

ALBERTA SECURITIES COMMISSION

Citation: Investment Industry Regulatory Organization of Canada, Re, 2012 ABASC 104

Date: 20120316

DECISION

Investment Industry Regulatory Organization of Canada

Background

The Alberta Securities Commission (the **Commission**) has received an application from the Investment Industry Regulatory Organization of Canada (**IIROC**) for an order under section 213 of the *Securities Act* (Alberta) (the **Act**) exempting IIROC from certain terms of its recognition as a self-regulatory organization, to enable IIROC to distribute certain funds to eligible investors or clients of certain IIROC member firms.

Representations

This decision is based on the following facts represented to the Commission by IIROC:

General

1. IIROC is recognized as a self-regulatory organization under the Act and under corresponding legislation in all other provinces of Canada. In Alberta, the terms of IIROC's recognition are set out in the Commission order cited as *Re Investment Industry Regulatory Organization of Canada (IIROC)*, 2008 ABASC 301, as varied by further order cited as *Re Investment Industry Regulatory Organization of Canada*, 2010 ABASC 290 (together, the **Recognition Order**).
2. Following investigations into the Canadian asset-backed commercial paper (**ABCP**) market, IIROC concluded settlement agreements (the **Settlement Agreements**), accepted on 21 December 2009 by IIROC hearing panels, which resolved proposed proceedings related to the sale of third-party ABCP by three firms (the **Settling Firms**, being Scotia Capital Inc. (**Scotia**), Canaccord Financial Ltd. (now Canaccord Genuity Corp.) (**Canaccord**) and Credential Securities Inc. (**Credential**)) to clients of the Settling Firms who purchased ABCP from or through the Settling Firms in the circumstances described in the Settlement Agreements.
3. Under the Settlement Agreements the Settling Firms made the following payments to IIROC: \$28,950,000 by Scotia; \$3,100,000 by Canaccord; and \$200,000 by Credential (such amounts, together with interest earned thereon, being referred to as the **Settlement Funds**).
4. IIROC, with the approval of its Corporate Governance Committee, has determined to allocate the Settlement Funds to investors who purchased ABCP from the Settling Firms.

Scotia Settlement Funds

5. IIROC wishes to distribute the Settlement Funds attributable to Scotia to investors who purchased ABCP issued by Coventree Inc. (**Coventree ABCP**) directly or indirectly from Scotia between 25 July and 10 August 2007, inclusive, who continued to hold such ABCP on 13 August 2007 (the date on which the third-party ABCP market froze) and who were not aware that a number of Coventree conduits contained significant US subprime exposure, as disclosed in an email sent to Scotia by Coventree on 24 July 2007.
6. Each such investor will receive a proportionate amount of the Settlement Funds attributable to Scotia, based on the purchase price paid by the investor, less any cash amounts received by the investor with respect to its Coventree ABCP, on or before 12 January 2009 from Scotia or otherwise, or after that date from a registered dealer other than Scotia from or through whom the investor purchased its Coventree ABCP.
7. IIROC will:
 - (a) jointly with the Ontario Securities Commission (the **OSC**), publish a news release announcing its proposed distribution and the terms on which investors are eligible to obtain their proportionate amount of the Settlement Funds attributable to Scotia; and
 - (b) send to all potentially eligible investors a joint OSC-IIROC notice (the **Joint Notice**) describing the eligibility criteria and the method of calculating the funds to be distributed to them.
8. As Canaccord and Credential purchased Coventree ABCP directly or indirectly from Scotia during the relevant period, Canaccord and Credential will be entitled to participate in the distribution on behalf of their clients who purchased this Coventree ABCP through or from them and who satisfy the eligibility criteria contained in the Joint Notice, but neither Canaccord nor Credential will be entitled to participate in the distribution of such Settlement Funds on their own behalf.

Canaccord & Credential Settlement Funds

9. Canaccord and Credential each established relief programs under which they returned to their clients a substantial amount of their losses from the purchase of third-party ABCP.
10. Clients of Canaccord and Credential who purchased third-party ABCP from one of them, other than Coventree ABCP purchased directly or indirectly from Scotia after 24 July 2007, and who continued to hold such ABCP on 13 August 2007, will receive a proportionate share of the Settlement Funds attributable to Canaccord or Credential, as applicable, based on the purchase price paid by the client for the third-party ABCP held on 13 August 2007, less any cash amounts received by the client with respect to the ABCP from Canaccord or Credential or otherwise.

11. IIROC will:
- (a) publish a news release announcing its proposed distribution and the terms on which investors are eligible to obtain their proportionate amount of the Settlement Funds attributable to Canaccord and Credential; and
 - (b) send to all potentially eligible investors a notice (the **IIROC Notice**) describing the eligibility criteria and the method of calculating the funds to be distributed to them.
12. None of Scotia, Canaccord or Credential will be permitted to receive any of the Settlement Funds, directly or indirectly.

Distributions

13. IIROC and the OSC have agreed jointly to retain an administrator (the **Administrator**) to administer the distribution of the Settlement Funds and of settlement funds paid by other firms that entered into settlement agreements approved by the OSC on 21 December 2009, and have agreed to share proportionately the fees and expenses of the Administrator relating to the distribution of all such settlement funds (the **Administration Costs**).
14. IIROC wishes to pay its share of the Administration Costs (**IIROC's Administration Costs**) from the Settlement Funds.
15. Section 9 of the Recognition Order restricts IIROC's use of fines and amounts paid under settlement agreements to specified purposes that benefit investors: for the administration of its disciplinary hearing panels or, subject to approval by IIROC's Corporate Governance Committee, the development of systems and other non-recurring capital expenditures necessary to address emerging regulatory issues and education about and research into investing and similar matters. Section 9 would not permit IIROC to use the Settlement Funds to benefit investors by distributing the Settlement Funds or paying IIROC's Administration Costs.

Decision

The Commission, being satisfied that it would not be prejudicial to the public interest to do so, orders under section 213 of the Act that IIROC is exempt from section 9 of the Recognition Order with respect to the distribution of the Settlement Funds to investors or clients of the Settling Firms who satisfy the eligibility criteria set out in the Joint Notice or the IIROC Notice, as applicable, including the payment of IIROC's Administration Costs.

For the Commission:

"original signed by"

 Glenda Campbell, QC
 Chair

"original signed by"

 Stephen Murison
 Vice-Chair