

Re Credit Suisse Securities (Canada) Inc

IN THE MATTER OF:

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

AND

CREDIT SUISSE SECURITIES (CANADA) INC

2009 IIROC 15

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

Heard: February 17, 2009

Decision: March 26, 2009

(23 paras.)

Hearing Panel:

Paul M. Moore, Q.C, Chair

Michael Walsh, Member

David Kerr, Member

Appearances:

Diana Iannetta, IIROC Enforcement counsel

Joel Wiesenfeld, Counsel for the Respondent

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Acceptance

1. At a hearing on February 17, 2009 the panel accepted and approved as being in the public interest the settlement agreement between the Respondent and Staff of the Investment Industry Regulatory Organization of Canada.

Sanction

2. In the settlement agreement the Respondent agreed to a fine in the amount of \$25,000.

Costs

3. No costs were claimed by Staff.

The Infractions

4. The settlement agreement related to two unrelated infractions on two separate (but contiguous) days by the Respondent of the rule requiring it at all time to meet minimum regulatory capital amounts.

The First

5. The first infraction was a \$121,321,000 capital deficiency on September 17, 2008.

6. This occurred during a week of extraordinary market volatility.
7. In anticipation of market volatility, the Respondent had requested funds from a European affiliate early in the week of September 15, 2008. The Respondent expected an increase in a receivable from the affiliate as a result of a change in the marked-to-market of an equity swap portfolio.
8. Because the full amount of the receivable had not been received by September 17, 2008, the Respondent reported to IIROC the \$121,321,000 capital deficiency.
9. By September 18, 2008, the Respondent had received sufficient funds from its affiliate to correct the deficiency.
10. The Respondent has since amended its repayment procedures for receivables from its affiliate so that repayments are now made as soon as a certain threshold amount is reached.

The Second

11. The second deficiency was the result of a trader taking on a principal position consisting of large long and short equity positions and long futures positions which were to hedge the risk of the equity positions.
12. The futures positions were recorded as trades for an affiliate company, instead of for the Respondent. As a result, the Respondent remained exposed for holding the equity positions in inventory with a margin requirement of \$57 million. Without this required margin, the Respondent would have been in a positive capital position.
13. The Respondent rectified this deficiency the next day by unwinding a substantial amount of the position which reduced the margin requirement. This action, together with positive market conditions caused the Respondent to be in a positive capital position by September 19, 2008.
14. The Respondent has since implemented an action plan to address the incorrect hedging of principal positions on a going forward basis.

Sanctions Approved

15. Breaches of the minimum regulatory capital rules, no matter how technical, are traditionally prosecuted.
16. We accepted counsels' submissions that in this case only a minimum fine was appropriate.
17. IIROC Staff guidelines for sanctions suggest a minimum fine of \$25,000.
18. We were satisfied that this was not a case for a rigid formula requiring a minimum fine for each of the incidents of regulatory capital deficiencies. The calculation of regulatory capital is complex. The events occurred during unusual market volatility. The embarrassment to the Respondent that IIROC took action, in itself, is a significant deterrent. Requiring either a larger fine or a fine for each infraction, rather than \$25,000, was not necessary in this case.
19. This was not a situation where the regulator capital deficiency suggested financial problems or difficulties. The incidents were technical.
20. The Respondent was pro-active in addressing the deficiencies and in addressing the concerns of IIROC.
21. The deficiencies were corrected immediately and were of short duration.
22. There was full disclosure and cooperation by the Respondent and minimum costs to IIROC in settling this matter.
23. IIROC chose not to seek costs in this matter. Accordingly, the observations of the panel in *Peregrine Financial Group Canada Inc.* [2007] I.D.P.C.D. No. 49 that fines and costs should be shown separately, were not applicable in this settlement.

DATED at Toronto this 26th day of March, 2009.

