

# Re Reynolds and Chang

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

**MARK ANDREW REYNOLDS**

AND

**LAWRENCE BRADLEY CHANG**

2009 IIROC 50

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

Heard: November 10, 2009  
Decision: November 16, 2009  
(14 paras.)

**Hearing Panel:**

Wade Nesmith, Chair  
Chris Lay  
Brian Field

**Appearances:**

Paul Smith for the IIROC  
Stephen O'Neill for Mark Andrew Reynolds  
Roderick Anderson for Lawrence Bradley Chang

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## DECISION ON SETTLEMENT AGREEMENT

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Introduction

¶ 1 On November 10, 2009, the Panel held a hearing pursuant to IIROC Dealer Member Rules 20.35 to 20.40 to review and determine whether or not to accept a Settlement Agreement between the IIROC Staff and the Respondents. Following review, we decided to accept the Settlement Agreement and informed the parties that our reasons would follow. The Settlement Agreement is appended hereto. These are our reasons.

Breaches and Penalties

¶ 2 Staff and the Respondents agreed on the following penalties:

- a. Reynolds – a breach of Dealer Member Rule 29.1, commonly known as “conduct unbecoming” in respect of his failure to learn essential facts regarding client trading and, thereby, failing to fulfill his responsibilities as a gatekeeper, for which he will receive a suspension of 6 months, a fine of \$40,000 and make a contribution of \$2,000 toward costs; and
- b. Chang – breaches of Dealer Member Rules 1300.1, all as a result of his failure to make appropriate inquiries of his clients with respect to their trading and, thereby, failing to fulfill his responsibilities as a gatekeeper, for which he will receive a fine of \$30,000 and make a contribution of \$2,000 toward costs.

¶ 3 It is important to note that while Mr. Reynold’s conduct amounted to a breach of 29.1 and, therefore, must have included conduct that involved gross negligence or moral turpitude (necessary components of conduct unbecoming), it was agreed that Mr. Chang’s conduct did not reach those levels.

#### Test for Acceptance

¶ 4 The test for whether a Panel should accept a settlement agreement placed before it is now largely settled.

¶ 5 In *Re Clark* [1999] I.D.A.C.D. No. 40 the Panel held that:

“In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.”

¶ 6 In *Re Milewski* [1999] I.D.A.C.D. No. 17 the Panel held that:

“A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”

¶ 7 The question for us, therefore, is whether these penalties fall within a “reasonable range of appropriateness”.

#### Precedents

¶ 8 Several cases were placed before us to demonstrate that the proposed penalties were within that range of appropriateness, and we agree that they support such a conclusion. Of particular relevance, in our view, is the Ontario Securities Commission decision *In the Matter of Jeffrey Kasman and Clinton Anderson*, Ontario Securities Commission; July 14, 2009, a review of a decision of a panel of the Ontario District Council.

¶ 9 In *Kasman and Anderson*, the Panel reviewed many of the same precedents to which we were referred and came to the conclusion, following a hearing, that the appropriate penalty for each respondent was a 2 month suspension and a fine of \$25,000. That decision was upheld on appeal to the Ontario Securities Commission. It is important to note that in that case there was a finding that the respondents’ failure to execute their role as a gatekeeper facilitated a market manipulation.

#### Mitigating Factors

¶ 10 In the instant matter we were advised that neither Respondent has any disciplinary record. Additionally, we note that unlike the situation in *Kasman and Anderson*, there is no evidence before the Panel that any manipulation occurred, let alone that the Respondents’ conduct facilitated one.

#### Conclusion

¶ 11 Despite the lack of evidence or finding with respect to a manipulation, the trading in question was, to an impartial observer, highly irregular and such that it ought to have attracted scrutiny by both Reynolds and Chang. They ignored it at their peril, and to the detriment of the public markets. They failed in their roles as gatekeepers, a role that is of fundamental importance in ensuring that markets are fair.

¶ 12 Reynold's conduct, it is admitted, was more egregious than Chang's. The admission with respect to liability is greater. We agree that his penalty should be more serious and find the agreed-upon penalty appropriate, particularly in light of the decision in *Kasman and Anderson*. This type of conduct demands a period of suspension.

