

# Re Credifinance Securities Limited

IN THE MATTER OF:

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

AND

CREDIFINANCE SECURITIES LIMITED

2009 IIROC 16

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

Heard: March 6, 2009  
Decision: April 7, 2009  
(23 paras.)

## Hearing Panel:

Mr. Terrance Sweeney  
Mr. F. Michael Walsh  
Mr. Selwyn Kossuth

## Appearances:

Milton Chan & Kathryn Andrews, Counsel for Investment Industry Regulatory Organization of Canada  
Michael Meredith & Alistair Crawley, Counsel for Credifinance Securities Limited

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## DECISION

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1. The Panel was convened on March 6, 2009 to consider a Notice of Application dated February 24, 2009 for an Expedited Hearing, with notice to the Respondent, pursuant to *Dealer Member Rules* 20.41, 20.42 and Rule 16 of the *Rules of Practice and Procedure*.

## ORDER SOUGHT:

2. IIROC seeks an order, among other things, to suspend immediately the Respondent's membership in IIROC and to cease dealing with the public.

## EVIDENCE:

3. Counsel for IIROC tendered an Affidavit sworn by Jean Chan, the Manager of Financial and Operations Compliance at IIROC. Mr. Meredith cross-examined Ms. Chan and called Marjorie Ann Glover, an officer of the Respondent, to be sworn and testify. Mr. Meredith asked her certain questions and Mr. Chan cross-examined her briefly. Mr. Chan and Mr. Crawley made submissions on behalf of their respective clients. At the end of the Hearing, the Panel issued the Order annexed hereto as Exhibit "A" and indicated that this Decision would follow.

## THE FACTS:

4. Based on the evidence noted above, the transcript of the Hearing and the submissions of Counsel, the Panel finds that the following facts were proved:
  1. Credifinance was admitted to membership in the Investment Dealers Association of Canada (IDA), the predecessor of IIROC, in March 1991.
  2. The following are the approved persons employed with the firm as of December 31, 2008. All of their registrations were suspended by the Ontario Securities Commission (“OSC”) as of January 2, 2009.
    - Georges BENARROCH – President and CEO, Ultimate Designated Person, Officer (Trading)
    - Marjorie Ann GLOVER – Chief Compliance Officer, Chief Financial Officer, Alternate Designated Person, Officer (Trading)
    - Linda Anne KENT – Registered Representative (retail)
    - William George MAGEE – Vice-President, Officer (Non-Trading)
  3. Through various corporate entities, Mr. Benarroch owned and controlled Credifinance throughout the relevant period.
  4. Credifinance entered into a Type 3 Introducing/Carrying Broker Agreement with Pinnacle Correspondent Services (a division of Canaccord Capital Corporation) (“Canaccord”) in 2005. As a result, Credifinance is an Introducing Broker with Canaccord as its Carrying Broker, under IIROC Dealer Member Rule 35.1.
  5. On November 13, 2007, Credifinance entered into a share subscription agreement with DSLC Capital Corp (DSLC), where DSLC agreed to gradually acquire 69.1% interest in Credifinance.
  6. Pursuant to IDA By-Laws, such significant change in ownership requires the approval of the relevant district council. Via letter dated January 17, 2008, IDA’s Ontario District Council approved Credifinance’s change of ownership.
  7. On January 24, 2008, Credifinance, DSLC, and the IDA entered into a Uniform Subordination Agreement, where DSLC provided a subordinated loan in the amount of \$400,000 to Credifinance. Pursuant to the Uniform Subordination Agreement, IDA’s consent is required for repayment of any part of the loan.
  8. By Notice of Hearing dated November 11, 2008, Staff commenced a disciplinary proceeding against Credifinance and three of its approved persons, Benarroch, Glover and Kent.
  9. At a set date hearing on November 25, 2008, the Hearing Panel scheduled the hearing for June 15, 2009. The hearing date was subsequently published in IIROC Enforcement Notice 08-0228.
  10. Via letter dated December 8, 2008, DSLC informed IIROC that it terminated the aforementioned share subscription agreement, and requested IIROC’s consent to the repayment of the subordinated loan.
  11. IIROC refused to grant consent to the repayment of the loan.
  12. On February 6, 2009, DSLC commenced a civil proceeding in the Ontario Superior Court of Justice (Commercial List) against Credifinance, Mr. Georges Benarroch, Ms. Marjorie Ann Glover, and two related corporate entities, Donabo Inc. and Credifinance Capital Corp. It claims, among other things, that Credifinance had failed to advise DSLC of the aforementioned disciplinary proceeding.
  13. On February 6, 2008, DSLC further sought, and was granted, an interlocutory order by Justice

Morawetz of the Superior Court of Ontario. The order restricts the defendants from dissipating any of their assets or issuing cheques, withdrawing any money or in any way dealing with accounts in the name of Credifinance, or with any other accounts of Credifinance in any other bank, trust company or other depository.

