

ALBERTA SECURITIES COMMISSION

Citation: Investment Industry Regulatory Organization of Canada, Re, 2013 ABASC 146

Date: 20130409

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 who were clients of a certain IIROC member firm.

Representations

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

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 *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 a settlement agreement (the **Settlement Agreement**), accepted on 8 February 2013 by an IIROC hearing panel, which resolved a proceeding related to the sale of third-party ABCP by Deutsche Bank Securities Ltd. (**DBSL**) to clients of DBSL who purchased ABCP from DBSL in the circumstances described in the Settlement Agreement.
3. Under the Settlement Agreement, DBSL paid a fine of \$1,000,000 to IIROC (together with interest earned on those funds, 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 DBSL.
5. IIROC wishes to distribute the Settlement Funds to investors who purchased ABCP issued by Coventree Inc. (**Coventree ABCP**) from DBSL 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 Inc. conduits contained significant US subprime exposure, as disclosed in an email sent to DBSL by Coventree Inc. on 24 July 2007.

6. Each such investor will receive a proportionate amount of the Settlement Funds, 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 or from DBSL thereafter.
7. 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; and
 - (b) send to all potentially eligible investors a notice (the **Notice**) describing the eligibility criteria and the method of calculating the funds to be distributed to them.
8. The eligibility criteria and terms for distribution of the Settlement Funds will be the same as those that applied to previous distributions of settlement funds paid by certain other IIROC member firms, which resulted from the same investigations by IIROC into the Canadian ABCP market, and which were permitted under an exemption granted by the Commission on 16 March 2012 (cited as *Re Investment Industry Regulatory Organization of Canada*, 2012 ABASC 104).
9. DBSL will not be permitted to receive any of the Settlement Funds, directly or indirectly.
10. IIROC will retain an administrator (the **Administrator**) to administer the distribution of the Settlement Funds and wishes to pay the fees and expenses of the Administrator relating to the distribution of the Settlement Funds (the **Administration Costs**) from the Settlement Funds.
11. Section 9 of Appendix A 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 the 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 Appendix A of the Recognition Order with respect to the distribution of the Settlement Funds to investors who were

clients of DBSL who satisfy the eligibility criteria set out in the Notice, including the payment of the Administration Costs.

For the Commission:

“original signed by:

Glenda Campbell, QC
Vice-Chair

“original signed by”

Stephen Murison
Vice-Chair