

# Re Jory Capital

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of  
Canada**

**and**

**Jory Capital Inc.**

2013 IIROC 20

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

Heard: April 17, 2013  
Decision: April 22, 2013

**Hearing Panel:**

Mr. Robert Hucal – Chair, Mr. Peter McWilliams and Mr. William Welton

**Appearances:**

Mr. Lorne Herlin, Counsel for IIROC

Mr. Thomas Kormylo (by teleconference), Counsel for Jory Capital Inc.

Mr. Patrick Cooney on behalf of Jory Capital Inc.

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## REASONS FOR DECISION

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¶ 1 We were constituted as a Panel to consider, pursuant to the Dealer Member Rules of IIROC, whether or not to accept a Settlement Agreement negotiated between IIROC’s enforcement division and Jory Capital Inc. (“Jory Capital”). At the conclusion of the Hearing held for this purpose in Winnipeg, Manitoba on April 18, 2013, and after considering the submissions and Settlement Agreement terms, we accepted it.

¶ 2 The Settlement Agreement is annexed to our Decision. It contains:

- a) a summary of the underlying facts;
- b) an admission by Jory Capital that since October 29, 2012 Jory Capital has failed to maintain a level of risk adjusted capital above zero;
- c) an agreement by Jory Capital that its IIROC membership be terminated pursuant to Member Rule 20.34.

¶ 3 The authority granted pursuant to Rule 20.36 allows this Panel to accept or reject the Settlement Agreement. The material presented states a Hearing Panel should not interfere in a negotiated settlement re Milewski, followed recently in Deutsche Bank Securities Ltd. Additionally, in the decisions of Gateway Securities Inc. and Graydon Elliott Capital Corp., the principles relating to the adoption or rejection of a settlement agreement were considered. Our duty is to determine whether or not the penalty is reasonable and meets the objectives of the disciplinary process.

¶ 4 We accept principles set out in the several decisions and are of the unanimous view that the Settlement Agreement terms are within the reasonable range of appropriateness, meet the objectives of the disciplinary process and maintain the integrity of the investment industry.

¶ 5 IIROC has, in its submission, advised it seeks no costs and we therefore so note.

¶ 6 The process leading up to this Settlement Agreement and our approval includes a decision of an IIROC Hearing Panel dated December 13, 2012 in which Jory Capital's membership was suspended and which immediately precluded Jory Capital from dealing with the public.

¶ 7 In reaching this decision, we note that the Settlement Agreement effectively concludes Jory Capital's involvement as an IIROC member.

Dated this 22<sup>nd</sup> day of April, 2013.

Robert Hucal

Peter McWilliams

William Welton

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. Investment Industry Regulatory Organization of Canada (IIROC) Enforcement Department Staff (Staff) has received information from IIROC's Financial and Operations Compliance Department regarding the Respondent, Jory Capital Inc. (Jory).
2. Staff's review of the information disclosed matters for which Jory may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1 (the Hearing Panel).
3. Staff and Jory consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).

### II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and Jory jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. Jory admits that since October 29, 2012 it has failed to have and maintain at all times risk adjusted capital greater than zero, contrary to IIROC Dealer Member Rule 17.1.
6. Staff and Jory agree to the following term of settlement:

Jory's membership in IIROC is terminated, pursuant to IIROC Dealer Member Rules 20.34(e) and 20.34(g).

### III. STATEMENT OF FACTS

#### (i) Acknowledgment

7. Staff and Jory 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

8. IIROC requires all Dealer Members to always maintain a level of risk adjusted capital above zero. Since October 29, 2012 Jory has failed to meet this requirement.

##### Jory

9. Jory is a privately owned company operating out of one office location in Winnipeg.

10. Effective October 15, 1999, Jory was admitted to the membership of the Investment Dealers Association of Canada.
11. Effective June 1, 2008, Jory was admitted to the membership of IIROC.

