

# 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.**

## NOTICE OF APPLICATION

**TAKE NOTICE** that on Monday, February 4th, 2013, at the IIROC René Lévesque Room, in Montréal, Québec, at 2:00 pm. or as soon thereafter as this application can be heard, staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) will make an application to a Hearing Panel in an Expedited Hearing **ON NOTICE** to Penson Financial Services Canada Inc. (“Penson”) pursuant to Dealer Member Rules 20.41, 20.42 and 20.45 and Rule 16 of the Rules of Practice and Procedure.

### **THE APPLICANT SEEKS THE FOLLOWING RELIEF:**

1. An order providing 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 granted by the Quebec Superior Court, Commercial Division on February 1, 2013 in the file 500-11-044039-135 (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 order continuing the liquidation of Penson under the supervision of the Court and appointing a liquidator granted by the Quebec Superior Court, Commercial Division on February 1, 2013 in the file 500-11-044039-135 (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.
2. Such further and other relief as counsel may request and the Hearing Panel may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. Penson is an IIROC Dealer Member and is regulated by IIROC. Penson acted as a "carrying broker," a commodities or securities broker which provided back office functions such as clearing, settlement and custodial services to other brokers. Penson therefore enabled other brokers, known as "introducing brokers," to provide a full range of services to their clients without incurring the material start-up and operational costs of running a back office.
2. Penson's other services also included: customized reporting to portfolio managers, servicing portfolio managers' clients; direct market access to Canadian exchanges and market places; omnibus custody services; equity, fixed income and foreign exchange trading.
3. Penson is an indirectly wholly owned subsidiary of Penson Worldwide, Inc. ("Penson US"), a publicly held holding company incorporated in the State of Delaware, USA, which was, until October 18, 2012, listed on the NASDAQ Stock Market.
4. In August 2011, Penson US began a comprehensive strategic review of operations to reduce costs and improve profitability. In this context, and over the course of several months, Penson US disposed of its trading operations in Asia, Australia, the United States and the United Kingdom through a series of transactions with third parties.
5. In December 2011, Penson US announced that, due to the significant interest shown in Penson's business, its board of directors had engaged an investment banking firm to assist in the proposed sale of Penson.

6. By September 2012, Penson US and Penson had not been able to find any buyer for Penson's business on terms that were acceptable and likely to lead to a successful transaction.
7. On September 28, 2012, the board of directors and sole shareholder of Penson approved the adoption of a comprehensive plan (the "Wind-Down Plan") detailing the various aspects concerning the Wind-Down (the "Wind-Down"), as well as the appointment of E&Y as liquidator and the filing of liquidation proceedings upon substantial completion of the Wind-Down.
8. The Wind-Down Plan established the sequential steps to be undertaken by Penson following its announcement to close down operations and issuing a 90 day termination notice pursuant to standard terms of agreement.
9. Specifically, the Wind-Down Plan included, inter alia: (a) a detailed timeline to facilitate the bulk transfer of customer records (including account holdings) and related securities, cash and collateral positions held for and on behalf of its introducing broker clients and other clients; (b) a key employee retention program (the "KERP") to ensure operational continuity and stability during the course of the Wind-Down; (c) the negotiation of ongoing banking and operational service arrangements with key counterparties; and (d) a communications plan with respect to the key messages to be delivered by Penson to key stakeholders and to the general public.
10. Prior to its adoption, Penson had provided IIROC and other regulators with a draft copy of the Wind-Down Plan and had consulted with them in connection with various questions and comments they had formulated in respect thereof. IIROC specifically asked Penson to provide for the appointment of a monitor to report to IIROC and other regulatory authorities on its execution.
11. On November 23, 2012, in order to secure the payment of its obligations under the KERP, Penson entered into a Trust Agreement with E&Y, as trustee.
12. On January 11, 2013, Penson US along with certain U.S. subsidiaries (the "US Debtors") filed voluntary proceedings under Chapter 11 of title 11 of the United States Code, to

allow them to propose a joint liquidation plan to provide for the liquidation of the US Debtors' property and for proceeds of the liquidation to be distributed to their creditors.

13. As a result, on Monday, January 14, 2013, based on the foregoing filing, IIROC staff exercised its discretion to designate Penson in Early Warning level one category, as per IIROC Rule 30.2.
14. On February 1, 2013, Penson petitioned the Québec Superior Court, Commercial Division for the issuance of an order under the *Canada Business Corporations Act* that the liquidation of Penson be continued under the supervision of the Court, appointing E&Y as liquidator and approving a claims process.
15. On February 1, 2013, the Québec Superior Court, Commercial Division, granted the Liquidation Order and the Claims Process Order.
16. As of the date hereof, Penson has substantially completed the implementation of the Wind-Down Plan having successfully transferred almost all of its client accounts and related securities.
17. On January 31, 2013, the employment of all employees of Penson was terminated. Approximately forty (40) former employees of Penson will be expected to be engaged by E&Y on behalf of Penson to assist with the liquidation.
18. Penson has now ceased the vast majority of its operations, terminated all of its employees and its directors and officers resigned effective as of the issuance of the Liquidation Order.
19. E&Y has been appointed as liquidator as a result of the Liquidation Order in respect of all or any part of the undertaking and property of Penson.
20. Penson has no intention to carry on its day to day operations as an IIROC Dealer Member and, on January 31, 2013, Penson sent to IIROC a notice of resignation of Membership in connection with the Liquidation Order and has initiated the formal process of surrender of its registrations with the securities regulators in each of the jurisdictions in which

Penson is registered and the termination of its status with stock exchanges, depository service providers and other similar organizations.

21. The publication of an IIROC suspension order would provide notice to former Penson clients of the immediate need to identify claims they may have against the firm, which claims will be dealt with in the accordance with the Claims Process Order.
22. In all of the circumstances, IIROC Staff relies on Dealer Member Rules 20.42(1)(a) and (d).

**THE APPLICANT WILL RELY ON THE FOLLOWING EVIDENCE:**

1. The affidavit of Marie-Lyne Côté, sworn February 4<sup>th</sup>, 2013, and its supporting exhibits;
2. Such further and other evidence as counsel may advise and the Hearing Panel may accept.

**DATED** at Montréal, Québec this February 4<sup>th</sup>, 2013.

*(s) Carmen Crépin*

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