¶ 13 With respect to Chang, his conduct did not reach the level of being "conduct unbecoming" and breaching Dealer Member Rule 29.1. Accordingly, we agree that a period of suspension is not required and agree that a fine is appropriate.

¶ 14 In summary, we accept the Settlement Agreement appended hereto.

Dated at Vancouver, British Columbia, this 16<sup>th</sup> day of November, 2009.

Wade Nesmith  
Chris Lay  
Brian Field

\* \* \* \* \*

## SETTLEMENT AGREEMENT

### I. Introduction

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Mark Andrew Reynolds (Reynolds), and Lawrence Bradley Chang (Chang) (the Respondents).
2. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.
3. The Investigation discloses matters for which the Respondents may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1 (the Hearing Panel).

### II. Joint Settlement Recommendation

4. The Respondents consent to be subject to the jurisdiction of IIROC.
5. Staff and the Respondents consent and agree to the settlement of these matters by way of this settlement agreement (the Settlement Agreement) 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*.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.

9. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
10. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. Staff and the Respondents 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.
13. Staff and the Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement.

### **III. Statement of Facts**

#### *(i) Acknowledgment*

14. Staff and the Respondents 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**

#### **Relevant Period**

15. This Settlement Agreement relates to events that took place from approximately November 2003 to July 2004 (the Relevant Period).

#### **Aberdene**

16. During the Relevant Period, Aberdene Mines Limited, a corporation registered in Nevada, U.S.A., traded on the Over-The-Counter Bulletin Board (OTCBB) under the symbol ABRM.
17. Prior to the Relevant Period Aberdene was a publicly traded shell with no business assets or operations and existed as little more than a name. It traded only 26 days through the entire year in 2003.
18. During the Relevant Period the share price of Aberdene increased from \$1.10 (USD)<sup>1</sup> in mid January 2004 to \$3.04 by February 24, 2004. The share price then rose to \$5.14 on June 16, 2004, when Aberdene completed a two-for-one (2:1) stock split. The share price then peaked over the next three weeks to close at \$4.40 (effectively \$8.80 pre-split) on July 8, 2004.
19. The share price started falling after July 8, 2004. Within three trading days the share price had dropped more than 54% and closed at \$2.00 on July 13, 2004. For the next two months it traded mostly in the range of \$2.00 - \$2.30. On September 21, 2004, it dropped another 60% to go from a close of \$1.95 on September 20, 2004, to close at \$0.78 on September 21, 2004. By the end of September it was \$0.55. By the spring of 2005 the share price was \$0.25.

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<sup>1</sup> All references to Aberdene share price, the cost to acquire Aberdene shares and monies spent by Aberdene are in U.S. Dollars

20. Throughout its investigation, Staff found no justification for the increase in share price of Aberdene. During the Relevant Period Aberdene issued a number of News Releases which, on the surface, could be interpreted as favorable by an unsophisticated investor. The News Releases outlined bold plans which would only accrue benefit to the company if it was able to raise and spend money exploring certain mining properties. Aberdene supplemented these News Releases by paying for promotional articles to be posted on internet investment forums and chat rooms and by spending \$750,000, in a separate agreement, on a promotional advertising campaign designed to encourage investors to purchase Aberdene shares.

### **Reynolds**

21. Reynolds was first registered in 1992. During the Relevant Period he was an RR at the Vancouver Branch of Research Capital Corporation (Research) whose business concentrated on financing developmental stage companies.
22. In August 2005, while he was still an RR at Research, Reynolds, became an advisor to Aberdene, assisting the President with the day to day operations of the company. He signed a contract to be paid a salary of \$10,000 per month and to receive options to purchase up to 1.2 million common shares of Aberdene at a price of \$0.40.
23. On December 19, 2005, Reynolds resigned from Research at Research's request due to concerns it had with respect to Reynolds conducting unauthorized outside business activities in relation to Aberdene. He has not since been registered with any Dealer Member firm.

### **Chang**

24. Chang was first registered in 1998 and joined Wolverton's Head Office in Vancouver as a RR in July 2000. He was registered at Wolverton through the Relevant Period and until the end of November 2005. He then joined Canaccord Capital Corporation where he was registered until he resigned on March 2009. He has not since been registered with a Dealer Member firm.

