

Re Dominick Capital

IN THE MATTER OF:

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

and

Dominick Capital Corporation

2019 IIROC 23

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

Heard: August 16, 2019

Decision: August 16, 2019

Reasons: September 6, 2019

Hearing Panel:

Christopher Portner, Chair, Shaine Pollock and Cindy Tripp

Appearance:

Elissa Sinha, Senior Enforcement Counsel

Ciro Mirabella, Director, Financial Operations and Compliance

In Attendance:

Michael McIntosh, President and Chief Executive Officer, Dominick Capital Corporation

REASONS FOR DECISION

INTRODUCTION

¶ 1 On August 16, 2019, Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) made an application to this Hearing Panel for an order suspending the membership of Dominick Capital Corporation (“DCC”) and ancillary relief (the “Order”) pursuant to Sections 8212 and 8426 of IIROC’s Consolidated Enforcement, Examination and Approval Rules (the “Consolidated Rules”). The Order sought was made with the consent of DCC.

¶ 2 Following a hearing at IIROC’s offices in Toronto, the Hearing Panel approved the Order, a copy of which is attached, and these are our Reasons for doing so.

THE FACTS

¶ 3 The facts relevant to the Order are set out in the Affidavit of Blaize Piacentini, Manager, Financial Operations Compliance of IIROC, sworn on August 9, 2019. In his capacity as Manager, Mr. Piacentini is responsible for the financial compliance oversight of Dealer Member firms in Ontario, including DCC, which is a Type 3 introducing broker. Laurentian Bank Securities Inc. (“Laurentian”) is DCC’s carrying broker.

¶ 4 In June 2019, DCC filed its monthly financial report for the month of May 2019, which indicated that, as at May 31, 2019, DCC had triggered Early Warning Level Two as contemplated by Rule 30 of the Dealer

Member Rules. As stated by Mr. Piacentini in his Affidavit, the early warning system provides IIROC with an advance warning that a Dealer Member is in financial difficulty and permits additional monitoring by IIROC.

¶ 5 By letter dated June 14, 2019, IIROC confirmed that DCC had triggered the early warning system as a result of its monthly loss of \$111,000 having been greater than three times its risk adjusted capital of \$163,000. By a letter, also dated June 14, 2019, DCC acknowledged the contents of IIROC's letter and agreed that DCC would comply with the restrictions stipulated by IIROC.

¶ 6 On August 2, 2019, Mr. McIntosh, the President and Chief Executive Officer of DCC, advised Mr. Piacentini by telephone that DCC anticipated that it would be capital deficient by the close of business on August 6, 2019. On August 6, 2019, Mr. McIntosh advised IIROC that DCC would, in fact, be capital deficient by the close of business and had no sources of capital available to remedy the deficiency. On the same day, DCC filed its daily risk adjusted capital report, which showed that it was capital deficient.

¶ 7 On August 9, 2019, IIROC issued a Notice of Application to an IIROC hearing panel for a protective order against DCC, which Application was returnable on August 16, 2019.

¶ 8 As of August 9, 2019, DCC had approximately 261 clients and approximately \$55 million of assets under administration, all of which are held by Laurentian. The Hearing Panel reviewed a copy of the written notice provided by DCC to all of its clients advising them of the hearing concerning the suspension of DCC from further activities as an investment dealer and was advised that a similar notice would be posted on DCC's website. In addition, Laurentian advised Mr. Piacentini that it would maintain DCC's accounts following the suspension and would assign a representative to handle instructions for liquidating trades and transfer requests from DCC's clients.

¶ 9 In his Affidavit, Mr. Piacentini stated that he believed that DCC's capital deficiency posed a risk of imminent harm to its clients, other Dealer Members and IIROC, and that the capital deficiency indicated that there was a possibility of DCC becoming insolvent, which posed a potential financial risk to DCC's clients and a reputational risk to IIROC and other Dealer Members.

REGULATORY FRAMEWORK

¶ 10 Rule 17.1 of IIROC's Dealer Member Rules states that:

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.

¶ 11 Pursuant to Subsection 8212(2)(vii) of the Consolidated Rules, a hearing panel may make one or more of the orders set out in Subsection 8212(4) if it finds that the Dealer Member's continued operation would create a risk of imminent harm to, among others, its clients and investors because the Dealer Member "is in financial or operating difficulty".

¶ 12 In the circumstances contemplated by paragraph 11 above, a hearing panel may make an order pursuant to Subsection 8212(4)(i) suspending the membership of the Dealer Member, and, pursuant to Subsection 8212(4)(ii), with terms and conditions requiring the suspended Dealer Member to take steps to facilitate the orderly transfer of its client accounts to another Dealer Member.