14. On February 12, 2009, Justice Cameron of the Superior Court of Ontario continued the aforementioned order, with a revision allowing Credifinance to disburse up to \$40,000 and dismissed the order against Ms. Glover. Justice Cameron further ordered various deadlines for document filings and examinations, and ordered that the matter be returnable on March 5, 2009 for a hearing.
15. As a Type 3 Introducing Broker, Credifinance is required by IIROC Dealer Member Rule 35.4(a) to maintain at all times minimum capital of \$250,000 for the purpose of calculating its risk adjusted capital ("RAC").
16. Credifinance is further required by IIROC Dealer Member Rule 400.2 to maintain a Financial Institution Bond. Credifinance is required to provide capital by the amount of its deductible at \$25,000 for the purpose of calculating its RAC.
17. On February 12, 2009, Staff determined that Credifinance was capital deficient by approximately \$250,000 as the regulatory capital of the firm is frozen. Staff informed Credifinance of its determination and its intention to commence suspension proceedings via letter on the same day.
18. Concurrently with the events outlined in the previous section, via letter addressed to Mr. Doug Harris, IIROC's Vice President & Associate General Counsel, on December 24, 2008, Credifinance notified IIROC of its intention to resign its membership with IIROC. The letter claims that Credifinance has ceased its business activities due to the default of DSLC on an agreement to provide additional capital to the firm.
19. Via letter addressed to Mr. Louis Piergeti, IIROC's Vice-President Financial & Operations Compliance, on December 24, 2008, Credifinance sought IIROC's consent to terminate its introduction/carrying broker agreement with Pinnacle Correspondent Services.
20. Via letter on January 13, 2009, Ms. Julie Hurley, IIROC's Membership Co-ordinator, outlined to Credifinance certain requirements for its resignation process.
21. On January 16, 2009, IIROC published IIROC Notice 09-0012 announcing that the resignation process for Credifinance's membership had been initiated.
22. Via letter dated January 28, 2009, Credifinance submitted the following:
  - Credifinance's audited financial statements as of December 24, 2008;
  - Comfort letter from Mr. T. Robert Hambley, C.A., a panel auditor, confirming that as of January 23, 2009, Credifinance had liquid assets totalling \$264,537, which was sufficient to meet all liabilities other than the subordinated loan. The letter further confirms that clients' free securities are properly segregated and are being transferred to another financial institution; and
  - Credifinance's acknowledgement and undertaking to provide books and records.
23. All accounts of the Respondent have been closed or transferred to another member firm.
24. The Respondent has ceased to do business with the public and it has only two employees remaining.
25. The resignation of Credifinance is currently pending.
26. On December 31, 2008, Credifinance's registration with the OSC was suspended.

27. Via email dated January 14, 2009, the OSC informed IIROC's Registration Department that Credifinance's registration had been suspended for non-renewal.

**5. RELEVANT IIROC RULES:**

1. Rule 8.5 gives the Board of Directors discretion to refuse to accept a resignation of a Dealer Member.
2. Rule 17.1 provides that every Dealer Member maintain at all times RAC greater than zero.
3. Rule 20.2(1) gives a Panel broad authority to hold any hearing and, among other things, make any decision required or permitted under Rule 20 or under IIROC's Practice and Procedure.
4. Rule 20.7 provides, among other things, that any Dealer Member shall remain subject to the jurisdiction of IIROC for five years after it has ceased to be a Dealer Member.
5. Rule 20.42 allows a Panel to impose any of the penalties prescribed upon a Dealer Member in a number of circumstances; in particular, if a securities commission suspends the membership or privileges of a Dealer Member.
6. Rule 20.45 gives a Panel the power to impose a variety of penalties against a Dealer Member in the circumstances prescribed in Rule 20.42 including the suspension of its Membership and a direction to immediately cease dealing with the public.
7. Rule 20.49 gives a Panel the power to assess and order against a Dealer Member appropriate and reasonable investigation costs.
8. Rule 35.4(a) provides that an introducing broker that is a party to an Introducing Type 3 arrangement must maintain at all times minimum capital of \$250,000 for the purposes of calculating its RAC.
9. Rule 400.2 requires a Member Dealer to have a Financial Institution Bond as insurance against certain losses.
10. Rule 600 outlines specific requirements with which a suspended Dealer Member must comply.