### **Aberdene Reorganized**

25. During the Relevant Period, a group of individuals (the Reorganization Group) were working on a plan to reorganize the management and direction of Aberdene (the Reorganization Plan).
26. Reynolds introduced or facilitated the introduction of some of the principal players who influenced the direction and business development and promotion of Aberdene.
27. The Reorganization Group included:
- (a) Hugh Grenfal (Grenfal), who was President of Aberdene until he resigned on January 27, 2004. He knew Reynolds for approximately 10 years prior to the Relevant Period.
  - (b) Jardine, who took over from Grenfal as President of Aberdene on January 27, 2004.
  - (c) Tim Hipscher (Hipscher), a close friend of Reynolds. Hipscher introduced Reynolds to Jardine. Hipscher became Secretary of Aberdene on January 27, 2004, when Jardine became President.
  - (d) Cameron Reynolds (Cameron), a U.K. resident, who was a close associate and the cousin of Reynolds. Cameron became the CFO of Aberdene on May 10, 2004.
  - (e) ADA, a longtime associate of Jardine's was responsible for a promotional budget whereby he paid writers for promotional articles about Aberdene.
  - (f) LEN, a long time friend and client of Reynolds, worked with ADA to help promote Aberdene.

In April 2004 he was the proposed new President of Aberdene, although he never formally became a Director.

### **Reynolds' Connected Clients**

28. During the Relevant Period Reynolds had the following non-Canadian clients (the Connected Clients) whom he knew, or ought to have known, were connected to each other and / or connected to members of Aberdene's reorganization group:
- (a) CB, a Canadian and close friend of Hipscher. CB had two corporate accounts for corporate entities that were incorporated in a tax haven jurisdiction.
  - (b) RC, a British Citizen, and a close business associate of Reynolds and Cameron. RC had a personal account and an account for a corporate entity that was incorporated in a tax haven jurisdiction.
  - (c) HS, a British citizen and his spouse CL a citizen of Taiwan, who were close business associates of RC
  - (d) AG and his spouse FA, citizens of the Philippines, who were connected to HS and CL.

### **Chang's Clients**

29. During the Relevant Period Chang had the following clients who bought and sold shares of Aberdene:
- (a) BOM, a bartender from Vancouver;
  - (b) CMD, a corporation whose principal was a mortgage broker from Vancouver;
  - (c) KEL, a physician and a U.S. citizen residing in the state of Maryland. KEL's office manager, ABE, also a U.S. citizen residing in Maryland had authority to trade in KEL's account. The trading authorization form indicated that ABE's Investment Knowledge was "Poor / Nil."
  - (d) PRAD, a personal holding company of EDW, a U.S. citizen residing in Nevada. EDW was a self-employed investor with Excellent Investment Knowledge and high risk tolerance.
  - (e) EBR, a Canadian Citizen, residing in Toronto, Ontario. EBR had a personal account and had trading authority over his father's account which guaranteed his own account. The NCAF for both accounts indicated a sophisticated investor who wanted to take on 100% speculative investments.

### **Respondents' Clients Bought and Sold Aberdene Shares**

30. During the Relevant Period the Respondents executed buy and sell transactions for Aberdene shares for each of the above named clients.
31. On January 15, 2004, Aberdene announced that it had entered into negotiations to acquire certain mineral properties in the United States and that further information would be made available upon the completion of the negotiations.
32. Some of the transactions were after the January 15, 2004, News Release but before the January 27, 2004, News Release which announced the proposed management change whereby Jardine and Hipscher became Directors.
33. The remaining transactions were after the News Release on January 27, 2004, though June 30, 2004.

## No Reasonable Inquiries

34. Although their clients traded significant volumes of Aberdene while the share price of Aberdene was increasing significantly, the Respondents executed the transactions without making reasonable inquiries to determine the purpose of or confirm the propriety of the transactions in circumstances which a reasonable RR ought have determined necessitated further inquiry because:

In the case of Reynolds:

