

# Re Morrison

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 (IDA)**

**and**

**Elizabeth Maureen Morrison**

2011 IIROC 44

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

Heard: June 20, 2011 in Calgary, Alberta  
Decision: June 20, 2011  
(19 paras.)

## **Hearing Panel:**

Ms. Shelley Miller, Q.C. (Chair), Mr. Martin Davies

## **Appearance:**

David McLellan, Enforcement Counsel for IIROC  
Gil Gauthier, Enforcement Counsel for IIROC  
Jocelyn Doucette, IIROC investigator  
Craig Leggett, Counsel for Elizabeth Maureen Morrison

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## **REASONS FOR DECISION**

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¶ 1 As a result of a Settlement Agreement entered into between IIROC and the Respondent, a Settlement Hearing was conducted on June 20, 2011 in Calgary pursuant to the IIROC Dealer Member Rules. The Hearing Panel received a Settlement Hearing Book submitted on behalf of counsel for IIROC and the Respondent containing the proposed Settlement Agreement, relevant IIROC rules and disciplinary sanction guidelines and certain decisions of previous hearing panels.

¶ 2 The hearing panel also heard detailed oral submissions from each counsel.

¶ 3 The contraventions alleged by IIROC and admitted by the Respondent are set out in the Settlement Agreement as follows:

1. From September, 2004 to October 2005, while a registered representative at Blackmont Capital Inc., she:

- i. Failed to use due diligence to learn and remain informed of the essential facts relative to every client and to every order account accepted contrary to IDA regulation 1300.1(a) [now IIROC rule 1300.1(a)];
- ii. Failed to use due diligence to ensure that the acceptance of any order from the customer was suitable for such customer contrary to IDA regulation 1300.1(p) [now IIROC rule 1300.1(p)];
- iii. Facilitated the purchase of a private placement by clients for which the issue relied on certain exemptions from the registration and prospectus requirements of applicable securities legislation when those clients did not qualify for exemption, contrary to IDA bylaw 29.1 [now Dealer member Rule No. 29.1]

## **FACTS**

¶ 4 Between September 2004 and October 2005 the Respondent opened new client accounts for approximately 179 individuals seeking to purchase certain preferred shares pursuant to a non-brokered private placement. All these new clients were referrals to the Respondent from the president of an Alberta based corporation described as being engaged in oil and gas exploration.

¶ 5 The Respondent received no commission or fees of any kind but as a junior broker was motivated to open the accounts by the desire to build her book of business. She considered the entity a high risk security and duly warned each client of the high risk nature of the investment. It was her practice to send a prospective client a blank new client account form (“NCAF”) by mail to be filled out, signed and returned. Upon receipt of the returned NCAF, the Respondent would review it, speak to the client either by telephone or in person to confirm the contents and complete any missed missing information.

¶ 6 The clients all had the same objectives which were 100% venture and 100% high risk. Most clients resided in Alberta and Ontario but some resided in British Columbia, Manitoba or Saskatchewan. All wanted to open new accounts to participate in a non-brokered private placement of the company’s preferred shares. Nearly all the clients invested only in that junior exploration company and did not want to purchase any other security even though the Respondent urged many to consider some other investments which carried a lower risk profile or generated income. Nearly all the clients were transferring funds held in registered retirement accounts.

¶ 7 The Respondent did not review the client’s subscription agreement or likely would have note that many of the clients did not qualify for the exemptions based on the financial information appearing in the NCAF. The Respondent spoke to the branch management and the compliance department of her firm about the concerns and complied with their instructions to her. She made a handwritten notation on all of the NCAFs confirming that: she conversed with the clients; they had been cautioned and were aware of the risk and that they could lose some, or all, of their investment.

¶ 8 The Respondent also provided each client advice that their portfolio reflected a high degree of risk (“concentration letter”). Those clients were asked to sign and return a copy of the same which was drafted by the Respondent’s firm compliance department.

