

Re Edgecrest Capital

IN THE MATTER OF:

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

and

Edgecrest Capital Corporation

2015 IIROC 32

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

Heard: September 10, 2015 at Toronto, Ontario

Decision: September 10, 2015

Reasons for Decision: September 17, 2015

Hearing Panel:

Edward T. McDermott, Chair, Neil Murphy and Ron Smith

Appearance:

Rob Del Frate, Senior Enforcement Counsel for IIROC

Samuel Hardy, President, David Beatty, Chairman, Chief Executive Officer and Ultimate Designated Person
and Andrew Mikitchook, representatives for the Respondent, Edgecrest Capital Corporation

REASONS FOR DECISION

INTRODUCTION

¶ 1 This Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on September 10, 2015 for an Expedited Hearing in accordance with Rule 16 of the IIROC *Rules of Practice and Procedure* (“Practice Rules”). The purpose of the hearing was to determine an application brought by IIROC Enforcement Staff against Edgecrest Capital Corporation (“Edgecrest” or “the Respondent”) pursuant to Rules 20.41 and 20.42 of the IIROC Dealer Member Rules (“Member Rules”) seeking an order of this Hearing Panel under the powers conferred upon it pursuant to the provisions of Rule 20.45, the relevant portions of which include the following:

20.45 Powers Of Hearing Panel

- (1) A Hearing Panel has the power to impose any of the following penalties upon a Respondent who is an Approved Person or Dealer Member in the circumstances prescribed in Rule 20.42 and Rule 20.43:
 - (a) suspension of approval or Membership;
 - (b) imposition of terms or conditions on a suspension of approval or Membership;
 - ...
 - (d) direction to immediately cease dealing with the public;

...

¶ 2 The applicable threshold provisions of the Member Rules pursuant to which this Hearing Panel can exercise the powers conferred upon it pursuant to the provisions of Rule 20.45 are, in this particular case, as follows:

20.41 Expedited Hearings

- (1) Expedited hearings are held upon application by Corporation Staff and without notice to the Respondent in the circumstances prescribed in Rule 20.42 and Rule 20.43.

20.42 Types of Expedited Hearings – Members

- (1) A Hearing Panel may impose any of the penalties prescribed by Rule 20.45 upon a Dealer Member in any of the following circumstances:

...

Financial or Operating Difficulty

- (d) where a Dealer Member is in such financial or operating difficulty that the Hearing Panel determines the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

...

¶ 3 At the outset of this hearing, Enforcement Counsel advised the Hearing Panel that IIROC had determined to invoke this expedited process because of its great concern that in the circumstances hereinafter outlined, the Respondent could not be permitted to continue to operate or maintain its active membership with IIROC without the potentiality of creating circumstances which could present significant risk of imminent harm to the public, other Dealer Members and IIROC itself.

¶ 4 IIROC accordingly urged this Hearing Panel to issue an order pursuant to Rule 20.45 (a draft of which was presented to the board) which would have the effect of suspending the Respondent's membership in IIROC; precluding it from dealing with the public; imposing additional terms and conditions to assist in the regulation of the Respondent during the suspension period and establishing a protocol whereby IIROC may ultimately move for an order terminating the membership of Edgecrest in IIROC.

¶ 5 Senior Enforcement Counsel also provided the Hearing Panel with an affidavit of Samuel Hardy (the President of Edgecrest) indicating that he had reviewed the order sought in this matter and was consenting on behalf of Edgecrest to the issuance of such order. Mr. Hardy and other senior representatives of Edgecrest attended the hearing itself and confirmed that the Respondent was consenting to the issuance of the order sought by IIROC. The representatives of Edgecrest were advised of the Respondent's right to be represented by counsel at this proceeding but declined (on behalf of Edgecrest) to avail itself of that right.

¶ 6 The Hearing Panel accordingly proceeded to receive and consider the evidence submitted by IIROC and the submissions of Senior Enforcement Counsel in support of the issuance of the order sought. The Hearing Panel then recessed to consider the material and submissions before it and determined that it was prepared to issue the order sought by IIROC in the terms set forth in the draft presented to the Hearing Panel.

¶ 7 The Hearing Panel accordingly reconvened the hearing and advised the parties to this effect and issued the order sought with reasons for such decision to follow.

¶ 8 The following sets forth the context in which the Hearing Panel determined that the conditions required for the issuance of the order as set forth in Rule 20.42(d) had been satisfied and that the terms of the order (which had been consented to by the Respondent) were appropriate in these circumstances.