### **Risk Adjusted Capital**

12. Risk adjusted capital is a defined measure of a Dealer Member's capital (calculated pursuant to Generally Accepted Accounting Principles) that has been adjusted for regulatory purposes. The calculation of risk adjusted capital is the primary means by which the financial status of a Dealer Member is prescribed and monitored.
13. IIROC Dealer Member Rule 17.1 requires all Dealer Members to always maintain risk adjusted capital greater than zero as calculated in accordance with Form 1 – Joint Regulatory Financial Questionnaire and Report (JRFQR). If at any time the risk adjusted capital of a Dealer Member is less than zero, that Dealer Member is required to immediately notify IIROC.
14. The requirement that a Dealer Member must maintain positive risk adjusted capital is essential for the determination of the financial solvency of a Dealer Member and ultimately for the protection of the public, other Dealer Members, and IIROC.
15. Through the filing of an annual audited JRFQR and a monthly financial report, Dealer Members are required to regularly calculate and then submit their risk adjusted capital status to IIROC.

### **Risk Adjusted Capital Deficiency**

16. Since October 29, 2012, Jory's risk adjusted capital has been less than zero.
17. As of November 28, 2012, which is the last day that Jory filed its risk adjusted capital calculation, Jory's level of risk adjusted capital was -\$248,000.
18. Due to, among other things, Jory's risk adjusted capital deficiency, on November 22, 2012 the Manitoba Securities Commission (MSC) suspended Jory's registration as an investment dealer. As a result of the MSC suspension, Jory's registration as an investment dealer was also automatically suspended in British Columbia, Alberta, and Saskatchewan.
19. On November 29, 2012, Jory informed IIROC that it wished to withdraw its IIROC membership.
20. On December 6, 2012, the Ontario Securities Commission suspended Jory's registration as an investment dealer. As of that date, Jory ceased active business operations because it had been suspended by every province where it was registered to do business as an investment dealer.
21. Pursuant to IIROC Dealer Member Rule 20.45(1), on December 12, 2012 Staff applied for and obtained an Order which, among other things, suspended Jory's IIROC membership. A copy of the IIROC Hearing Panel's Decision and Order is attached as Schedule "A" to this Settlement Agreement.
22. On December 28, 2012, all of Jory's accounts were transferred to another Dealer Member.
23. As of February 4, 2013, Jory no longer has any registrants.
24. Pursuant to IIROC Dealer Member Rule 8, the IIROC Board of Directors may only consider an application for resignation if, among other things, a Dealer Member has liquid assets sufficient to meet all its liabilities other than subordinated loans. Given that Jory does not have liquid assets sufficient to meet all its liabilities, the IIROC Board of Directors cannot consider Jory's application for resignation.

## **IV. TERMS OF SETTLEMENT**

25. 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*.
26. The Settlement Agreement is subject to acceptance by the Hearing Panel.

27. The Settlement Agreement shall become effective and binding upon Staff and Jory as of the date of its acceptance by the Hearing Panel.
28. 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.
29. If the Hearing Panel accepts the Settlement Agreement, Jory waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review, or appeal.
30. If the Hearing Panel rejects the Settlement Agreement, Staff and Jory may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in this Settlement Agreement.
31. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
32. Staff and Jory 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.
33. 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.
34. This Settlement Agreement may be signed in counterparts and/or by facsimile.

**AGREED TO** by the Respondent, Jory Capital Inc. at the City of Winnipeg in the Province of Manitoba, this 3rd day of April, 2013.

“Witness”

“Patrick Cooney”

**WITNESS**

**JORY CAPITAL INC.**

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 11th day of April, 2013.

“Shannon Mathieson”

“Lorne Herlin”

**WITNESS**

**LORNE HERLIN**

Senior Enforcement Counsel  
on behalf of IIROC Staff

**ACCEPTED** at the City of Winnipeg in the Province of Manitoba, this 18th day of April, 2013, by the following Hearing Panel:

Per: “Robert Hucal”  
Panel Chair

Per: “Peter McWilliams”  
Panel Member

Per: “William Welton”  
Panel Member

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