¶ 9 The Respondent sent the completed NCAFs to her firm’s back office which transmitted the same to the branch manager for review and approval. The branch manager approved the client’s applications for client accounts. The Respondent had no direct involvement in the processing of the transaction on behalf of the client.

¶ 10 The Respondent failed to personally assess the information provided by the client or adequately assess the risk tolerance and investment objective information on a number of the NCAFs or whether it was consistent with their age, net worth, investment experience and knowledge.

¶ 11 In completing the NCAF and opening the new accounts the Respondent erroneously ensured that the NCAFs matched the risk level of the particular security instead of the individual client’s investment objectives and risk tolerance.

¶ 12 Despite the fact that the subject investment was not apparently suitable in view of their recorded age, net worth, investment experience and knowledge the Respondent accepted the orders from the clients when she ought to have questioned whether many of the clients qualified for any exemption to participate in the private placement as they purported to do.

## DECISION

¶ 13 The issue for the panel was whether to accept or reject the proposed settlement. Enforcement counsel provided a copy of the decision *Re Milewski*, [1999] I.D.A.C.D. No. 17, which contains the following statement:

“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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlement.

¶ 14 Counsel for the Respondent provided a more recent decision in *Re Bereskin* [2010] IIROC No. 37 which contained the following statement:

“Given the standard of “reasonableness” it is the responsibility of this panel to determine whether the penalties set forth in this Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the security markets and prevention of a repetition of the offence.”

¶ 15 We were also provided with cases cited by both IIROC and the Respondent’s counsel contained in the Settlement Hearing Book and we note specifically that the “Know Your Client” rule in the Dealer Member Disciplinary Sanction Guidelines requires that all registrants make diligent and business-like efforts to learn and record the essential financial and personal circumstances and the investment objectives of each client. This panel agrees that knowing your client is a fundamental ongoing obligation that a registrant is required to meet to continue to act in the best interest of her clients”.

¶ 16 After hearing and considering all the submissions of counsel for both parties, this panel accepts that the Respondent failed to:

- adequately assess the risk tolerance and investment objective information
- ensure that the NCAF matched the risk level of the security in question
- recognize the subject investment was not apparently suitable in relation to the recorded age, net worth, investment experience and knowledge of the clients.

¶ 17 In the Respondent’s favour were the facts were she had no disciplinary history; she acknowledged her failure to question whether all the clients qualified for the exemption to participate in the private placement; she cooperated in the inquiry and made no profit from her actions.

¶ 18 In addition, she had relied upon her compliance department and branch manager to provide guidance and her error appeared to flow from inexperience. As such, her failures were acts of omission rather than commission, which, in the panel’s view, do not reflect on her integrity.

## PENALTY

¶ 19 The Settlement Agreement provided that the Respondent would pay a fine of \$30,000.00 and successfully rewrite the CPH examination by December 31, 2011. The hearing panel is satisfied that the terms of the Settlement Agreement are reasonable having regard to the nature of the misconduct, the need for

deterrence, the mitigating factors, the sanction guidelines as well as all of the personal circumstances referenced by Respondent's counsel. Accordingly, the hearing panel accepts the terms of the Settlement Agreement.

DATED as of the 20<sup>th</sup> day of June, 2011.

Shelley L. Miller, Q.C., Chair

Martin Davies

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Elizabeth Maureen Morrison, 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 Elizabeth Maureen Morrison.
3. 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.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
  - a. From September, 2004 to October, 2005, while a Registered Representative at Blackmont Capital Inc., she
    - i. failed to use due diligence to learn and remain informed of the essential facts relative to every client and to every order or account accepted contrary to IDA Regulation 1300.1(a) [ now IIROC Rule 1300.1(a)];
    - ii. failed to use due diligence to ensure that the acceptance of any order from a customer was suitable for such customer contrary to IDA Regulation 1300.1(p) [now IIROC Rule 1300.1(p)];
    - iii. facilitated the purchase of a private placement by clients for which the issuer relied on certain exemptions from the registration and prospectus requirements of applicable securities legislation when those clients did not qualify for exemption, contrary to IDA By-law 29.1 [now Dealer Member Rule 29.1].
8. Staff and the Respondent agree to the following terms of settlement:
  - a) The Respondent agrees to pay a fine to IIROC in the amount of thirty thousand dollars (\$30,000.00);
  - b) The Respondent shall be required to successfully rewrite the CPH examination by December 31, 2011;