**ARGUMENT:**

***For IIROC:***

6. Mr. Chan submitted that there are three grounds why the order should be granted:
  - (i) The OSC has suspended Credifinance's registration as an investment dealer;
  - (ii) Credifinance's RAC is below zero contrary to Dealer Member Rule 17.1; and
  - (iii) Credifinance is in the process of winding down and has voluntarily commenced the process to resign its membership.
7. Mr. Chan also suggested that he was seeking a "standard order" which was necessary to ensure that IIROC maintains jurisdiction over Credifinance in light of the Ontario Divisional Court decision in Taub, Divisional Court File No. 303/07, dated 2008-07-15, in which a majority of the judges ruled that a predecessor of IIROC could not discipline former members. That decision was appealed to the Ontario Court of Appeal which has heard the appeal and reserved its decision.
8. Mr. Chan also highlighted Dealer Member Rule 8.5 and the discretion therein to refuse to accept a resignation, especially when there are outstanding disciplinary matters. He said that IIROC has an obligation to protect the public and the order sought will put the public on notice that Credifinance is no longer allowed to conduct business.
9. Finally, Mr. Chan submitted that as Credifinance says that it has ceased operations the order would not give rise to any prejudice against it.

***For Credifinance:***

10. Mr. Crawley in his submissions emphasized the following:
- (a) The order would have no purpose in light of Credifinance's avowed intention to cease operations.
  - (b) The only reason why IIROC is seeking the order is to maintain jurisdiction over Credifinance.
  - (c) The order would be pejorative to Credifinance.
  - (d) The order, insofar as it seeks to direct Credifinance from dealing with the public, is superfluous in that Credifinance has already done so.
  - (e) It is an inappropriate way of dealing with a member. The order will condemn Credifinance to a "kind of regulatory purgatory" where it is compelled to continue, among other things, to pay IIROC fees.
  - (f) The public will think that by keeping Credifinance as a suspended member, IIROC would be managing the matter to improve its financial position at the expense of a member.

**ANALYSIS AND DECISION:**

11. The registration of Credifinance has been suspended by the OSC and its RAC has fallen below zero. Either one of these events would be justification enough for the Panel to issue the Order IIROC seeks.
12. The Panel notes that Counsel for Credifinance adduced no evidence, save for the limited testimony of Ms. Glover. Accordingly, the Panel respectfully is unable to give the submissions of Mr. Crawley much weight as they are unsubstantiated. Nevertheless, the Panel has considered them and notes that the public is well aware of the allegations against Credifinance and others, e.g. the IIROC notice of December 14, 2008. In this context, it is difficult for the Panel to see how this proceeding can be said to be pejorative to Credifinance or prejudicial to it or to cause it reputational harm. IIROC seeks a standard Order in which it is justified. If this creates a "regulatory purgatory" for Credifinance, which the Panel does not concede, it will be a short one given that the hearing will commence in June of this year.
13. The "elephant in the room" is the impending decision of the Ontario Court of Appeal in Taub. When released, it may well impact on this Panel and the parties. It is understandable, therefore, why IIROC is loath to do anything that might attenuate its jurisdiction over Credifinance and jeopardize the June hearing. In the opinion of the Panel, and in the context of the function of IIROC to protect the public, this in itself is a reason to issue the Order.
14. Accordingly, for these reasons, on March 6, 2009, the Panel issued the Order attached as Exhibit "A". **DATED** at Toronto, this 6<sup>th</sup> day of March, 2009.

Terrance Sweeney, Panel Chair  
Selwyn Kossuth, Panel Member  
F. Michael Walsh, Panel Member

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**ORDER**

**THIS APPLICATION** by the Staff of the Investment Industry Regulatory Organization of Canada (IIROC) coming on for hearing at Toronto, Ontario on Friday, March 6, 2009, pursuant to Dealer Member Rules 20.41, 20.42, and Rule 16 of the Rules of Practice and Procedure,

**THIS HEARING PANEL ORDERS:**

- 1) that Credifinance's membership with IIROC be immediately suspended;
- 2) that Credifinance comply with IIROC Dealer Member Rule 600 throughout the suspension period;
- 3) that Credifinance immediately cease dealing with the public;
- 4) that Credifinance Securities Limited shall pay the Staff costs associated with this application, in the amount of \$ 6,000; and
- 5) This Order comes into effect on Friday, March 6, 2009.

**DATED** at Toronto, Ontario, this 6<sup>th</sup> day of March, 2009.

Terrance Sweeney, Panel Chair  
Selwyn Kossuth, Panel Member  
F. Michael Walsh, Panel Member

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