

Re White

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

WAYNE WHITE

2010 IIROC 25

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

Hearing: May 3, 2010, in Toronto Ontario
Decision: June 2, 2010
(23 paras.)

Hearing Panel:

The Honourable Robert Montgomery (Chair)
Mr. Selwyn Kossuth
Mr. Hugh McNabney

Appearances:

Elsa Renzella, Enforcement Counsel
T. Nigel Campbell, for Wayne White

DECISION AND REASONS

¶ 1 At all material times, the Respondent was employed at the downtown Toronto branch office of HSBC Securities (Canada) Inc. (“HSBC Securities”) and registered with the IDA as a Registered Representative Options (Retail).

¶ 2 Since May 16, 2005, the Respondent has been employed with Brant Securities Limited as a Registered Representative Options (Retail). The Respondent has been in the retail brokerage business since 1972. On June 1, 2008, the Respondent became a regulated person of IIROC.

Off-book Private Placements

¶ 3 In 2003 and 2004, the Respondent subscribed to nine (9) private placements (some of which had multiple tranches) offered by six (6) different issuers. He subscribed to these offerings under two different names: (1) the corporate name of Kayjay Realty Inc. (“Kayjay”), and (2) the corporate name of Alamy Holdings Inc. (“Alamy”).

¶ 4 At all material times, the Respondent was President of both Kayjay and Alamy. The Respondent had trading authority over both companies' accounts held at HSBC Securities.

¶ 5 During this same two-year period from 2003 to 2004, ten of the Respondent's clients participated in various private placements, most of which were placements also subscribed to by the Respondent through his companies Kayjay or Alamy. The private placements ("the Private Placements") which both the Respondent and/or some his clients subscribed to are contained in Schedule A of the Settlement Agreement.

¶ 6 None of the subscriptions by the Respondent and his clients to the Private Placements were recorded on the books and records of HSBC Securities. The Respondent also did not obtain the approval from HSBC Securities regarding his clients' participation in the Private Placements. HSBC Securities had no direct knowledge of this participation in the Private Placements until late October 2004.

Personal Financial Dealings

¶ 7 The GAPCO offering, referred to in Schedule A, relied upon the prospectus exemption set out in Ontario Securities Commission ("OSC") Rule 45-501, section 2.3 (otherwise known as the 'accredited investor' exemption). The offering also required a minimum subscription amount of \$400,000 US.

¶ 8 In order to meet the minimum threshold subscription amount and comply with the 'accredited investor' exemption, the Respondent, through Alamy and Kayjay, and his clients, through two investment clubs, invested in the private placement through a trustee, TH, who directly subscribed to the shares on behalf of these individual investors. TH was also a client of the Respondent.

¶ 9 The two investment clubs were called the Cup of Mud investment club and the Canada Pallet investment club, which consisted of six and eight members, respectively. All of the clubs' members except for two were the Respondent's clients at HSBC Securities.

¶ 10 The following investments were made through TH by the investment clubs, Alamy and Kayjay: \$236,000 US (Cup of Mud), \$211,000 (the Canada Pallet), \$53,000 US (Alamy) and \$57,000 US (Kayjay).

¶ 11 The pooling of these investments was not directly known by HSBC Securities and was in violation of section 2.3 of OSC Rule 45-501.

Undisclosed Benefits

¶ 12 IBK Capital Corporation ("IBK") is a registered Limit Market Dealer and an independent privately owned investment banking firm offering a full range of services to the mining industry including acting as agent for various private placement offerings. IBK was also a client of the Respondent at HSBC Securities.

¶ 13 All of the Private Placements were offered through IBK who acted as the placement agent.

¶ 14 As a result of his and his clients' subscriptions in some of the Private Placements, the Respondent received benefits, either directly or indirectly, from IBK valued at approximately \$97,000. Of the total amount, approximately \$41,000 took the form of re-investment in various private placements on behalf of the Respondent, Alamy, Kayjay, or KV Limited, of which the Respondent's brother is an owner. The remaining amounts were paid to others as agreed to by the Respondent.

¶ 15 HSBC Securities had no direct knowledge of these benefits being provided to the Respondent.

¶ 16 The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:

(i) In 2003 and 2004, the Respondent participated and facilitated his clients' participation in various private placements, such transactions being conducted off the books and records and without the knowledge or consent of his employer Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1);

(ii) In or about January 2004, the Respondent engaged in personal financial dealings with clients when he participated in a private placement distribution with a group of his clients without the

knowledge or consent of his employer Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1); and

(iii) In 2003 and 2004, the Respondent received, directly or indirectly, monetary benefits from a third-party for his facilitation of, solicitation of or any other acts in furtherance of his and his clients' investments in various private placements, without his employer Member firm's knowledge or consent, contrary to IDA By-law 18.15 (now Dealer Member Rule 18.15).