9. The Respondent agrees to pay costs to IIROC in the sum of five thousand dollars (\$5,000.00).

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

10. For the purposes of this Settlement Agreement only, 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**

11. Between September, 2004 and October, 2005, the Respondent, a Registered Representative with Blackmont Capital Inc., failed to know her client, and failed to ensure that the acceptance of client orders were suitable, with respect to a number of new client accounts that invested in a non-brokered private placement in Arbour Energy Inc. (“Arbour”).
12. The Respondent also failed to question whether many of the clients qualified for any exemption to participate in the private placement as they purported to do.

##### **Respondent**

13. Between January 2003 and July 2007, the Respondent was a Registered Representative (“RR”) in the Calgary office of First Associates Inc. which subsequently changed its name to Blackmont Capital Inc (“Blackmont”). Since July, 2007 the Respondent has been a RR with PI Financial Corp.
14. The Respondent does not have any disciplinary history.

##### **Arbour Energy Inc.**

15. Arbour was an Alberta based corporation described as being engaged in oil and gas exploration. Beginning in 2004, its common shares were listed for trading on the Canadian National Stock Exchange (“CNQ”). Arbour had been a reporting issuer since 2002, initially as a capital pool company on the TSX Venture Exchange (and its predecessor CDNX).
16. In the fall of 2005, the Alberta Securities Commission issued a Cease Trade Order with respect to Arbour shares. The shares have not traded since 2005. The ASC has alleged that the principals of Arbour in conjunction with others engaged in fraudulent conduct and made misleading statements to investors and the investment community at large in offering documents.

##### **Complaints**

17. This matter arose out of a March 3, 2010 Comset filing by Macquarie Private Wealth Inc. (successor to Blackmont), as well as an April 26, 2010 client complaint made directly to Staff.

##### **New Clients**

18. Between approximately September 2004 and October 2005, the Respondent opened new client accounts for approximately one hundred and seventy nine (179) individuals (“Clients”) seeking to purchase Arbour preferred shares pursuant to a non-brokered private placement. All of these new clients were referrals to the Respondent from DM, president of Arbour. There was no commission or fees of any kind paid to the Respondent for opening the accounts of the Clients or upon purchases of the Arbour shares; as a junior broker, the Respondent was motivated to open the accounts by the desire to build her book of business.
19. The total amount invested by the Clients was \$10,571,478.60.
20. When the accounts were opened, the Respondent knew that Arbour was a small oil and gas company, trading on the CNQ at a price of approximately \$0.30. She considered Arbour a high risk security. She warned each of the Clients of the high risk nature of the investment given that it was a junior exploration

company.

21. Unlike the common shares of Arbour, the preferred shares were not traded on any exchange and were subject to a hold period. However, they were preferred shares of the company and so were in a superior position to the common shares of Arbour in relation to the company's income and assets.

