

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA  
AND  
BARRET CAPITAL MANAGEMENT INC.

## NOTICE OF APPLICATION

**TAKE NOTICE** that on Tuesday, January 17, 2011, at the JPR Meeting Rooms, 390 Bay Street, Third Floor, in Hearing Room C, in Toronto, Ontario, at 10:00 a.m. or as soon thereafter as this application can be heard, staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) will make application to a Hearing Panel in an Expedited Hearing **ON NOTICE** to Barret Capital Management Inc. (“Barret”) 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) Barret’s Membership is immediately suspended;
  - (b) Barret is directed to immediately cease dealing with the public;
  - (c) IIROC staff may undertake any action with the carrying broker, Laurentian Bank Securities Inc., to facilitate the orderly transfer of client accounts from Barret consistent with applicable law;

- (d) Barret's rights and privileges of Membership are terminated as of 30 days from the date of the order;
  - (e) Barret is expelled from the Corporation as of 30 days from the date of the order; and
  - (f) costs of the investigation and hearing of this matter.
2. Such further and other relief as counsel may request and the Hearing Panel may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. Barret, an IIROC Dealer Member and previously IDA Dealer Member, is a small investment dealer operating from an office on Eglinton Avenue East in midtown Toronto. It promotes itself as specializing in futures and options on metals, energies and all other exchange-traded commodities. It also offers to purchase physical gold and silver in clients' investment accounts.
2. Barret has abused its privilege of access to the capital markets by using client funds for its own purposes, at its own discretion, in complete disregard of securities regulation.
3. Barret has engaged in an elaborate trade allocation scheme (the "Scheme") over a number of years. Through its Scheme, Barret has juggled winning and losing trades among client accounts based on the capital available in those accounts without regard to particular client objectives or investment instructions. Barret continued to earn commissions on its trading throughout the Scheme, including earning commission on trading in accounts that had been depleted.
4. In the course of its Scheme, Barret has made significant misrepresentations to clients including through manipulating account values, misrepresenting account values and holdings by way of false account statements or otherwise providing false information to clients and by manipulating on and off book payments to clients.
5. Barret's compliance is wholly inadequate and failed to prevent the various wrongdoings making up the Scheme. As a result of Barret's Scheme and its activities undertaken to hide the Scheme from clients, it is not possible to accurately trace individual investors'

funds or to unwind the history of unauthorized and discretionary trading. Further, Barret permits an individual to be involved in its operations who is prohibited from being registered or participating in a registrant.

6. Barret has:
  - (a) experienced a pervasive failure of its operating procedures which failure has allowed the Scheme, the misrepresentations to clients and all associated regulatory breaches;
  - (b) an inadequate compliance system which has failed to ensure proper supervision of client accounts;
  - (c) inadequate internal controls;
  - (d) inadequate books and records;
  - (e) a history of improper transactions that continues to the present; and
  - (f) an individual involved in its operations who is prohibited from participating in the capital markets.
7. All of the foregoing factors have placed Barret in a position of severe operating difficulty.
8. Barret clients are at imminent risk of harm as a result of Barret's operating difficulty, in the form of ongoing misappropriation of their money to fund losing trades and ongoing misinformation about the value and holdings in their accounts. Barret's operating difficulty creates a risk of imminent harm to members of public more generally, who are prospective Barret clients.
9. Barret is a small company and its principals must necessarily be involved in all aspects of its operations. Given the practical realities of Barret's small operation, an immediate suspension for an interim period to permit the orderly transfer of Barret client accounts and a termination of Barret's rights and privileges of approval thereafter are the least restrictive remedies that will serve to protect the public interest.
10. Dealer Member Rules 20.41, 20.42 and 20.45.
11. Rule 16 of IIROC's Rules of Practice and Procedure.

13. Such further and other grounds as counsel may advise and the Hearing Panel may permit.

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

1. The affidavit of Vito Pedone, sworn January 7, 2012; and
2. such further and other evidence as counsel may advise and the Hearing Panel may accept.

**DATED** at Toronto, Ontario this 10<sup>th</sup> day of January, 2012.



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JEFFREY KEHOE  
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