

Re Peregrine Financial Group Canada

IN THE MATTER OF:

**An Expedited Hearing under *Dealer Member Rule 20.42* of the
Investment Industry Regulatory Organization of Canada**

and

Peregrine Financial Group Canada Inc

2012 IIROC 43

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

Heard: July 19, 2012
Reasons: July 30, 2012

Hearing Panel:

The Honourable Fred Kaufman, C.M., Q.C. (Chair), Brigitte Geisler, Terry Bourne

Appearances:

Susan Kushneryk, Elsa Renzella and Brian F. Empey, for IIROC
Mark Evans and Jane O. Dietrich, for the Respondent

REASONS FOR ORDER

Introduction

¶ 1 This is an expedited hearing, as permitted by Rules 20.41 and following, and more particularly Rule 20.42(1)(d), which deals with situations “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.”

¶ 2 In its Notice of Application, served on the Respondent shortly before the Hearing, IIROC asks for an Order which, inter alia, would immediately suspend the Respondent’s Membership. This is permitted by Rule 20.45, which also allows for the imposition of terms and conditions. It is important to note that the Respondent consents that the Application be granted, which the Panel did at the conclusion of the Hearing, written Reasons to follow. These are the Reasons.

The Facts

¶ 3 The facts giving rise to the Application are set out succinctly in the Affidavit of Catherine Drennan:

1. I am a Financial and Operations Manager, Financial and Operations Compliance, at the Investment Industry Regulatory Organization of Canada (“IIROC”). As such, I have knowledge of the matters to which I hereinafter depose. Where my knowledge is based on information and belief, I have indicated the source of that information and belief.
2. Peregrine Financial Group Canada, Inc. (“Peregrine”) is an IIROC Dealer Member and is regulated by IIROC. Peregrine deals primarily in futures contracts. It is a corporation incorporated pursuant to the laws of the Province of Ontario. A copy of the National Registration Database record for Peregrine is attached as Exhibit “A” to this affidavit. A

Corporation Profile Report for Peregrine produced on July 16, 2012, is attached as Exhibit “B”.

3. Peregrine is a wholly owned subsidiary of Peregrine Financial Group, Inc. (“Peregrine US”), located in Chicago, Illinois. A copy of Peregrine’s notes to its financial statements dated December 31, 2011, confirming its status as a subsidiary is attached as Exhibit “C” to this affidavit.
4. On July 9 and 10, 2012, Peregrine US was made the subject of regulatory actions by the US National Futures Association and the US Commodity Trading Futures Commission. On July 10, 2012, Peregrine US filed a petition for bankruptcy in the US Bankruptcy Court. Copies of the US National Futures Association Notice of Member Responsibility Action dated July 9, 2012, the US Commodity Futures Trading Commission Complaint in action 12-CV-05383 in the US District Court for the Northern District For Illinois Eastern Division dated July 10, 2012 and the Peregrine US Voluntary Petition in the United States Bankruptcy Court, Northern District of Illinois dated July 10, 2012, are attached as Exhibits “D”, “E” and “F” to this affidavit.
5. IIROC has approved the bulk transfer of Peregrine’s client accounts to another IIROC Dealer Member, R.J. O’Brien Associates Canada Inc. (“RJOB”). I am advised by my colleague, Robert DeGoeij in IIROC’s Calgary office, that he confirmed with Keith Riddoch, RJOB President and Chief Executive Officer (“CEO”), that its staff have reconciled the account transfers with Peregrine’s records and have confirmed that all of Peregrine’s client accounts, including all cash and open futures contract positions, were transferred to RJOB by end of day on July 16, 2012.
6. I am advised by Eugenia Chee, Chief Financial Officer for Peregrine, and believe that the employment of all but one of Peregrine’s staff was terminated as of July 13, 2012, and that the employment of the one remaining Peregrine staff person, Chee, will terminate shortly. While Peregrine will still have its CEO Jim Klotz in place, Klotz does not receive a salary from Peregrine and is resident in the US.
7. With only one staff person whose employment is going to be terminated shortly and a non-resident CEO, Peregrine will not be able to carry on its day to day operations.
8. Peregrine’s operational difficulties raise concerns for IIROC as it continues to hold itself out as a Dealer Member in good standing, so that members of the public and other Dealer Members could be left with a mistaken belief as to Peregrine’s ability to conduct registerable activity. The publication of an IIROC suspension order would provide notice to former Peregrine clients of the immediate need to identify claims they may have against the firm.
9. Without employees in place who are subject to IIROC’s jurisdiction, there will be no one to ensure that Peregrine complies with its existing obligation (under Early Warning restrictions imposed on Peregrine by IIROC staff) to protect its remaining capital, which capital should be used to satisfy claims that may be brought by its former clients. Instead, there is a risk that its capital could be wrongfully dissipated to the detriment of former clients of Peregrine.
10. Other Dealer Members and IIROC could suffer reputational harm or liabilities in connection with unforeseen events arising while Peregrine continues as a Dealer Member in these circumstances.
11. Peregrine’s continued operation therefore poses a risk of imminent harm to the public, other Dealer Members and to IIROC.

