

Gateway Securities Inc (Re)

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

AND

GATEWAY SECURITIES INC

2009 IIROC 13

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

Heard: March 20, 2009
Decision: March 23, 2009
(25 paras.)

Hearing Panel:

John Rogers, Chair
Brian Field
Chris Lay

Appearances:

Lorne Herlin, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada
Douglas R. Eyford, Eyford Macaulay, Barristers & Solicitors, for the Respondent

REASONS FOR DECISION

1. A hearing panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on March 20, 2009 for an Expedited Hearing in accordance with Rule 16 of the IIROC *Rules of Practice and Procedure* to hear an application brought by IIROC Enforcement Staff against Gateway Securities Inc. (“Gateway”) pursuant to Rules 20.41 and 20.42 of the IIROC Dealer Member Rules for an order that:
 1. Gateway’s membership with IIROC be immediately suspended; and
 2. Gateway be directed to immediately cease dealing with the public.
2. Prior notice of the hearing was given to Gateway and Gateway was represented at the hearing by counsel.

Grounds for the Application

3. Gateway is an Introducing Broker with Pinnacle Correspondent Services (“Pinnacle”), a division of Canaccord Capital Corporation, as its carrying broker.
4. As of January 9, 2009, Gateway ceased active business operations. As of January 12, 2009, most of Gateway’s client assets were sold to PI Financial Corporation (“PI”), a Dealer Member, and all of

Gateway's registered representatives transferred either to PI or to other Dealer Members. At that time, a few of Gateway's client accounts remained with Pinnacle.

5. In a letter dated February 9, 2009, Gateway advised IIROC that it intended to resign its IIROC membership.
6. In a further letter dated March 6, 2009, Gateway advised IIROC that as of March 2, 2009, it no longer held any client accounts.
7. As of January 31, 2009, Gateway had a risk adjusted capital of \$73,000. However, by February 28, 2009, Gateway's risk adjusted capital was deficient in the amount of \$871,000. By March 12, 2009, this risk adjusted capital deficiency had grown to \$961,000.
8. Gateway advised IIROC Enforcement Staff on February 26, 2009 that no additional capital would be invested into Gateway and that, therefore, Gateway's risk adjusted capital deficiency would not be remedied.

Gateway's Position

9. Counsel for Gateway advised that his client did not oppose the order sought by IIROC Enforcement Staff. He confirmed that Gateway was not functioning as a Dealer Member, that it had amended its website to remove any reference to IIROC and to its IIROC membership, and that Gateway was in the process of winding up its affairs.
10. However, Gateway's counsel expressed concern that the order when issued be clear in its terms that its intent is to order Gateway to cease dealing with the public in its capacity as a Dealer Member. He was concerned that the order not be worded in such a manner so as to impede Gateway's ongoing ability to deal with its creditors, service providers, or to resolve any client complaints in the course of the winding up of its business affairs.

Decision

11. This Hearing Panel orders in accordance with the powers conferred upon us pursuant to Rule 20.45 of the Dealer Member Rules that in its capacity as a Dealer Member:
 1. Pursuant to Dealer Member Rule 20.45(1)(a), the membership of Gateway is hereby suspended indefinitely;
 2. Pursuant to Dealer Member Rule 20.45(1)(d), Gateway shall immediately cease dealing with the public;
 3. Pursuant to Dealer Member Rule 20.45(1)(b) the following terms apply to the suspension referred to in Paragraph 1 above:
 - a. This Order comes into effect on Friday, March 20, 2009 at 3:00 p.m.; and
 - b. This Order does not in any way impair the ability of Gateway to deal with its creditors or service providers, or to resolve any client complaints.

Reasons

Risk Adjusted Capital Deficiency

12. A Dealer Member's risk adjusted capital amount is calculated in accordance with Generally Accepted Accounting Principals adjusted for regulatory purposes. This calculation of a Dealer Member's risk adjusted capital amount is an extremely important tool to assist IIROC Enforcement Staff in monitoring the financial health of IIROC Dealer Members.