¶ 17 The Respondent agrees to the following terms of settlement:

- a. A fine in the amount of \$97,000;
- b. 45-day suspension from any registration with IIROC;
- c. Close supervision for a period of one year upon any subsequent registration with IIROC; and
- d. Successful completion of the Conduct and Practices Handbook examination within 6 months from any subsequent registration with IIROC.

¶ 18 The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$15,000.00.

¶ 19 In the case of *Re Deck*, [2007] I.D.A.C.D. No. 19, decided May 28, 2007 by a British Columbia Panel, the Panel stated that if the terms of settlement fall within a reasonable range the Panel should accept the settlement. The Panel shall not substitute its discretion for that of the Staff of the Association.

¶ 20 It was the initial view of the Panel that the terms of settlement are at the lower end of the range.

¶ 21 It is, however, significant that there were no client complaints. While Mr. White says he did not know the rule, he contravened, in our view, the test "knew or ought to have known". With his industry association since 1972 we are of the view that he ought to have known the rule.

¶ 22 In our view delay is NOT a mitigating factor.

¶ 23 Taking all factors into consideration, we believe the terms of settlement are within a fair range and we accept them.

Dated at Toronto in the Province of Ontario, this 2nd day of June 2010.

Robert S. Montgomery, Chair

Selwyn Kossuth, Panel Member

Hugh McNabney, Panel Member

*** * * 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 Wayne White ("the Respondent").
2. The Investigation was commenced by Enforcement Department Staff ("IDA Staff") of the Investment Dealers Association of Canada ("IDA") prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its

regulatory functions.

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. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent 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 Respondent 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 Respondent waives his 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 Respondent 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 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. STATEMENT OF FACTS

(i) Acknowledgment

14. 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

Registration and Jurisdiction

15. At all material times, the Respondent was employed at the downtown Toronto branch office of HSBC Securities (Canada) Inc. (“HSBC Securities”) and registered with the IDA as a Registered Representative Options (Retail).
16. Since May 16, 2005, the Respondent has been employed with Brant Securities Limited as a Registered Representative Options (Retail).
17. The Respondent has been in the retail brokerage business since 1972.
18. On June 1, 2008, the Respondent became a regulated person of IIROC.

Off-book Private Placements

19. In 2003 and 2004, the Respondent subscribed to nine (9) private placements (some of which had multiple tranches) offered by six (6) different issuers. He subscribed to these offerings under two different names: (1) the corporate name of Kayjay Realty Inc. (“Kayjay”), and (2) the corporate name of Alamy Holdings

Inc. (“Alamy”).

20. At all material times, the Respondent was President of both Kayjay and Alamy. The Respondent had trading authority over both companies’ accounts held at HSBC Securities.
21. During this same two-year period from 2003 to 2004, ten of the Respondent’s clients participated in various private placements, most of which were placements also subscribed to by the Respondent through his companies Kayjay or Alamy.
22. The private placements (“the Private Placements”) which both the Respondent and/or some his clients subscribed to are contained in Schedule A of this Settlement Agreement.
23. None of the subscriptions by the Respondent and his clients to the Private Placements were recorded on the books and records of HSBC Securities. The Respondent also did not obtain the approval from HSBC Securities regarding his clients’ participation in the Private Placements. HSBC Securities had no direct knowledge of this participation in the Private Placements until late October 2004.

Personal Financial Dealings

24. The GAPCO offering referred to in Schedule A relied upon the prospectus exemption set out in Ontario Securities Commission (“OSC”) Rule 45-501, section 2.3 (otherwise known as the ‘accredited investor’ exemption’). The offering also required a minimum subscription amount of \$400,000 US.
25. In order to meet the minimum threshold subscription amount and comply with the ‘accredited investor’ exemption, the Respondent, through Alamy and Kayjay, and his clients, through two investment clubs, invested in the private placement through a trustee, TH, who directly subscribed to the shares on behalf of these individual investors. TH was also a client of the Respondent.
26. The two investment clubs were called the Cup of Mud investment club and the Canada Pallet investment club, which consisted of six and eight members, respectively. All of the clubs’ members except for two were the Respondent’s clients at HSBC Securities.
27. The following investments were made through TH by the investment clubs, Alamy and Kayjay: \$236,000 US (Cup of Mud), \$211,000 (the Canada Pallet), \$53,000 US (Alamy) and \$57,000 US (Kayjay).
28. The pooling of these investments was not directly known by HSBC Securities and was in violation of section 2.3 of OSC Rule 45-501.