- (a) He knew or ought to have known his clients were connected to each other and/or to the Reorganization Group;
- (b) He executed a total of 9 transactions for RC, CB, and HS between January 13 and January 27, 2004, when he ought to have known those clients may have been in possession of material undisclosed information regarding the Reorganization Plan;
- (c) His client RC purchased approximately 800,000 shares with total acquisition cost of approximately \$3,000,000 and sold the same amount of shares at or around the same price at which they were purchased;
- (d) His client AG purchased 185,400 shares with total acquisition cost of approximately \$430,000 and sold 185,400 shares at essentially the same price at which they were purchased;
- (e) He executed 25 purchase transactions for clients which on their own were greater than 20% of the entire purchasing volume for Aberdene shares on the day the transaction was made. 2 of these 25 purchase transactions were greater than 50% of the entire purchasing volume for Aberdene shares on the day the transaction was made. 8 of the remaining 23 greater were made on 4 days (2 each day) when Reynolds' clients accounted for more than 60% of the purchasing volume for Aberdene shares;
- (f) He executed 6 sell transactions for clients which on their own were greater than 20% of the entire purchasing volume for Aberdene shares on the day the transaction was made;
- (g) He executed 9 purchase transactions when another one of his clients was on the sell side of the transaction;

In the case of Chang:

- (h) He stated his clients BOM and CMD made decisions to trade Aberdene based on whether Chang's other clients were trading it;
  - (i) He knew his clients KEL&ABE, EDW (PRAD), and EBR participated in the same internet chat sites which featured short selling;
  - (j) He executed 2 purchase transactions for BOM and CMD which combined to account for 29% of the purchase volume on the day the transaction was made;
  - (k) He executed 1 purchase transaction for KEL&ABE which represented 28% of the purchase volume on the day the transaction was made;
  - (l) He executed 26 purchase transactions for EBR (and EBR's father) and PRAD which on their own were greater than 8% of the entire purchasing volume for Aberdene shares on the day the transaction was made. 5 of these 26 purchase transactions were greater than 25% of the entire purchasing volume for Aberdene shares on the day the transaction was made.
35. In failing to learn essential facts regarding their clients' trading the Respondents acted merely as order-takers and failed to fulfil their responsibilities as gatekeepers of the capital markets.

## IV. CONTRAVENTIONS

36. Reynolds admits that he acted contrary to Dealer Member Rule 29.1 by accepting orders to buy and sell shares of Aberdene in client accounts without reasonably informing himself of the essential facts relative to his clients' orders, and without assuring himself the transactions were not being effected for improper purposes, in circumstances which necessitated such inquiries.
37. Chang admits that he acted contrary to Dealer Member Rules 1300.1(a), (o), and (p) by accepting orders to buy and sell shares of Aberdene in client accounts without making reasonable or diligent inquiries that were reasonably necessary to inform himself of the essential facts relative to his clients and their orders and to assure himself that the transactions were suitable for his clients in the circumstances which necessitated such inquiries.

**V. TERMS OF SETTLEMENT**

38. The Respondents agree to the following terms of settlement:
  - (i) Reynolds will pay a fine of \$40,000;
  - (ii) Chang will pay a fine of \$30,000;
  - (iii) The Respondents will each contribute \$2,000 towards IIROC's investigative and prosecution costs for a total of \$4,000;
  - (iv) Reynolds is suspended from approval in any registered capacity with IIROC for a period of 6 months from the date of his execution of this Settlement Agreement.
39. In determining the applicability and length of suspensions for the Respondents Staff has considered the fact that neither Respondent is currently registered and has not been registered since December 2005 (Reynolds) and March 2009 (Chang).
40. The monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.

AGREED TO by the Respondent Reynolds at Vancouver in the Province of British Columbia, this 20<sup>th</sup> day of October, 2009.

**“Witness signature”**

**Witness**

**“Respondent’s signature”**

**Respondent**

AGREED TO by the Respondent Chang at Vancouver in the Province of British Columbia, this 27<sup>th</sup> day of October, 2009.

**“Witness signature”**

**Witness**

**“Respondent’s signature”**

**Respondent**

AGREED TO by Staff at the City of Vancouver, in the Province of British Columbia, this 4<sup>th</sup> day of November, 2009.

**“Witness signature”**

**Witness**

**“Paul Smith”**

**Enforcement counsel**

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 10<sup>th</sup> day of November, 2009, by the following Hearing Panel:

Per: “Wade Nesmith”  
Panel Chair

Per: “Chris Lay”  
Panel Member

Per: “Brian Field”  
Panel Member

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