Paul M. Moore, Q.C
Michael Walsh
David Kerr

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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of Credit Suisse Securities (Canada) Inc., (“the Respondent”).
2. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

II. Joint Settlement Recommendation

3. The Respondent consents to be subject to the jurisdiction of IIROC.
4. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”) in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
5. The Settlement Agreement is subject to acceptance by the Hearing Panel.
6. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
7. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
8. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
9. 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 in relation to the matters disclosed in the Investigation.
10. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
11. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
12. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

13. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

A. Registration History and Nature of Business

14. Credit Suisse Securities (Canada) Inc. (“CSSCI”) is a member of IIROC with its head office in Toronto, Ontario.

B. The Regulatory Framework – Minimum Capital Requirements

15. IIROC Dealer Member Rule No. 17 describes the requirement to maintain minimum risk adjusted capital (“RAC”). The calculation of RAC is the primary means by which the financial status of a Member is prescribed and monitored.

16. In particular, Rule No. 17.1 provides:

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. The First Capital Deficiency

17. In anticipation of market volatility, CSSCI requested funds from an affiliate, CS Europe Ltd. early in the week of September 15, 2008. CSSCI expected an increase in a receivable from CS Europe Ltd. as a result of a change in the marked-to-market of an equity swap portfolio.
18. On September 18, 2008, IIROC Financial and Operations Compliance Staff wrote to CSSCI requesting the amount of estimated RAC as at the end of September 17, 2008. The inquiry was made in light of the previous day’s market downturn.
19. As the full amount owing on the receivable from CS Europe Ltd. had not been received by September 17, 2008, CSSCI reported to IIROC an estimated capital deficiency of \$121,321,000 as at that date.
20. By September 18, 2008, CSSCI had received sufficient funds from CS Europe Ltd. to correct the deficiency. However, as the funds were not received until September 18, 2008, CSSCI was capital deficient on September 17, 2008.
21. Payments on such receivables were previously made a monthly basis. Following this event, CSSCI amended its repayment procedures so that repayments are now made as soon as a certain threshold amount is reached.

D. The Second Capital Deficiency

22. On September 18, 2008 the firm incurred a second capital deficiency of \$27.7 million.
23. This deficiency was the result of a trader taking on a principal position consisting of large long and short equity positions and long futures positions, which were to hedge the risk of the equity positions.
24. The futures positions were recorded as trades for an affiliated company, instead of in CSSCI. As a result, CSSCI remained exposed for holding the equity positions in inventory with a margin requirement of approximately \$57 million. Without this required margin, CSSCI would have been in a positive capital position.
25. CSSCI rectified this deficiency the next day by unwinding a substantial amount of the positions which reduced the margin requirement. This action, together with positive market conditions caused the firm to be RAC positive by September 19, 2008.
26. CSSCI submitted an action plan to IIROC to address the incorrect hedging of principal positions on a going forward basis. The action plan was satisfactory to IIROC and was subsequently implemented by CSSCI.

Mitigating Factors

27. CSSCI was pro-active in attempting to identify and correct the deficiency and notified Financial and Operations Compliance Staff promptly as to the possibility of the capital deficiency.
28. CSCI cooperated with IDA Staff throughout the investigation.
29. No client accounts were affected as a result of the capital deficiency.

IV. Contraventions

30. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:
 - 1) On September 17 and 18, 2008, Credit Suisse Securities (Canada) Inc. failed to maintain risk adjusted capital at a level greater than zero as calculated in accordance with Form 1 and thereby contravened IIROC Dealer Member Rule 17.1.

VI. Terms of Settlement

31. The Respondent agrees to the following terms of settlement:
 - a) A fine in the amount of \$25,000.
32. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 06 day of February, 2009.

Witness signature

Respondent's signature

Witness

Respondent

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 10 day of February, 2009.

Witness signature

"Diana Iannetta"

Witness

Diana iannetta

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

ACCEPTED at the City of Toronto in the Province of Ontario, this 17 day of February, 2009, by the following Hearing Panel:

Per: "Paul Moore"

Panel Chair

Per: "David Kerr"

Panel Member

Per: "Michael Walsh"

Panel Member

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