Discussion

¶ 4 It is clear from what is asserted in the Affidavit – and accepted by the Respondent – that the Order requested is warranted, and that all the conditions exist to proceed by way of expedited hearing. The principal objective is to avoid, in the words of the Rule, “risk of imminent harm to the public, other Dealer Members or the Corporation.” We believe that the terms of the Order, including, as it does, the suspension of Membership,

as well as the other terms and conditions, achieve this purpose.

¶ 5 We did, however, note that it is within the power of a Hearing Panel to impose a Monitor. This was not asked for, presumably because of the good will and cooperation the Respondent has demonstrated up to this point, so we did not impose this condition *proprio motu*. But this power remains, and we invited counsel to keep that option in mind should the situation change.

Disposition

¶ 6 This is the Order made by the Panel:

WHEREAS counsel for staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and counsel for Peregrine Financial Group Canada, Inc. (“Peregrine”) appeared before us on Thursday, July 19th, 2012;

AND ON REVIEWING the affidavit of Catherine Drennan, sworn July 19th, 2012;

AND ON BEING ADVISED of the consent of Peregrine to this Order;

AND ON HEARING submissions from counsel for IIROC and counsel for Peregrine;

THIS PANEL HEREBY ORDERS THAT:

1. Peregrine’s Membership is, on consent, immediately suspended;
2. Peregrine is directed to immediately cease dealing with the public as a Dealer Member, including removing any websites from public access;
3. Notwithstanding any other provisions of this Order, Peregrine is authorized and entitled but, subject to paragraph 7 hereof, not obligated to pay its reasonable operating expenses including without limitation severance payments, wages for Peregrine staff, lease payments, legal costs and storage costs after providing IIROC’s Vice President, Financial and Operations Compliance (“IIROC VP Operations”) with prior written notice of such payments.
4. Peregrine is restricted from undertaking any of the following activities without first obtaining the written consent of IIROC’s VP Operations:
 - (a) reducing its capital in any manner including redemption, repurchase or cancellation of any of its shares;
 - (b) reducing or repaying any indebtedness which has been subordinated with the approval of IIROC;
 - (c) directly or indirectly making any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company or affiliate; and
 - (d) increasing non-allowable assets, unless a prior binding commitment to do so exists, or entering into any new commitments which would have the effect of materially increasing the non-allowable assets of the firm;
5. Peregrine shall work with IIROC staff to plan and effect steps for an orderly wind-down, through a liquidation or other similar process acceptable to IIROC staff, which steps shall be initiated in a manner satisfactory to IIROC staff no later than August 20, 2012, failing which IIROC staff may appear before a Hearing Panel for further orders and direction;
6. Peregrine shall preserve all books and records, including all hard copy and electronic records in Peregrine’s possession or control (including any computer servers, hard drives and any other electronically stored records in any form) (the “Records”) for a period of nine months or pending further order of a Hearing Panel, which Records shall be made available to IIROC staff on demand within a reasonable timeframe;

7. Peregrine shall maintain the Records at its office premises at 1290 Central Parkway West, Suite 200, Mississauga, Ontario, and shall pay any and all costs required for the purpose of that maintenance, for the period set out in paragraph 6 hereof, and the Records shall not be moved or altered without notice and approval of IIROC staff; and
8. Upon IIROC staff's satisfaction that necessary wind-up steps have been effected, IIROC staff may move without notice to Peregrine for an order terminating Peregrine's Membership.

Dated at Toronto, this 30th day of July, 2012.

Hon. Fred Kaufman, Chair

Brigitte Geisler, Industry Representative

Terry Bourne, Industry Representative

Copyright © 2012 Investment Industry Regulatory Organization of Canada. All Rights Reserved.