### **Account Opening Process**

22. Upon being contacted by a prospective client by telephone, it was the Respondent's practice to send them a blank NCAF by mail. In most cases, the prospective client would then fill out the form, sign it, and return it to her by mail.
23. Upon receiving the NCAF from the client, the Respondent would review it, and then speak with the client by telephone, or meet the client in person, in order to confirm its contents and to complete any missing information.
24. Among other things, the Clients had the following characteristics:
  - a) The Clients' objectives were one hundred percent venture, and one hundred percent high risk;
  - b) The majority of the Clients resided in Alberta and Ontario, but the group also included residents of British Columbia, Manitoba and Saskatchewan;
  - c) All of the Clients wanted to open new accounts with the specific purpose of participating in a non-brokered private placement of Arbour preferred shares;
  - d) Nearly all of the Clients invested only in Arbour, and did not want to purchase any other security notwithstanding that the Respondent urged many to consider some other investments which carried a lower risk profile or generated income; and
  - e) Nearly all of the Clients were transferring funds held in registered retirement accounts.
25. The Respondent did not review the client subscription agreements. The Respondent was aware that many of the Clients were relying on an offering memorandum exemption, or an accredited investor exemption, in order to participate in the private placement. However, many of the Clients did not qualify for these exemptions based on the financial information appearing in the NCAF.
26. As indicated above, the Respondent was concerned about the high degree of risk that the Clients were taking on, and spoke to her firm about these concerns. She spoke with the branch management and with the Compliance department and she followed their instructions to her. As a result, she:
  - a) made a handwritten notation on all of the NCAFs confirming her conversations with the various clients that the client had been cautioned and was aware of the risk and that they could lose some or all of their investment; and
  - b) also provided to each of the Clients a letter advising that their portfolio reflected a high degree of risk ("Concentration Letter"). The Clients were asked to sign and return a copy of the Concentration Letter. This letter was drafted by the Compliance Department and provided to the Respondent to send out to the Arbour clients.
27. The Respondent would then send the completed NCAF to the Blackmont back office, who would give the NCAF to the Branch Manager for review and approval.
28. The Branch Manager approved the Clients' applications for client accounts.
29. The procedure for handling a non-brokered private placement at Blackmont, at that time, was that once an account was opened and the dealer received a completed subscription agreement, the back office of Blackmont would handle all aspects of processing the transaction on behalf of the client(s) without the involvement of the client's broker. This procedure was followed in the case of the Clients' purchase of Arbour preferred shares and the Respondent had no involvement in the process.

30. The NCAFs of the Clients indicated that for many of them, the investment in Arbour represented a substantial portion of their net worth.
31. The NCAFs of the Clients indicated, among other things, the following:
  - a) There were 101 clients in which their Arbour investment represented more than 30% of their liquid assets, including 72 clients in which their Arbour investment represented more than 50% of their liquid assets;
  - b) There were 36 clients in which their Arbour investment represented more than 30% of their net worth, including 19 where it exceeded 50% of their net worth, and 3 clients where it exceeded 100% of their net worth;
  - c) There were 72 clients in which their Arbour investment exceeded their annual income, including 9 clients where it exceeded 5 times their annual income.
32. The Respondent failed to personally assess the information provided by the Clients. She knew that the Clients were investing in Arbour, a high risk security, but she did not adequately assess the risk tolerance and investment objective information on a number of NCAFs and whether it was consistent with their age, net worth, investment experience and knowledge.
33. The Respondent, in completing the NCAF and opening the new accounts erroneously ensured that the NCAFs matched the risk level of the particular security, instead of the individual client's investment objectives and risk tolerance.
34. The Respondent accepted the orders from the Clients despite the fact that for many of the Clients, the investment in Arbour was not apparently suitable in view of their recorded age, net worth, investment experience and knowledge. The Respondent believed that because she had cautioned them about the risk involved in an investment in Arbour, that she had satisfied her obligation to the clients.
35. The Respondent acknowledges that she ought to have questioned whether many of the Clients qualified for any exemption to participate in the private placement as they purported to do.

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

36. 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.
37. The Settlement Agreement is subject to acceptance by the Hearing Panel.
38. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
39. 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.
40. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
41. 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.
42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
43. 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.
44. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable

immediately upon the effective date of the Settlement Agreement.

45. 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 Calgary, in the Province of Alberta, this 14<sup>th</sup> day of June, 2011.

“Witness signature”

“Respondent’s signature”

WITNESS

RESPONDENT

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 14<sup>th</sup> day of June, 2011.

“Witness signature”

“David McLellan”

WITNESS

DAVID MCLELLAN

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

ACCEPTED at the City of Calgary in the Province of Alberta, this 20<sup>th</sup> day of June, 2011, by the following  
Hearing Panel:

Per: “Shelley Miller”

Panel Chair

Per: “Martin Davies”

Panel Member

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