

# Re Gateway Securities Inc

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory  
Organization of Canada (IIROC)**

**and**

**The By-Laws of the  
Investment Dealers Association of Canada (IDA)**

**and**

**Gateway Securities Inc**

2011 IIROC 8

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

Heard: January 14, 2011  
Decision: January 14, 2011  
(7 paras.)

**Hearing Panel:**

Murray A. Clemens, QC, Chris Lay, Robert Travers

**Appearances:**

Lorne Herlin for the Investment Industry Regulatory Organization of Canada  
No one appearing for Gateway Securities Inc.

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## REASONS FOR DECISION

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### I. Introduction

¶ 1 We were constituted as a panel to consider, pursuant to Rule 20.36 to the Investment Industry Regulatory Organization of Canada (IIROC), whether to accept a settlement agreement (the Settlement Agreement) that has been negotiated between IIROC's Enforcement Department and Gateway Securities Inc. At the conclusion of the hearing held for this purpose in Vancouver, British Columbia on January 14, 2011, and after considering the submissions and the terms of the Settlement Agreement we accepted it.

¶ 2 These are our reasons for doing so.

### II. The Settlement Agreement

¶ 3 The Settlement Agreement is annexed to this decision. It contains:

- (a) a summary of the underlying facts;
- (b) an admission by the respondent, Gateway Securities Inc., that since February 28, 2009 it has failed to meet IIROC's minimum capitalization requirements, contrary to IIROC Dealer Member Rule 17.1; and

- (c) Gateway's agreement to its expulsion from membership in IIROC, pursuant to IIROC Dealer Member Rule 20.34(2)(f).

¶ 4 We adopt what was said by the Panel in *Re Darcy Alan Higgs*, a February 9, 2010 decision concerning a settlement agreement pursuant to Rule 20-36 of the IIROC Rules as follows:

[4] There are two broad related principles that apply in connection with a decision to accept or reject a settlement;

[5] The first is succinctly stated in the following passage from the decision in *Re Milewski* [[1999] I.D.A.C. No. 17, August 5, 1999 at page 11]:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

[6] Secondly, in the recent decision of the Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* [2009 SKCA 81 (Can Lii)], the court cited with approval and applied to an administrative tribunal the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in *R. v. G.W.C.* [2000 ABCA 333 (Can Lii)], namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.

¶ 5 This Panel is of the unanimous view that rejection of the Settlement Agreement would be inconsistent with the foregoing principles.

### **Discussion**

¶ 6 In reaching this decision the Panel notes that the Agreement effectively concludes Gateway's involvement as a member of IIROC. It has already ceased to be involved in the investment industry. The process leading up to this Settlement Agreement and our approval of it, includes a decision of an IIROC Hearing Panel dated March 23, 2009, [2009] IIROC No. 13, by which Gateway's membership was suspended indefinitely and it was ordered to immediately cease dealing with the public. The Settlement Agreement and the Panel's approval of that Agreement effectively concludes this matter

¶ 7 These are the reasons for our decision of January 14, 2011 to accept the Settlement Agreement.

Murray A. Clemens, QC

Chris Lay

Robert Travers

AS OF JANUARY 14, 2011.

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## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Department Staff (Staff) has received information from IIROC's Financial and Operations Compliance Department regarding Gateway Securities Inc. (the Respondent).

2. Staff's review of the referral disclosed matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1 (the Hearing Panel).
3. Staff and the Respondent consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).

## **II. JOINT SETTLEMENT RECOMMENDATION**

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits that since February 28, 2009, it has failed to meet IIROC's minimum capitalization requirement, contrary to IIROC Dealer Member Rule 17.1.
6. Staff and the Respondent agree to the following term of settlement:

The Respondent agrees to its expulsion from membership in IIROC, pursuant to IIROC Dealer Member Rule 20.34(2)(f).

## **III. STATEMENT OF FACTS**

### *(i) Acknowledgment*

7. 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 these specific facts.

