

**INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

IN THE MATTER OF:

**AN EXPEDITED HEARING PURSUANT TO *DEALER MEMBER RULE 20.42*
OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF
CANADA**

AND

FIRST LEASIDE SECURITIES INC.

NOTICE OF APPLICATION

TAKE NOTICE that on Friday, February 24, 2012, at Legal Transcript Services, 350 Bay St., 7th floor, in Toronto, Ontario, at 11:00 am or as soon thereafter as the application can be heard, Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) will make application to a Hearing Panel for an Expedited Hearing, **WITH NOTICE**, to First Leaside Securities Inc. (“First Leaside”) pursuant to Dealer Member Rules 20.41, 20.42, 20.45 and Rule 16 of the Rules of Practice and Procedure.

THE RELIEF SOUGHT IS:

An Order granting the following relief:

- 1) Pursuant to Dealer Member Rule 20.42(1) (d), 20.45(1)(a), First Leaside Securities Inc.’s membership is hereby suspended;
- 2) Pursuant to Dealer Member Rule 20.45(1)(d), First Leaside Securities Inc. shall immediately cease dealing with the public, including the removal of its website;
- 3) Pursuant to Dealer Member Rule 20.45(1)(b), clients of First Leaside will be permitted to transfer client accounts at Penson Financial Services Canada Inc., including liquidating trades except those trades involving securities which are subject to the Cease Trade Agreement with Staff of the Ontario Securities Commission;
- 4) FLSI shall report to IIROC Staff as directed every 30 days regarding any action taken pursuant to this Order, until such time as all FLSI client accounts have been transferred to third party Member Firms;

- 5) The risk adjusted capital and minimum capital requirement (together, the “Regulatory Capital”) shall be dealt with in accordance with the terms of the Initial Order of the Ontario Superior Court of Justice *In the Matter of the Companies’ Creditors Arrangement Act* of which FLSI was an applicant, dated February 23, 2012 (the “CCAA Order”);
- 6) In the event that FLSI shall desire the Regulatory Capital to be dealt with otherwise than in accordance with the CCAA Order, such other dealing shall only be effected by further Order of the Court in the CCAA proceedings, and FLSI shall consult with IIROC Staff and attempt to seek agreement on the terms of such use of the Regulatory Capital before any motion is brought to (i) amend or vary the CCAA Order in that regard or (ii) seek a further Order in that regard;
- 7) Upon completion of the transfer of client accounts, and determination of any claims against FLSI, to the satisfaction of IIROC Staff, IIROC Staff may move, without notice to FLSI, for an order terminating the membership of FLSI;
- 8) This Order will come into effect immediately; and
- 9) Such further and other relief that counsel may request and that the Hearing Panel may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

- 1) First Leaside Securities Inc. (“FLSI”) is currently a Dealer Member. However, several factors have caused it to be in such financial or operating difficulty that it cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation. Those factors include:
 - i. A substantial portion of its business is subject to a Cease Trade Agreement with Ontario Securities Commission Staff;
 - ii. It is undertaking the transfer of client accounts to other Dealer Members;
 - iii. It is terminating employees;
 - iv. It has made application to the Ontario Superior Court of Justice under the *Companies’ Creditors Arrangement Act* (CCAA), in which it has expressed an intention to wind down its operations; and
 - v. IIROC’s ability to govern the Dealer Member is severely restrained if not lost altogether as a result of the CCAA proceeding.

Recent Events

- 2) FLSI is among a group of entities within the First Leaside Group of Companies (the “FL Group”) which has made an application to the Ontario Superior Court of Justice under the *Companies’ Creditors Arrangement Act* (the “Application”).
- 3) The purpose of the Application is to permit the First Leaside Group of Companies to undertake an orderly wind-down of operations within a court-supervised process.
- 4) If granted, the Applicant (which includes FLSI) shall have the right to:
 - i. Permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate;
 - ii. Terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
 - iii. Pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
 - iv. Pursue all avenues for the potential sale of the Business or Property, in whole or part, subject to further approval of such sale by this Court.

Background

- 5) In 2011, Grant Thornton Limited conducted a viability review of the entire FL Group (not including dormant or inactive companies) and produced a report on August 19, 2011. Grant Thornton was retained by lawyers for First Leaside. Ontario Securities Commission (OSC) and IIROC Staff received the report shortly after it was produced.
- 6) One of Grant Thornton’s key findings was that the future viability of the FL Group was contingent on their ability to raise new capital. It found that one of the largest sources of revenue in the FL Group was the fees it generated in one of its operating entities, First Leaside Wealth Management (“FLWM”), on the raising of new capital. If the FL Group was restricted from raising new capital, it would likely be unable to continue its operations in the ordinary course, as it would have insufficient revenue to support its infrastructure, staffing costs, distributions, and to meet their funding requirements for existing projects.
- 7) On October 28, 2011, IIROC Staff placed FLSI into discretionary Early Warning Level 2 (EW2). As a result, FLSI was prohibited from:
 - i.Reducing its capital;
 - ii.Repaying subordinated indebtedness without IIROC approval;

- iii. Making bonus, loan or capital payments to any director, officer, or affiliate of FLSI; and
- iv. Reducing the “non-allowable assets” of FLSI.

