

Re Jory Capital

IN THE MATTER OF:

**An Application for a Review of a Decision of the Investment Industry
Regulatory Organization of Canada pursuant to Section 31.1(4) of the
Securities Act, C.C.S.M. c. S50**

and

**Dealer Member Rule 20.29 of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

Jory Capital Inc

2012 IIROC 7

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

Hearing: February 2, 2012
Decision: February 14, 2012
(11 paras.)

Hearing Panel:

Richard L. Yaffe (Chair), Martin Davies, Kathleen Jost

Appearances:

Lorne Herlin, for IIROC

Art Stacey, for Jory Capital Inc.

PANEL DECISION

- ¶ 1 We were constituted as a Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) to consider an application by Jory Capital Inc. (“Jory”) for the removal of certain enhanced business restrictions (“EBRs”) that had previously been imposed on Jory by IIROC.
- ¶ 2 The EBRs had been imposed by IIROC pursuant to a letter from IIROC staff to Jory dated June 29, 2009 (the “June 29 Letter”). At the relevant time, Jory was in the category of Early Warning Level 2 pursuant to IIROC Dealer Member Rule 30, which is the more serious of the two categories under IIROC’s Early Warning System that is intended to identify IIROC members that are in danger of having a capital deficiency.
- ¶ 3 The EBRs imposed on Jory by IIROC pursuant to the June 29 Letter prohibited Jory from:
- (i) opening any new branch offices;
 - (ii) hiring any new registered representatives or investment representatives (the “New Rep Restriction”);
 - (iii) opening any new customer accounts (the “NCA Restriction”); or
 - (ii) changing its inventory position in any material respect.

¶ 4 By letter from IIROC staff dated December 17, 2009 (the “December 2009 Letter”), IIROC provided clarification regarding the interpretation of the NCA Restriction. IIROC staff confirmed that the NCA Restriction prohibits the opening of new accounts for new customers, but, subject to certain restrictions and conditions, it does not prohibit the opening of a new account for an existing customer of Jory provided that the new account is opened in the same name as the existing account.

¶ 5 Pursuant to the December 2009 Letter, Jory does not require approval from IIROC to open a new account for an existing customer in the same name if the new account is

- (i) a tax-free savings account;
- (ii) a registered retirement savings or other registered plan account; or
- (iii) a cash, margin, or COD account.

However, pursuant to the December 2009 Letter, Jory must request approval from IIROC to open any new accounts not satisfying the above conditions. The December 2009 Letter stipulates that accounts requiring approval include, but are not limited to:

- (i) corporate or business accounts, where the corporation or business does not have an existing account with Jory, even if the shareholder or business owner is an existing client of Jory;
- (ii) accounts for spouses and family members of existing clients, including spousal RRSP and other registered plan accounts.

¶ 6 Finally, pursuant to the December 2009 Letter, Jory is required to report to IIROC by email, within 5 business days of opening a new account, the client name, type of account, and account number assigned of each new account Jory opens (in addition to submitting daily commission detail and summary reports).

¶ 7 On September 27, 2010, Jory applied to The Manitoba Securities Commission (the “MSC”) to have the NCA Restriction and the New Rep Restriction removed. In response, IIROC brought an application to the MSC to have Jory’s application dismissed.

¶ 8 By way of a preliminary ruling dated December 31, 2010, the MSC denied IIROC’s application and ruled that it would hear Jory’s application. On January 11, 2012, IIROC applied to the MSC to have an IIROC hearing panel consider the review of the EBRs. We were provided with an excerpt of the transcript of the MSC’s reasons for judgement, which ordered that an IIROC hearing panel conduct the review. The MSC imposed certain conditions, as follows:

“It is the condition of our decision that the IIROC hearing panel convene and hear Jory’s application based on materials already prepared by the parties within four weeks from today. The decision must be reached within two weeks thereafter and communicated to the parties.”

¶ 9 IIROC Rule 20 prescribes the rules relating to IIROC hearing processes, and Part 9 thereof applies specifically to Early Warning review proceedings. IIROC Rule 20.29(4) prescribes the options available to an IIROC hearing panel with respect to the disposition of such matters, and provides that the panel may:

- (i) affirm the order;
- (ii) quash the order;
- (iii) vary or remove any prohibitions imposed on the Dealer Member; and
- (iv) make any decision that could have been made by IIROC pursuant to IIROC Rule 20.28 (IIROC Rule 20.28 is the rule pursuant to which IIROC may impose EBRs).

¶ 10 In order to satisfy the time conditions imposed by the MSC, we have agreed that we will provide our decision, to be followed by more extensive reasons.

¶ 11 It is the decision of this Panel that Jory shall be subject to the EBRs as set out in the June 2009 Letter, as modified and clarified by the December 2009 Letter. Reasons for our decision will follow.

Dated at Winnipeg, Manitoba, this 14th day of February, 2012.

Richard L. Yaffe

Martin Davies

Kathleen Jost