13. IIROC Dealer Member Rule 17.1 requires that all Dealer Members have and maintain at all times a risk adjusted capital greater than zero. If at any time a Dealer Member's risk adjusted capital falls below zero, Dealer Member Rule 17.1 requires the Dealer Member to immediately notify IIROC of this fact.
14. In the matter at hand, Gateway's risk adjusted capital at the end of February 2009 was not only not above zero, it was in deficit in the amount of \$871,000. Two weeks later this deficit amount had risen to \$961,000 and IIROC Enforcement Staff had been notified that no additional capital would be injected into Gateway to remedy the situation.
15. Dealer Member Rule 20.42(1)(d) authorizes a hearing panel following an expedited hearing to impose the penalties prescribed by Dealer Member Rule 20.45 upon a Dealer Member in the situation:
 - (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.
16. Given Gateway's existing and, apparently, growing capital deficiency, there is no question but that Gateway is experiencing the financial difficulty contemplated by Dealer Member Rule 20.42(1)(d) such that it cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or IIROC. It is therefore appropriate to impose the penalties prescribed by Dealer Member Rule 20.45.
17. Dealer Member Rule 20.45(1) grants to a hearing panel the power to impose certain penalties upon a Dealer Member who is found to be in the financial difficulty prescribed in Dealer Member Rule 20.42(1)(d). These penalties include:
 - (a) suspension of Membership; and
 - (d) direction to immediately cease dealing with the public.
18. To prevent the risk of harm to the public, other Dealer Members and IIROC, both a suspension order should immediately be issued against Gateway pursuant to Dealer Member Rule 20.45(1)(a); and Gateway should be ordered to immediately cease dealing with the public pursuant to Dealer Member Rule 20.45(1)(d).

Imposition of Terms

19. In the expedited hearing held on March 6, 2009 pursuant to Dealer Member Rule 20.42, wherein IIROC Enforcement Staff sought an order against *Creditfinance Securities Limited* seeking, among other relief, the immediate suspension of the Dealer Member's membership and an order that it immediately cease dealing with the public, the hearing panel granted the order sought by IIROC Enforcement Staff. Similarly, following the expedited hearings for Evergreen Partners Inc. held on November 10, 2008, and Graydon Elliott Capital Corporation held on March 2, 2007, the hearing panels granted the orders sought by IIROC Enforcement Staff.
20. In each of these three matters, the order made by the hearing panel did not include terms similar to the terms included in our order.
21. However, these three matters differ from the matter at hand. Gateway is not a Dealer Member struggling to remain in business. Gateway has no client accounts. All its registered representatives have transferred to other Dealer Members. Gateway has clearly expressed its intentions both by its actions and in its communications with IIROC that it has ceased carrying on business with the public; other than those activities which might be required of it to complete an orderly winding up of its business.
22. Indeed, Gateway through its counsel appeared at this Expedited Hearing and has consented to the issuance of the order being sought by IIROC Enforcement Staff.
23. Gateway's main concern is that the wording of such order not unduly restrict it from proceeding with the winding up of its business.

24. Dealer Member Rule 20.45(1)(b) empowers a hearing panel to impose terms or conditions on the suspension of a Member.
25. In most circumstances as is evidenced by the three matters referred to above, there is no need for a hearing panel to impose such terms or conditions on a Member's suspension. However, the circumstances in the matter at hand warrant the use of the power granted by Dealer Member Rule 20.45(1)(b) to impose the terms that have been included in the order so that the order as made protects the public, other Dealer Members and IIROC while at the same time permitting Gateway to wind up its business affairs in an orderly manner.

Dated at Vancouver, British Columbia, this 23rd day of March, 2009.

John Rogers, Chair
Brian Field
Chris Lay

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ORDER

THIS APPLICATION by Staff of the Investment Industry Regulatory Organization of Canada (IIROC), with notice to Gateway Securities Inc. (Gateway) a member of IIROC, coming on for hearing at Vancouver, British Columbia on Friday, March 20, 2009, pursuant to 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, and on hearing counsel for IIROC staff and counsel for Gateway;

THIS HEARING PANEL ORDERS:

In accordance with the powers conferred upon us pursuant to Rule 20.45 of the Dealer Member Rules that in its capacity as a Dealer Member:

1. Pursuant to Dealer Member Rule 20.45(1)(a), the membership of Gateway is hereby suspended indefinitely;
2. Pursuant to Dealer Member Rule 20.45(1)(d), Gateway shall immediately cease dealing with the public;
3. Pursuant to Dealer Member Rule 20.45(1)(b) the following terms apply to the suspension referred to in Paragraph 1 above:
 - a. This Order comes into effect on Friday, March 20, 2009 at 3:00 p.m.; and
 - b. This Order does not in any way impair the ability of Gateway to deal with its creditors or service providers, or to resolve any client complaints.

DATED at Vancouver, British Columbia this 20th day of March, 2009.

John Rogers, Chair
Chris Lay, Member
Brian Field, Member

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