

Re Tempest Capital

IN THE MATTER OF:

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

and

Tempest Capital Corp.

2014 IIROC 54

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

Heard: October 23, 2014

Decision: October 23, 2014

Decision Released: October 29, 2014

Hearing Panel:

The Honourable Thomas R. Braidwood, Q.C., Chair, Brian Worth and Michael Johnson

Appearances:

Paul Smith, Senior Enforcement Counsel, IIROC

Tempest Capital Corp., Self-Represented, Navdeep Gill, CFI, CCO

REASONS FOR DECISION

¶ 1 In September 2014, the Respondent, Tempest Capital Corp., advised IIROC that it intended to resign its membership. Such an intention cannot be automatic. It must be accepted by IIROC's Board of Directors before it can be effective. The Board of IIROC will not be in a position to consider the Respondent's resignation until November 26, 2014 at the earliest.

¶ 2 The Respondent has sent written notice to all of its clients advising them of its intention to resign. It has received back from each client a written acknowledgement that the client does not have a complaint against the Respondent. Further, the Respondent has transferred all cash and securities out of its client accounts and is currently undergoing a termination audit to satisfy the requirements of IIROC Dealer Member Rule 8 which relates to Dealer Member resignations.

¶ 3 The Respondent has effectively ceased carrying on business as a dealer. The parties have entered into a settlement agreement the terms of which provide that the Respondent's IIROC membership will be suspended until such time as its resignation is approved and also it will pay costs of \$1,000.00.

¶ 4 Paragraph 5 of the joint settlement recommendation reads as follows:

“5. The Respondent admits that it has ceased to carry on business as a dealer as contemplated by IIROC Dealer Member Rule 8.8 and that after October 24, 2014 it will no longer have a qualified Supervisor of approved persons and client accounts as required by IIROC Dealer Member Rule 1300.2.”

¶ 5 For convenience, the Settlement Agreement is now produced and marked as Appendix A our Reasons.

¶ 6 When this matter came on for hearing, the Hearing Panel unanimously approved the Settlement Agreement and accordingly ordered a suspension as provided in the agreement. Accordingly, the Hearing Panel confirms the following order:

- (a) the Respondent's IIROC membership is suspended until such time as its resignation is approved; and
- (b) the Respondent will pay costs of \$1,000.00.

Dated: October 29, 2014

Thomas R. Braidwood

Brian Worth

Michael Johnson

SETTLEMENT AGREEMENT

I. INTRODUCTION

- 1. IIROC Enforcement Staff ("**Staff**") and Tempest Capital Corp. ("**Respondent**") consent and agree to the settlement of this matter by way of this agreement ("**Settlement Agreement**").
- 2. The Enforcement Department of IIROC has conducted an investigation ("**Investigation**") into the conduct of the Respondent.
- 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 ("**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 that it has ceased to carry on business as a dealer as contemplated by IIROC Dealer Member Rule 8.8 and that after October 24, 2014 it will no longer have a qualified Supervisor of approved persons and client accounts as required by IIROC Dealer Member Rule 1300.2.
- 6. Staff and the Respondent agree to the following terms of settlement:
 - a) the Respondent's IIROC membership is suspended until such time as it's resignation is approved; and
 - b) the Respondent will pay costs of \$1,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

- 7. 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

- 8. In September 2014, the Respondent, an IIROC Dealer Member firm, gave notice to IIROC that it intended to resign its membership. Since that time, the Respondent has been taking steps to wind down its business and has now effectively ceased carrying on business as a dealer. The Respondent's application to resign its membership cannot be considered by the IIROC Board of Directors until November 26, 2014 at the earliest, but after October 24, 2014 the Respondent will no longer have a qualified Supervisor of client accounts and approved persons. Because it will not have a qualified Supervisor in place, the Respondent's membership must be suspended pending the acceptance of its application to resign.

The Respondent

9. The Respondent was admitted as an IIROC Dealer Member in November, 2012. It had seven approved persons working at one office location on Burrard Street in Vancouver.

Intended Resignation

10. In September, 2014, the Respondent advised IIROC that it intended to resign its IIROC membership.
11. No IIROC Dealer Member's resignation is automatic. It must be accepted by IIROC's Board of Directors before it can be effective.
12. IIROC's Board will not be in a position to consider the Respondent's resignation until November 26, 2014 at the earliest.
13. Since it announced its intention to resign, the Respondent has taken steps to wind down its business.
14. The Respondent has sent written notice to all of its clients advising them of its intention to resign. It has received back from each client a written acknowledgement that the client does not have a complaint against the Respondent.
15. The Respondent has transferred all cash and securities out of client accounts and is currently undergoing a termination audit to satisfy the requirements of IIROC Dealer Member Rule 8 which relates to Dealer Member resignations.
16. As of the date of this Settlement Agreement, the Respondent has effectively ceased carrying on business as a dealer.

Supervisor

17. At all times that the Respondent was actively engaged in the business of a dealer, it had an approved Supervisor of approved persons and client accounts. That individual's qualifications as a Supervisor will expire after October 24, 2014 and he does not plan to take any action to maintain his qualification because the Respondent has submitted its resignation which is anticipated to be approved by IIROC's Board of Directors on November 26, 2014, which is approximately one month after the expiration of his qualification. In addition, he does not intend to act as a Supervisor in the future.
18. The Respondent has no other qualified Supervisor and will therefore be, after October 24, 2014 unable to meet the requirements of IIROC Dealer Member Rule 1300.2 which require a Dealer Member to designate a qualified Supervisor of approved persons and client accounts.

IV. TERMS OF SETTLEMENT

19. 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.
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 its right under IIROC 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 Vancouver, British Columbia, this 22nd day of October, 2014.

“Navdeep Gill”

WITNESS

“Bradley Kopp”

RESPONDENT

AGREED TO by Staff at Vancouver, British Columbia, this 22nd day of October, 2014.

“Suzana Mujkanovic”

WITNESS

“Paul Smith”

PAUL SMITH

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

ACCEPTED at Vancouver, British Columbia, this 23rd day of October, 2014, by the following Hearing Panel:

Per: “Thomas Braidwood”

Panel Chair

Per: “Brian Worth”

Panel Member

Per: “Michael Johnson”

Panel Member

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