turn, is not only anathema in the investment industry, it negates, and cannot co-exist with, “high standards of ethics,” or integrity. Mr. Olive downplayed the degree of Mr. Blackmore's deceit, but the fact remains that, on his advice, his client has pleaded guilty to this contravention. Deceit, in any form, is abhorrent conduct and is a serious offence in the investment industry.

¶ 15 In weighing the Terms of Settlement to assess their suitability to the public interest, we looked carefully at the range of penalties that have been found to meet that test in other decisions. We find that the Terms before us fall well within the established ranges and we saw nothing to take the situation before us beyond those ranges.

¶ 16 Accordingly, we concluded that the Settlement Agreement met all the established criteria and we so advised the parties at the hearing. These are the reasons for our decision.

¶ 17 Upon advising the parties that the Settlement Agreement had been so accepted, pursuant to Rule 20.50 (1) (a) we declared the hearing open to the public.

**DATED** this 22 day of September, 2014.

Garrett Wilson, Chair

Eric Wray, Member

David R. Johnson, Member

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Jay Alan Blackmore, consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) in to the conduct of Jay Alan Blackmore.
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 Dealer Member Rules, Guidelines, Regulations or Policies:

Between approximately January and April, 2013, the Respondent engaged in outside business activities by facilitating off-book investments in private placements by five clients, without the approval of his firm and contrary to Dealer Member Rule 29.1.

6. Staff and the Respondent agree to the following terms of settlement:
  - a) A fine in the sum of \$30,000; and
  - b) A 45 day suspension of registration with IIROC in any capacity.
7. The Respondent agrees to pay costs to IIROC in the sum of \$2,500.

### **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) Factual Background**

##### **Overview**

9. The Respondent, Jay Alan Blackmore (“Blackmore”), engaged in outside business activities without his firm’s approval by facilitating off book investments by 5 clients totaling \$780,000.

##### **Registration History**

10. Blackmore became licensed in the securities industry as a Registered Representative (“RR”) in 2003. At all material times, he was employed as an RR in a branch of BMO Nesbitt Burns Inc. (“NB”) located in Regina, Saskatchewan.

11. On or about April 10, 2013, Blackmore ceased employment with NB.

#### **CGI Merchant Group LLC**

12. Blackmore was involved with a corporation named CGI Merchant Group LLC (“CGI”).
13. In or about early 2013, CGI was attempting to secure financing for two separate real estate development projects located in Florida: the “Office Commons” project; and the “1100 Biscayne Blvd.” project (together, the “Projects”).
14. While still employed as an RR with NB, Blackmore approached a number of his clients concerning a possible investment in the Projects.
15. Between approximately January and April, 2013, Blackmore facilitated investments by five of his clients in the Projects through private placements as follows:
- a) Four clients lent a total of \$630,000 to CGI Commons Invest Co, LLC, a corporation related to CGI, in exchange for subordinated debt issued in connection with the Office Commons project;
  - b) One client lent \$150,000 to a corporation related to CGI, in exchange for subordinated debt issued in connection with the 1100 Biscayne Blvd project.
16. These transactions were all conducted off-book while Blackmore was a Registered Representative and employee of NB. Blackmore did not properly disclose to his firm that he was engaging in this outside business activity.
17. In addition, Blackmore, through a corporation controlled by him, held a contractual interest in the corporations which were funding the Projects. He therefore had a personal financial interest in the success of the Projects and personally benefitted from having his clients invest in the Projects.
18. The facilitation of securities transactions for these clients off-book without the approval of his firm, and in relation to an outside investment in which he held a personal financial interest, constitutes conduct unbecoming of a registrant.

#### **IV. TERMS OF SETTLEMENT**

19. This settlement is agreed upon in accordance with IROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
20. The Settlement Agreement is subject to acceptance by the Hearing Panel.
21. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
22. 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.
23. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
24. 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.
25. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
26. 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.
27. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable

immediately upon the effective date of the Settlement Agreement.

28. 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.

**AGREED TO** by the Respondent at the City of Regina, in the Province of Saskatchewan,  
this 15<sup>th</sup> day of August, 2014.

“WITNESS”

“JAY BLACKMORE”

**WITNESS**

**RESPONDENT**

**JAY ALAN BLACKMORE**

**AGREED TO** by Staff at the City of Calgary, in the Province of Alberta, this 18<sup>th</sup> day of August, 2014.

“WITNESS”

“DAVID MCLELLAN”

**WITNESS**

**DAVID MCLELLAN**

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

**ACCEPTED** at the City of Regina, in the Province of Saskatchewan, this 5<sup>th</sup> day of August, 2014, by the  
following Hearing Panel:

Per: “Garrett Wilson”  
Panel Chair

Per: “Eric Wray”  
Panel Member

Per: “David Johnson”  
Panel Member

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