THE FACTS

¶ 9 The basic facts giving rise to the application were set forth in the affidavit of Blaize Piacentini, the Manager of Financial and Operational Compliance for IIROC, and can be briefly summarized as follows:

1. Edgecrest was admitted as a Dealer Member in IIROC on September 12, 2013 and maintains one office in Toronto, Ontario, although it is registered in a number of other provinces and is also registered with the Ontario Securities Commission as an Investment Dealer, which is required coincident with its registration with IIROC.
2. In February 2015, Mr. Beatty, the Ultimate Designated Person, Chairman and Chief Executive Officer of Edgecrest reported to IIROC that its Risk Adjusted Capital (“RAC”) for January 2015 was deficient and had triggered the criteria for IIROC’s Early Warning Level Two Category.
3. In response to this notification IIROC immediately issued a number of restrictions on Edgecrest’s operations and invoked its Early Warning Reporting requirements and other restrictions which were to extend until IIROC was satisfied by Edgecrest that the Early Warning designation was no longer required.
4. Subsequently, on May 19, 2015, Edgecrest filed a Special Early Warning Regulatory Financial Filing (“Interim RAC Filing”) indicating that it was capital deficient in the amount of \$18,000 and that it continued to trigger the criteria for IIROC’s Early Warning Level Two Category.
5. IIROC immediately responded (on May 20, 2015) advising Edgecrest that it continued to be designated in Early Warning Level Two and was restricted from engaging in a number of business activities without the prior written consent of IIROC as well as being subject to certain additional business restrictions pursuant to IIROC Rule 20.28. IIROC had been advised that Edgecrest had cut salaries for all staff; suspended employee expense accounts and client trading effective immediately. IIROC accordingly requested a written plan of action by Friday, May 22, 2015 addressing IIROC’s concerns on how Edgecrest would rectify its capital deficiency. Edgecrest was also then required to file its Interim RAC Filing on a daily basis.
6. On May 25, 2015, Edgecrest advised that it had taken certain steps (including obtaining some subordinated loans from related parties) so that it was in a positive RAC position as of May 26, 2015. Edgecrest however remained in Early Warning Level Two status and continued to be subject to the restrictions previously imposed by IIROC.
7. On August 20, 2015, Edgecrest’s Interim RAC Filing revealed that it was once again capital-deficient as a result of cumulative monthly operating losses.
8. On August 21, 2015, IIROC notified Edgecrest that it was required to correct the capital deficiency by August 25, 2015 and reminded Edgecrest that it remained subject to the Early Warning Level Two restrictions and reporting requirements previously imposed and required by IIROC.
9. By letters dated August 24 and 25, 2015 from Edgecrest, IIROC was advised that the Respondent was unable to correct the capital deficiency and it had proceeded to terminate all Edgecrest staff. Notification was also received from Edgecrest that it wished to resign its membership with IIROC effective immediately.
10. On August 25, 2015, IIROC responded to this notification and advised Edgecrest of the various requirements that must be satisfied by Edgecrest under the IIROC Member Rules before a resignation could be effective, including in particular the requirement that it file with IIROC a Termination Audit including audited financials and confirmation from an auditor that the Member has liquid assets sufficient to meet all its liabilities other than subordinated loans. IIROC also advised Edgecrest that its resignation could not be effective until the IIROC Board approved it, which could only occur once the prerequisites to resignation under IIROC’s Member Rules had been complied with.

11. On September 2, 2015, Edgecrest provided an Interim RAC Filing showing a further increase in the amount of its capital deficiency.
12. At the hearing we were advised that Edgecrest had terminated its entire staff and while it has commenced the process of resignation, it may not be able to complete that process in accordance with IIROC's Member Rules. In the meantime, it continues to hold Dealer Membership in IIROC as a Member in good standing. In these circumstances IIROC determined that it was a matter of considerable importance to take the necessary steps to suspend Edgecrest's membership with IIROC and obtain an order precluding it from continuing to trade with the public, as well as imposing additional terms which will assist IIROC in regulating Edgecrest as it proceeds through the resignation process proscribed by IIROC's rules.
13. On September 8, 2015, IIROC accordingly served a Notice of an Application to a Hearing Panel for an expedited hearing to obtain the relief it deemed necessary to prevent imminent harm to the public, other Dealer Members and IIROC itself.

REASONS FOR DECISION

¶ 10 As indicated above, after considering the evidence and hearing the submissions of counsel and the representatives of Edgecrest, this Hearing Panel determined that the order should issue on September 10, 2015 as requested by Senior Enforcement Counsel. The terms of that order are appended to these Reasons for Decision.

¶ 11 In our view, the material set forth in the affidavits and exhibits filed with this Hearing Panel together with the submissions of Senior Enforcement Counsel make it clear that the preconditions set forth in Rule 20.42(d) have been met in this particular situation. Edgecrest has clearly reached the point where it's financial and other difficulties no longer enable it to continue to operate and in fact the business has, in effect, been terminated as have all of its staff. In addition, the senior officers of the company have advised IIROC that Edgecrest wishes to resign its membership from IIROC. That step cannot however be completed until various requirements have been undertaken and completed by Edgecrest and ultimately (under the Member Rules of IIROC) the Board of IIROC has granted its approval to the resignation.