REASONS

¶ 13 The obligation of a Dealer Member to maintain risk adjusted capital greater than zero at all times is absolute and without qualification. As DCC quite properly acknowledged and notified IIROC that its adjusted risk capital was less than zero and that there were no additional sources of capital available to DCC, it was an

inescapable fact that DCC was in financial difficulty and that its capital deficiency posed a risk of imminent harm to its clients, other Dealer Members and IIROC. In the circumstances, and as contemplated by Subsection 8214(4) of the Consolidated Rules, it was quite appropriate that the Order should be issued without delay.

¶ 14 The terms of the Order require DCC to facilitate the orderly transfer of its client accounts at its cost to Laurentian or to another Dealer Member if so directed by a client and cease to represent to the public that it is registered with IIROC or that it provides investment services. DCC had previously provided its clients with a written notification that included instructions with respect to the handling of their accounts. IIROC Staff confirmed to the Hearing Panel that they had approved the contents of the notification.

¶ 15 The Order also prohibits DCC from engaging in a number of listed financial activities and requires, among other things, the preservation of all books and records. The restrictions set out in the Order are consistent with a number of previous suspension orders¹ and provide for appropriate protection for clients, investors, other Dealer Members, IIROC and the public.

¶ 16 For the foregoing reasons, we approved the issuance of the Order.

Dated this 6 day of September 2019.

Christopher Portner

Shaine Pollock

Cindy Tripp

SCHEDULE "A"

ORDER

THIS APPLICATION, made by Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") for an Order suspending the membership of Dominick Capital Corporation (DCC) and ancillary relief was heard on August 16, 2019 at Toronto, Ontario, pursuant to Sections 8212 and 8426 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (the "Consolidated Rules").

ON READING the materials filed in support of this application, including the Affidavit of Blaize Piacentini sworn on August 9, 2019,

AND ON HEARING the submissions of counsel for IIROC Staff and DCC,

THIS HEARING PANEL ORDERS that:

1. Pursuant to Section 8212(4)(i) of the Consolidated Rules, DCC's membership in IIROC is suspended effective immediately.
2. Pursuant to Section 8212(4)(ii) of the Consolidated Rules, DCC shall take steps to facilitate the orderly transfer of its client accounts to its carrying broker Laurentian Bank Securities, or to another Dealer Member if so directed by a client. DCC shall bear all transfer fees associated with the transfer of its client accounts.
3. Pursuant to Section 8212(4)(iv) of the Consolidated Rules, DCC shall immediately cease to represent to the public on its website, social media or by any other means that it is registered with IIROC or provides investment services. DCC shall be permitted to post a communication on its web site regarding the

¹ *Re All Group Financial Services*, 2017 IIROC 06; *Re Octagon Capital*, 2016 IIROC 02; *Re Edgecrest Capital*, 2015 IIROC 32; *Re Northern Securities Inc.*, 2013 IIROC 14; *Re Peregrine Financial Group Canada*, 2012 IIROC 43.

suspension and informing clients on how to transfer their accounts, consistent with paragraph 2 of this Order.

4. DCC shall comply with IIROC Dealer Member Rule 600 throughout the suspension period.
5. DCC is prohibited from engaging in any of the activities set out in Sections 30.3(iv) and 30.6 of the IIROC Dealer Member Rules until IIROC notifies DCC in writing that its membership with IIROC has been terminated in accordance with paragraph 10 of this Order.
6. DCC shall file its monthly financial report (MFR) no later than 15 business days following the end of the relevant month until IIROC notifies DCC in writing that its membership with IIROC has been terminated in accordance with paragraph 10 of this Order.
7. DCC shall preserve all books and records, including all hard copy and electronic records in DCC's possession or control (including any computer servers, hard drives and any other electronically-stored records in any form) (the "Records") for a period of seven years from the date on which each record is created, and shall make such Records available upon request to IIROC staff and/or former clients of DCC within five business days or another mutually-agreed upon time period.
8. DCC shall maintain the Records at its head office premises currently located at 133 Richmond Street West, Suite 602, Toronto, Ontario, M5H 2L3 and the Records shall not be moved without prior notice and written approval from IIROC staff, which approval is not to be unreasonably withheld. DCC is responsible for any and all costs associated with the storage and maintenance of its Records.
9. DCC shall pay any outstanding IIROC and Canadian Investor Protection Fund Fees.
10. When IIROC is satisfied as to the determination of client claims against DCC, IIROC staff may move, in its sole discretion and without notice to DCC, for an order terminating DCC's membership with IIROC.

DATED at Toronto, Ontario, this 16th day of August, 2019.

Christopher Portner

Shaine Pollock

Cindy Tripp

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