

Re Union Securities

IN THE MATTER OF:

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

and

Union Securities Ltd.

2017 IIROC 05

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

Heard: December 14, 2016
Decision: December 14, 2016
Written Decision: January 19, 2017

Hearing Panel:

The Honourable Thomas R. Braidwood, Q.C., Chair, David Duquette and Robert Travers

Appearances:

Paul Smith, Enforcement Counsel for IIROC

Taylor Veinotte Sullivan, Counsel for the Respondent

Patrick Sullivan

REASON FOR DECISION

¶ 1 This hearing is commenced to determine whether or not the Settlement Agreement should be approved pursuant to IIROC Dealer Member Rule 8200 and 8203. This procedure has been described by counsel for IIROC as “an administrative clean-up”. There is no question of fault involved.

A. OVERVIEW

¶ 2 The Respondent has not carried on business as an IIROC Dealer Member since 2012 and has been suspended since 2013, but it is unable to formally resign its IIROC membership according to IIROC rules because its Risk Adjusted Capital (“RAC”) is below zero. There is no reasonable prospect that the Respondent will ever be in a position to resign in accordance with IIROC rules. The Respondent should therefore be expelled from membership in IIROC.

Assets Purchased

¶ 3 In October 2012, the Respondent entered into an agreement with another IIROC Dealer Member whereby certain of the Respondent’s assets and client accounts were purchased by and transferred to the purchasing firm. With that agreement, the Respondent effectively ceased carrying on business as a Dealer Member.

¶ 4 The asset purchase agreement included an additional amount of money that was to be paid to the Respondent contingent upon a certain amount of account retention at the purchasing firm at the end of three years, October 2015.

Intended Resignation

¶ 5 In November 2012, the Respondent informed IIROC in writing that it intended to resign its IIROC membership. IIROC published Notice 12-0346 to publicly announce the Respondent's intention to resign its membership.

¶ 6 No IIROC Dealer Member's resignation is automatic. Before it can be effective, the proposed resignation must be accepted by IIROC's Board of Directors.

¶ 7 Before a resignation will be accepted, the resigning Dealer Member must satisfy IIROC that various conditions have been met. One such condition is that the resigning Dealer Member must provide IIROC with a termination audit that says without qualification that the firm has liquid assets sufficient to meet all its liabilities other than subordinated loans.

Negative RAC

¶ 8 Before the conditions required for the acceptance of its resignation could be met, the Respondent's RAC fell below zero in July 2013. RAC is a defined measure of a Dealer Member's capital that has been adjusted for regulatory purposes. IIROC rules require all Dealer Members to always maintain a RAC greater than zero.

End of Contingent Period

¶ 9 In October 2015, at the end of the period set out to determine the contingent payment, the amount of account retention at the purchasing firm was insufficient to require the contemplated additional payment to the Respondent. No additional monies were due to the Respondent. The opportunity for its financial position to improve had therefore expired.

¶ 10 The Respondent remains unable to meet the requirements for a proper resignation according to IIROC Rules.

Liabilities Exceed Assets

¶ 11 The Respondent's liabilities to non-related parties exceed its assets and there is no reasonable expectation that the situation will change in the foreseeable future.

B. CONTRAVENTIONS

¶ 12 By engaging in the conduct described above, the Respondent ceased to carry on business as a dealer as contemplated by IIROC Rule 8.8 and contravened IIROC Rule 17.1 by failing to maintain a RAC above zero.

¶ 13 The following two sections are applicable:

“Rule 8 - Dealer Member Resignations, Amalgamations, etc.

8.8 If a Dealer Member has ceased to carry on business as a securities dealer..., the applicable District Council may, unless the Dealer member has voluntarily resigned in accordance with this Rule 8, terminate the Membership of the Dealer Member after the Dealer Member has been given the opportunity for a hearing...”

“Rule 17 – Dealer Member Minimum Capital, Conduct of Business and Insurance

17.1 Every Dealer Member shall have and maintain at all times risk adjusted capital greater than zero calculated in accordance with Form 1 and with such requirements as the Board of Directors may from time to time prescribe. If at any time the risk adjusted capital of a Dealer Member is, to the knowledge of such Dealer Member, less than zero, such Dealer Member shall immediately notify the Corporation.”

C. CONCLUSION

¶ 14 In these circumstances, the Respondent cannot comply with the provisions relating to “Risk Adjusted

Capital” because of its lack of funds and accordingly the Settlement Agreement should be accepted.

¶ 15 The Hearing Panel is unanimously of the opinion that the Respondent be expelled from membership in IIROC.