- 8) FLSI remains under discretionary EW2.
- 9) On October 31, 2011, the FL Group entered into a Cease Trade Agreement (“CTA”) with OSC Staff regarding the units of limited partnerships and funds formed or established by the FL Group. (the “FL Products”);

The Business of FLSI

- 10) FLSI acted as agent for the offerings of the FL Products;
- 11) FLSI clients who purchased the FL Products hold them in their accounts at FLSI (carried by Penson Financial Services Canada Inc.) or in certificate form outside of FLSI.
- 12) FLSI also provides advisory services to companies within the FL Group in the structuring of limited partnerships for real estate properties. Revenue is generated from both advisory services and primary distribution fees for limited partnership units (LPUs) sold to accredited investors through private placements.
- 13) FLSI’s main sources of revenue are as follows:
 - i. advisory fees paid to it by F.L. Securities Inc., the EMD;
 - ii. agency fees for distributing the LPUs;
 - iii. administrative fees from high net worth retail clients with investments mainly in fixed income products.

Finances

- 14) FLSI’s last MFR filing was for December 2011. Statement E reveals the following income for that month:

	Dec (\$)
Corp Finance Revenue/New Issues - equity	0
Corp Finance Revenue/Corporate Advisory Fees	0
Interest	2,000
Fees	(257,000)
Total Income	(255,000)

- 15) There is currently risk adjusted capital in the amount of approximately \$1,741,000, together with a minimum capital requirement of \$250,000.
- 16) However, the Application and Order sought make provision for the use of that capital to pay certain costs associated with the Application.

Management

- 17) In November 2011, the FL Group appointed an Independent Committee to assume all decision-making authority in respect of the FL Group and oversee its operations.
- 18) None of the Independent Committee members are IIROC registrants.
- 19) FLSI is a wholly-owned subsidiary of FLWM.
- 20) Although David Phillips is the President and UDP of FLSI, as well as its majority common-shareholder, the Application indicates that since the appointment of the Independent Committee, Phillips has no longer been in charge of the management of the FL Group (and presumably, FLSI).
- 21) In December 2011, the Independent Committee retained a Chief Restructuring Officer (“CRO”). The CRO has made the Application on behalf of the FL Group.

Employees

- 22) The materials filed in support of the Application indicate that due to downsizing over the last several months and the decision to wind down operations, approximately 30 FL Group employees have been temporarily laid off or terminated. 5 IIROC registrants were terminated by FLSI in November 2011.
- 23) Currently, the FL Group employs 19 salaried employees. According to its Application, the FL Group expects to reduce its workforce to approximately 11 people by month end. It is unclear what proportion of these employees are employed by FLSI.
- 24) However, very recently Notices of Termination were filed in respect of two Registered Representatives. This leaves 13 IIROC registrants employed with FLSI.
- 25) The Application further states that during the CCAA process it is likely that staffing levels will be reduced further.

Intention to Wind Down FLSI

- 26) The Application states that FLSI will wind down operations. It further states that as a result, there is no need for clients to continue to hold non-FL Proprietary Products through FLSI.
- 27) The Application further states that as part of the CCAA order sought, FLSI wishes to allow clients to transfer non-FL Proprietary Products and cash to another investment dealer and that FLSI will cooperate in that process.
- 28) Such further and other grounds as counsel may advise and the Hearing Panel may permit.

IIROC STAFF WILL RELY UPON THE FOLLOWING EVIDENCE:

- 1) Affidavit of Brian Connell-Tombs; and
- 2) Such further and other evidence as counsel may advise and the Hearing Panel may permit.

DATED at Toronto, Ontario, this 22nd day of February, 2012.



JEFFREY KEHOE
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
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EXPEDITED HEARINGS

20.41 Expedited Hearings

- (1) Expedited hearings are held upon application by Corporation Staff and without notice to the [Respondent](#) in the circumstances prescribed in [Rule 20.42](#) and [Rule 20.43](#).

20.42 Types of Expedited Hearings- Members

- (1) A [Hearing Panel](#) may impose any of the penalties prescribed by [Rule 20.45](#) upon a Dealer Member in any of the following circumstances:

Bankruptcy

- (a) a Dealer Member makes a general assignment for the benefit of its creditors, makes an authorized assignment or a proposal to its creditors; is declared bankrupt, or a winding-up order is made in respect of a Dealer Member or a receiver or other [officer](#) with similar powers is appointed in respect of all or any part of the undertaking and property of the Dealer Member.

Suspension or Cancellation of Registration or Membership

- (b) the registration of a Dealer Member as a dealer in securities or commodities under any statute respecting trading or advising in respect of securities or commodities or as an underwriter in any statute in respect of securities or commodities has lapsed or is suspended or cancelled;
- (c) a [recognized stock exchange](#), [securities commission](#), securities regulatory authority, [self-regulatory organization](#) or any recognized trading or quotation system suspends the [Membership](#) or privileges of a Dealer Member;

Financial or Operating Difficulty

- (d) 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;

Failure to Cooperate With Corporation Compliance Examinations or Investigations

- (e) where a Dealer Member fails to cooperate with Corporation compliance examinations or investigations pursuant to [Rule 19](#) and the [Hearing Panel](#) determines that the Dealer Member cannot be permitted to continue to operate without risk of imminent harm to the public, other Dealer Members or the Corporation;

Criminal Charges

- (f) where a Dealer Member has been charged with a criminal offence relating to

theft, fraud, misappropriation of funds or securities, forgery, money laundering, market manipulation, insider trading, misrepresentation or unauthorized trading, and such criminal charge likely brings the capital markets into disrepute.

Non-Compliance With Conditions

- (g) where a Dealer Member fails to comply with terms or conditions imposed pursuant to [Rule 20.33](#), [Rule 20.34](#) or [Rule 20.38](#) or [Rule 20.29](#).