### **(ii) Factual Background**

8. Effective January 31, 2007, the Respondent was admitted to the membership of the Investment Dealers Association of Canada.
9. Effective June 1, 2008, the Respondent was admitted to the membership of IIROC.
10. As of January 9, 2009, the Respondent ceased active business operations.  
As of January 12, 2009, most of the Respondent's client assets were transferred to other Dealer Members.
11. By way of a February 9, 2009 letter, the Respondent informed IIROC that it intended to resign its IIROC membership.
12. On February 24, 2009, IIROC published IIROC Notice 09-0057 which announced that the resignation process for the Respondent's membership had been initiated.
13. By way of a March 6, 2009 letter, the Respondent informed IIROC that as of March 2, 2009, it no longer held any client accounts.

### **Risk Adjusted Capital**

14. Risk adjusted capital is a defined measure of a Dealer Member's capital (calculated pursuant to Generally Accepted Accounting Principles) that has been adjusted for regulatory purposes. The calculation of risk adjusted capital is the primary means by which the financial status of a Dealer Member is prescribed and monitored.
15. IIROC Dealer Member Rule 17.1 requires all Dealer Members to always maintain risk adjusted capital greater than zero as calculated in accordance with Form 1 – Joint Regulatory Financial Questionnaire and Report (JRFQR). If at any time the risk adjusted capital of a Dealer Member is less than zero, that Dealer Member is required to immediately notify IIROC.
16. The requirement that a Dealer Member must maintain positive risk adjusted capital is essential for the determination of the financial solvency of a Dealer Member and ultimately for the protection of the public, other Dealer Members, and IIROC.
17. Through the filing of an annual audited JRFQR and a monthly financial report (MFR), Dealer Members

are required to regularly calculate and then submit their risk adjusted capital status to IIROC.

### **Risk Adjusted Capital Deficiency**

18. As of January 31, 2009, the Respondent had a positive risk adjusted capital of \$73,000.
19. On March 13, 2009, the Respondent electronically filed its MFR for February 2009. The February 2009 MFR indicated that as at February 28, 2009 the Respondent had a risk adjusted capital deficiency of \$871,000.
20. On March 16, 2009, the Respondent electronically filed its Special Early Warning Regulatory Financial Filing. This filing indicated that as at March 12, 2009 the Respondent had a risk adjusted capital deficiency of \$961,000. Subsequently, the Respondent advised IIROC that the Respondent's parent company would not be taking any steps to remedy the risk adjusted capital deficiency.
21. Due to the Respondent's risk adjusted capital deficiency, pursuant to IIROC Dealer Member Rule 20.45(1) on March 20, 2009 IIROC applied for and obtained an order which, among other things, suspended the Respondent's IIROC membership. A copy of the IIROC Hearing Panel's decision is attached as schedule "A" to this Settlement Agreement.
22. Pursuant to IIROC Dealer Member Rule 8, the IIROC Board of Directors may only consider an application for resignation if a Dealer Member has liquid assets sufficient to meet all its liabilities other than subordinated loans. Given that the Respondent does not have liquid assets sufficient to meet all its liabilities, the IIROC Board of Directors cannot consider the Respondent's application for resignation.

### **IV. TERMS OF SETTLEMENT**

23. This settlement is agreed upon 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*.
24. The Settlement Agreement is subject to acceptance by the Hearing Panel.
25. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
26. 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.
27. 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.
28. 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.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
30. 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.
31. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.
32. This Settlement Agreement may be signed in counterparts and/or by facsimile.

**AGREED TO** by the Respondent at the City of Vancouver in the Province of British Columbia, this 26<sup>th</sup> day of November, 2010.

"Witness signature"

"Respondent's signature"

Witness

Respondent

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 5<sup>th</sup> day of January, 2011.

“Witness signature”

“Lorne Herlin”

Witness

Lorne Herlin

Enforcement Counsel on behalf of IIROC Staff

**ACCEPTED** at the City of Vancouver in the Province of British Columbia, this 14<sup>th</sup> day of January, 2011, by the following Hearing Panel:

Per: “Murray Clemens”

Panel Chair

Per: “Robert Travers”

Panel Member

Per: “Chris Lay”

Panel Member

**Editor’s Note:**

Attachment to the Settlement Agreement (a copy of *Re Gateway Securities Inc* [2009] IIROC No. 13) is omitted.

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