¶ 12 Until that process has been completed Edgecrest continues to be a Dealer Member of IIROC in good standing and it would be open to it to continue to communicate with members of the public or others that it is still in good standing with IIROC and as such entitled to all of its rights and privileges as a Dealer Member.

¶ 13 Clearly in these circumstances it is important that steps be taken to communicate to the public and others that this is no longer the case as to do otherwise would raise the prospect of potentially significant harm being inflicted upon the public and the reputation of IIROC and its other Dealer Members if Edgecrest were to proceed in this manner.

¶ 14 This Hearing Panel accordingly concludes that the preconditions to imposing the penalties provided for under Rule 20.45 of the Rules (as set forth in Rule 20.42(d)) have been satisfied.

¶ 15 We are further of the view that the provisions set forth in the draft Order are necessary and appropriate to make a clear public statement that Edgecrest's Membership in IIROC is no longer in good standing and it is not entitled to deal with the public so that the members of the public and the industry will be fully aware of this fact. The other conditions of the Order are also appropriate to assist IIROC in regulating Edgecrest during the period of suspension and ultimately terminating its membership.

¶ 16 We have accordingly determined to issue the attached order which took effect immediately upon this Hearing Panel signing it on September 10, 2015. In so doing, we note that the granting of this Order is not unlike other situations where various Hearing Panels have issued similar penalties and directives under Rule 20.45 in circumstances where the threshold prerequisites set forth in Rule 20.42(1) had been found to be satisfied and the Dealer Member wished to resign but did not have the ability or financial means to comply with the Member Rules in order to effect the resignation.

¶ 17 In these circumstances other panels have tended to fashion penalties and directions such as were tendered on this Hearing Panel in order to nullify the potentially harmful impact of the Dealer Member being able to represent itself at large as a Member in good standing while also ensuring that the Member's conduct remains subject to IIROC's regulation until its membership is actually terminated. See *E3M Investments*, 2014 IIROC 33; *Gateway Securities Inc.*, 2009 IIROC 13; *Peregrine Financial Group Canada Inc.*, 2012 IIROC 43 and *Evergreen Capital Partners Inc.*, 2008 IIROC 31.

¶ 18 We have also noted that by both affidavit and in person before this Hearing Panel, the senior representatives of Edgecrest acting on its behalf, have signified their consent to the issuance of the requested Order.

¶ 19 We understand that Staff will take the necessary steps to ensure that the terms of this Order are appropriately published so that they are brought to the attention of the Investing Public and IIROC's Dealer Members.

DATED at Toronto this 17th day of September 2015.

Edward T. McDermott

Chair

Neil Murphy

Industry Representative

Ron Smith

Industry Representative

APPENDIX

INVESTMENT INDUSTRY REGULATORY

ORGANIZATION OF CANADA

IN THE MATTER OF:

**AN EXPEDITED HEARING PURSUANT TO DEALER MEMBER RULE 20.42 OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

EDGECREST CAPITAL CORPORATION

ORDER

WHEREAS an application by the Staff of the Investment Industry Regulatory Organization of Canada (IIROC Staff) for an order suspending the membership of Edgecrest Capital Corporation (Edgecrest) was heard on September 10, 2015 at Toronto, Ontario, pursuant to IIROC Dealer Member Rules 20.41, 20.42 and 20.45 and Rule 16 of the Rules of Practice and Procedure;

AND UPON reviewing the materials filed in support of this application;

AND UPON noting the consent of Edgecrest to this Order;

AND UPON hearing submissions of counsel for IIROC Staff;

THIS HEARING PANEL ORDERS:

- 1) Pursuant to Dealer Member Rule 20.45(1)(a), Edgecrest's Membership in IIROC is hereby suspended;
- 2) Pursuant to Dealer Member Rule 20.45(1)(d), Edgecrest shall immediately cease dealing with the public;

- 3) Edgecrest shall comply with IIROC Dealer Member Rule 600 throughout the suspension period;
- 4) Edgecrest shall preserve all books and records, including all hard copy and electronic records in Edgecrest'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 7 years or pending further order of a Hearing Panel, which Records shall be made available to IIROC staff on demand within a reasonable timeframe;
- 5) Upon determination of all client claims against Edgecrest to the satisfaction of IIROC Staff, IIROC Staff may move, without notice to Edgecrest, for an order terminating the membership of Edgecrest;
- 6) An order that Edgecrest shall pay any outstanding IIROC and Canadian Investor Protection Fund fees; and
- 7) This Order shall come into effect immediately.

DATED at Toronto, Ontario, this 10th day of September, 2015.

Original Executed by:

"Edward McDermott"

Edward McDermott. Chair

"Ron Smith"

Ron Smith, Panel Member

"Neil Murphy"

Neil Murphy, Panel Member

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