Undisclosed Benefits

29. IBK Capital Corporation (“IBK”) is a registered Limit Market Dealer and an independent privately owned investment banking firm offering a full range of services to the mining industry including acting as agent for various private placement offerings. IBK was also a client of the Respondent at HSBC Securities.
30. All of the Private Placements were offered through IBK who acted as the placement agent.
31. As a result of his and his clients’ subscriptions in some of the Private Placements, the Respondent received benefits, either directly or indirectly, from IBK valued at approximately \$97,000. Of the total amount, approximately \$41,000 took the form of re-investment in various private placements on behalf of the Respondent, Alamy, Kayjay, or KV Limited, of which the Respondent’s brother is an owner. The remaining amounts were paid to others as agreed to by the Respondent.
32. HSBC Securities had no direct knowledge of these benefits being provided to the Respondent.

Mitigating Factors

33. The Respondent has cooperated in Staff’s investigation.
34. The Respondent did not understand that the benefits he received, directly or indirectly, were of a nature that needed to be disclosed to the Member firm.

IV. CONTRAVENTIONS

35. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:

(i) In 2003 and 2004, the Respondent participated and facilitated his clients' participation in various private placements, such transactions being conducted off the books and records and without the knowledge or consent of his employer Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1);

(ii) In or about January 2004, the Respondent engaged in personal financial dealings with clients when he participated in a private placement distribution with a group of his clients without the knowledge or consent of his employer Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to IDA By-law 29.1 (now Dealer Member Rule 29.1); and

(iii) In 2003 and 2004, the Respondent received, directly or indirectly, monetary benefits from a third-party for his facilitation of, solicitation of or any other acts in furtherance of his and his clients' investments in various private placements, without his employer Member firm's knowledge or consent, contrary to IDA By-law 18.15 (now Dealer Member Rule 18.15).

V. TERMS OF SETTLEMENT

36. The Respondent agrees to the following terms of settlement:

e. A fine in the amount of \$97,000;

f. 45-day suspension from any registration with IIROC;

g. Close supervision for a period of one year upon any subsequent registration with IIROC; and

h. Successful completion of the Conduct and Practices Handbook examination with 6 months from any subsequent registration with IIROC.

37. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of \$15,000.00.

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

39. 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 Toronto in the Province of Ontario, this 22nd day of April, 2010.

"Witness signature"

WITNESS

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 26th day of April, 2010.

Witness signature

WITNESS

"Wayne White"

RESPONDENT

"Elsa Renzella"

ELSA RENZELLA

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

ACCEPTED at the City of Toronto in the Province of Ontario, this 1st day of May, 2010, by the following Hearing Panel:

Per: “Robert Montgomery”

Panel Chair

Per: “Selwyn Kossuth”

Panel Member

Per: “Hugh McNabney”

Panel Member

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF WAYNE WHITE

SCHEDULE A

Issuer: Caledonia Mining Corporation

Date of Placement	Subscriber	Units Purchased	Total Purchase Price
January 6, 2003	Alamy	100,000	\$25,000
August 6, 2003	Alamy	100,000	\$25,000
April 5, 2004	Kayjay	32,000	\$10,560
	WSJ	20,000	\$6,600
	KW	20,000	\$6,600
	X Ontario Ltd.	100,000	\$33,000

Issuer: Gemhouse Online.Com Inc.

Date of Placement	Subscriber	Units Purchased	Total Purchase Price
March 29, 2004	Kayjay	96,113	\$14,417 US
	PS	208,632	\$31,295 US
	HM	75,299	\$11,295 US

Issuer: Guinea Alumina Products Corporation (“GAPCO”)

Date of Placement	Subscriber	Units Purchased	Total Purchase Price
January 30, 2004	TH	800,000	\$800,000 US

Issuer: South American Gold and Copper (“SAG”)

Date of Placement	Subscriber	Units Purchased	Total Purchase Price

December 10, 2003	Alamy	2,978,733	\$234,575
	WSJ	300,000	\$23,625
	HM	500,000	\$39,375
	PS	1,000,000	\$78,750
	X Ontario Ltd.	900,000	\$70,875
	JVM	300,000	\$23,625
	KW	100,000	\$7,875
	JG & RG	200,000	\$15,750
October 21, 2004	Kayjay	300,000	\$21,000
	DB	200,000	\$14,000
	JA	100,000	\$7,000
	WSJ	100,000	\$7,000

Issuer: Tribute Minerals Inc.

Date of Placement	Subscriber	Units Purchased	Total Purchase Price
January 21, 2003 (tranche 2)	Kayjay	420,756	\$105,189
	Alamy	320,000	\$80,000
	PS	100,000	\$25,000
	DB	40,000	\$10,000
January 21, 2003 (tranche 3)	Kayjay	80,000	\$24,000

Issuer: Western Goldfields

Date of Placement	Subscriber	Units Purchased	Total Purchase Price
November 3, 2003 (tranche 1)	Kayjay	100,000	\$80,000 US
	X Ontario Ltd.	50,000	\$40,000 US
	PS	100,000	\$80,000 US

November 26, 2003 (tranche 2)	WSJ	16,250	\$13,000 US
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