Dated: January 19, 2017

Thomas R. Braidwood

Panel Chair

David Duquette

Panel Member

Robert Travers

Panel Member

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Union Securities Ltd. (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. The Respondent has not carried on business as an IIROC Dealer Member since 2012 and has been suspended since 2013, but it is unable to formally resign its IIROC membership according to IIROC rules because its Risk Adjusted Capital (“RAC”) is below zero. There is no reasonable prospect that the Respondent will ever be in a position to resign in accordance with IIROC rules. The Respondent should therefore be expelled from membership in IIROC.

Background

5. The Respondent was founded in 1963 and became a Member of the Investment Dealers Association of Canada in February 1997 and subsequently a Dealer Member of IIROC in 2008 when the IDA and Market Regulation Services Inc. were consolidated into IIROC.
6. Throughout all relevant times its head office has been in Vancouver, British Columbia.

Assets Purchased

7. In October, 2012, the Respondent entered into an agreement with another IIROC Dealer Member whereby certain of the Respondent’s assets and client accounts were purchased by and transferred to the

purchasing firm. With that agreement, the Respondent effectively ceased carrying on business as a Dealer Member firm.

8. The Respondent's website has since posted the following message to clients:

After 50 years serving clients coast to coast in Canada and around the world, Union Securities Ltd. has shut its doors. As of October 15th 2012, all client accounts have been transferred out to other IIROC Member Investment Dealers.

9. The asset purchase agreement included an additional amount of money that was to be paid to the Respondent contingent upon a certain amount of account retention at the purchasing firm at the end of three years, October 2015.

Intended Resignation

10. In November, 2012 the Respondent informed IIROC in writing that it intended to resign its IIROC membership. IIROC published Notice 12-0346 to publicly announce the Respondent's intention to resign its membership.
11. No IIROC Dealer Member's resignation is automatic. Before it can be effective, the proposed resignation must be accepted by IIROC's Board of Directors.
12. Before a resignation will be accepted, the resigning Dealer Member must satisfy IIROC that various conditions have been met. One such condition is that the resigning Dealer Member must provide IIROC with a termination audit that says without qualification that the firm has liquid assets sufficient to meet all its liabilities other than subordinated loans.

Negative RAC

13. Before the conditions required for the acceptance of its resignation could be met, the Respondent's RAC fell below zero in July 2013. RAC is a defined measure of a Dealer Member's capital that has been adjusted for regulatory purposes. IIROC rules require all Dealer Members to always maintain a RAC greater than zero.
14. Since the Respondent had ceased active business operations, it was unable to improve its RAC position which has remained below zero ever since.
15. In November 2013 an IIROC Hearing Panel accepted a Settlement Agreement that the Respondent entered into with IIROC Enforcement Staff. Pursuant to that Settlement Agreement the Respondent's IIROC Membership was formally suspended and it was ordered to cease dealing with the public, although there was no suggestion that it had not already ceased carrying on business as a dealer in October 2012.

End of Contingent Period

16. In October 2015, at the end of the period set out to determine the contingent payment, the amount of account retention at the purchasing firm was insufficient to require the contemplated additional payment to the Respondent. No additional monies were due to the Respondent. The opportunity for its financial position to improve had therefore expired.
17. The Respondent remains unable to meet the requirements for a proper resignation according to IIROC rules.

Liabilities Exceed Assets

18. As of the date of this settlement agreement the Respondent's liabilities to non-related parties exceed its assets and there is no reasonable expectation that situation will change in the foreseeable future.

PART IV – CONTRAVENTIONS

19. By engaging in the conduct described above, the Respondent ceased to carry on business as a dealer as contemplated by IIROC Rule 8.8 and contravened IIROC Rule 17.1 by failing to maintain a RAC above zero.

PART V – TERMS OF SETTLEMENT

20. The Respondent agrees to the following sanctions and costs:
 - a. The Respondent is expelled from membership in IIROC.

PART VI – STAFF COMMITMENT

21. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of paragraph 22 below.
22. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

23. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
24. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
25. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
26. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
27. 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 based on the same or related allegations.
28. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
30. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf will make a public statement inconsistent with this Settlement Agreement.
31. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

32. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

33. A fax or electronic copy of any signature will be treated as an original signature.

DATED this "14th" day of "December", 20"16".

"signature"

Witness

"signature"

Respondent

"signature"

Witness

"signature"

Paul Smith

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

The Settlement Agreement is hereby accepted this "14th" day of December, 2016 by the following Hearing Panel:

Per: "Thomas Braidwood"

Panel Chair

Per: "Robert Travers"

Panel Member

Per: "David Duquette"

Panel Member

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