

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

PENSON FINANCIAL SERVICES CANADA INC.

**Hearing Panel:**

Jean-Pierre Lussier (Chair), Danielle Le May and Elaine Phenix

**Appearances:**

Sébastien Tisserand, Enforcement Counsel, IIROC

Martin P. Rosenthal, Ernst & Young Inc., in its capacity as Liquidator of Penson Financial Services Canada Inc.

Alain Riendeau, Fasken Martineau LLP, Counsel for Ernst & Young Inc., in its capacity as Liquidator of Penson Financial Services Canada Inc.

Philippe Leroux, Counsel for Penson Financial Services Canada Inc.

Alix d'Anglejan-Chatillon, Stikeman Elliott LLP, counsel for Penson Financial Services Canada Inc.

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## ORDER

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**WHEREAS** on February 1, 2013, the Quebec Superior Court, Commercial Division, granted in file 500-11-044039-135 and in accordance with applicable provisions of the Canada Business Corporations Act (a) an order continuing the liquidation of Penson Financial Services Canada Inc. (“Penson”) under the supervision of the Court and appointing a liquidator (the “Liquidation Order”), and (b) a claims process order (the “Claims Process Order”);

**WHEREAS** counsel for staff of the Investment Industry Regulatory Organization of Canada (“IIROC”), Ernst & Young Inc. (“E&Y”), in its capacity as Court-appointed liquidator of Penson, counsel for E&Y, in its capacity as Court-appointed liquidator of Penson, and counsel for Penson appeared before us on Monday, February 4, 2013;

**AND ON REVIEWING** the affidavit of Marie-Lyne Côté, sworn February 4, 2013;

**AND ON BEING ADVISED** of the consent of E&Y, in its capacity as Court-appointed liquidator of Penson, to this Order;

**AND ON HEARING** submissions from counsel for IIROC, counsel for E&Y and counsel for Penson;

**THIS PANEL HEREBY ORDERS THAT:**

- (a) Penson’s membership is immediately suspended;
- (b) Except as required by paragraphs (c)-(h), inclusive, of this Order and as otherwise required to complete the liquidation of its business, Penson is directed to immediately cease dealing with the public as a Dealer Member;
- (c) Penson shall provide notice of the claims process available to clients, as defined by and in accordance with the Claims Process Order;
- (d) Penson shall report information and prepare and deliver certain documentation, forms or tax slips in respect of its clients and/or parties on behalf of which Penson provided services or held assets, for the 2012 and 2013 tax years and for any prior years as the case may be, in accordance with the Liquidation Order;
- (e) Penson shall not pay distributions or other amounts to its shareholder, including distributions permitted by the Liquidation Order, without a further order of the Quebec Superior Court approving same;
- (f) Penson shall preserve all books and records, including all hard copy and electronic records in its possession or control (including any computer servers,

hard drives and any other electronically stored records in any form) (the “Records”) for a period of seven (7) years of the date hereof, unless otherwise directed by the Quebec Superior Court or an IIROC Hearing Panel with notice of at least ten (10) days to IIROC;

- (g) The Records shall be made available to IIROC staff on demand within a reasonable timeframe;
- (h) Penson shall continue to prepare, deliver and file all documents required to be filed under IIROC Rules, including without limitation, all applicable registration filings, monthly and annual reports to IIROC, and monthly and quarterly investment statements when applicable;
- (i) Upon IIROC staff’s satisfaction that necessary liquidation steps have been performed, IIROC staff may proceed without further notice with an order terminating Penson’s membership.

DATED at Montreal this 4<sup>th</sup> day of February, 2013.

*(s) Jean-Pierre Lussier*

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Jean-Pierre Lussier

*(s) Danielle Le May*

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Danielle Le May

*(s) Elaine Phenix*

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Elaine Phenix