

Re First Leaside Securities

IN THE MATTER OF:

**An Expedited Hearing under *Dealer Member Rule 20.42* of the
Investment Industry Regulatory Organization of Canada**

and

First Leaside Securities Inc

2012 IIROC 16

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

Heard: February 24, 2012
Decision: February 24, 2012
Reasons: March 19, 2012

Hearing Panel:

Julia Dublin (Chair), Debbie Archer, David Kerr

Appearances:

Diana Iannetta, Counsel for IIROC

Ted Frankel, Counsel for the Respondent

REASONS FOR ORDER

¶ 1 A hearing panel for the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on February 24, 2012 for an Expedited Hearing with notice in accordance with Rule 16 of the IIROC Rules of Practice and Procedure to hear an application brought by IIROC staff for an order under Rules 20.41, 20.42, and 20.45 that First Leaside Securities Inc, (“FLSI”) be suspended from IIROC membership and certain other conditions be imposed. Counsel for the Respondent FLSI did not oppose the application. The Panel issued the suspension order at the hearing.

BACKGROUND

¶ 2 FLSI was registered as an investment dealer under the Securities Act (Ontario) and at the time of the hearing was a member of IIROC, classified as an Introducing Broker with Penson Investment Services acting as its Carrying Broker. The primary business of FLSI’s parent company, First Leaside Wealth Management Inc., was the promotion, sale and management of real estate-based limited partnerships and pooled funds relying on exemptions from prospectus and continuous disclosure requirements that are available under the Securities Act (Ontario). These issuers are currently subject to a voluntary cease trade arrangement with the Ontario Securities Commission.

¶ 3 On February 23, 2012, on the application of a FLSI’s parent First Leaside Wealth Management Inc. and various affiliated entities, FLSI was made subject to an order under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”). The affairs of FLSI, including the wind-down of operations and the orderly transfer out of client accounts are now being supervised under a CCAA plan of arrangement by an independent committee of the Board and a restructuring officer appointed by the court. The requirements of this order take precedence over IIROC rules. FLSI is no longer carrying on an active securities business. It can no longer meet its obligations as an IIROC member firm and IIROC no longer has the power to supervise its activities.

¶ 4 Staff advised that FLSI's IIROC membership fees are paid in full to March 31, 2012.

ORDER SOUGHT

¶ 5 IIROC staff sought an order effective immediately that:

- a) First Leaside Securities Inc.'s membership be suspended;
- b) FLSI comply with IIROC Dealer Rule 600 throughout the suspension period;
- c) First Leaside Securities Inc. immediately cease dealing with the public, including the removal of its website;
- d) IIROC Staff may undertake any action to facilitate the orderly transfer of client accounts in cooperation with Penson Financial Services Canada Inc., including liquidating trades except those trades involving securities which are subject to the Cease Trade Agreement with Staff of the Ontario Securities Commission;
- e) FLSI shall report to IIROC Staff as directed every 30 days regarding any action taken pursuant to this Order, until such time as all FLSI client accounts have been transferred to third party Member Firms;
- f) The risk adjusted capital and minimum capital requirement (together, the "Regulatory Capital") shall be dealt with in accordance with the terms of the Initial Order of the Ontario Superior Court of Justice In the Matter of the Companies' Creditors Arrangement Act of which FLSI was an applicant, dated February 23, 2012 (the "CCAA Order");
- g) In the event that FLSI shall desire the Regulatory Capital to be dealt with otherwise than in accordance with the CCAA Order, such other dealing shall only be effected by further Order of the Court in the CCAA proceedings, and FLSI shall consult with IIROC Staff and attempt to seek agreement on the terms of such use of the Regulatory Capital before any motion is brought to (i) amend or vary the CCAA Order in that regard or (ii) seek a further Order in that regard; and
- h) Upon completion of the transfer of client accounts, and determination of any claims against FLSI, to the satisfaction of IIROC Staff, IIROC Staff may move, without notice to FLSI, for an order terminating the membership of FLSI.

REASONS

¶ 6 The panel was of the view that FLSI should not appear on the books of IIROC as a member in good standing nor have a public presence and accordingly an immediate suspension was appropriate, subject to various conditions as proposed by IIROC staff recognising that orderly transfer of client accounts must take place under the governing CCAA order. The panel considered that full termination was not appropriate at this juncture as suspension preserves theoretical benefits to third parties that would be lost on termination. Staff should be permitted to move expeditiously at a future date for termination of FLSI's IIROC membership without the obligation to serve notice.

¶ 7 The Panel noted that under IIROC Rule 600 a suspended member continues to be liable for the payment of IIROC fees. This is potentially inconsistent with the terms of the CCAA order which does not provide for payments to future creditors. In order to address this issue, compliance with IIROC Rule 600 was required to be consistent with the terms of the CCAA order

DATED the 19th day of March, 2012.

Julia Dublin, Chair

Debbie Archer, Member

David Kerr, Member