



INVESTMENT DEALERS
ASSOCIATION OF CANADA

bulletin



ASSOCIATION CANADIENNE DES
COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

BULLETIN # 3318

July 29, 2004

Discipline

Discipline Penalties Imposed on Jory Capital Inc., Patrick Michael Cooney and Brandi John Garfield Wermie – Violations of By-laws 30.3(iv)(3), 30.3(iv)(4), 17.1, 17.2A and 29.1

Person
Disciplined

The Manitoba District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on Jory Capital Inc. (“Jory”) a Member of the Association, Patrick Michael Cooney (“Mr. Cooney”), who was at all material times the Chief Executive Officer of Jory and Brandi John Garfield Wermie (“Mr. Wermie”), who was at certain material times the Chief Financial Officer of Jory.

By-laws,
Regulations,
Policies Violated

On July 20, 2004, the Manitoba District Council considered, reviewed and accepted Settlement Agreements negotiated between Jory, Mr. Cooney, Mr. Wermie and staff of the Association’s Enforcement Division. Pursuant to the Settlement Agreements, the Respondents admitted the following violations:

Jory:

- admitted that between May 31, 2001 and July 8, 2002, it permitted payments totaling \$195,600 to be made to Mr. Cooney without obtaining the prior written consent of the Vice-President, Financial Compliance of the Association, contrary to By-law 30.3(iv)(3);
- admitted that between August 9, 2001 and May 31, 2002, it increased its non-allowable assets by \$30,089.80 without obtaining the prior written consent of the Vice-President, Financial Compliance of the Association, contrary to By-law 30.3(iv)(4);
- admitted that on four occasions between December 31, 2001 and February 19, 2002 it failed to maintain its risk adjusted capital at a level greater than zero contrary to By-law 17.1; and
- admitted that in failing to promptly report the results of certain profitability tests which could have required it to be designated in Early Warning Level 1 or Level 2, Jory failed to establish and maintain adequate internal controls contrary to By-law 17.2A.

Mr. Cooney:

TORONTO	Suite 1600, 121 King Street West, Toronto, Ontario M5H 3T9 Telephone: (416) 364-6133 Fax: (416) 364-0753
CALGARY	Suite 2300, 355 Fourth Avenue S.W., Calgary, Alberta T2P 0J1 Telephone: (403) 262-6393 Fax: (403) 265-4603
HALIFAX	Suite 1620, 1791 Barrington Street, Halifax, Nova Scotia B3J 3K9 Telephone: (902) 423-8800 Fax: (902) 423-0629
MONTRÉAL	Suite 2802, 1 Place Ville Marie, Montréal, Québec, H3B 4R4 Téléphone: (514) 878-2854 Télécopieur: (514) 878-3860
VANCOUVER	Suite 1325, P.O. Box 11614, 650 West Georgia Street, Vancouver, B.C. V6B 4N9 Telephone: (604) 683-6222 Fax: (604) 683-3491

- admitted that between May 10, 2001 and July 8, 2002 he engaged in conduct which was unbecoming or detrimental to the public interest by receiving payments from Jory which were not in compliance with Early Warning Level 2 restrictions and by failing to ensure that the Jory had implemented adequate procedures to comply with Early Warning restrictions, contrary to By-law 29.1.

Mr. Wormie:

- admitted that between May 10, 2002 and July 8, 2002 that he failed to ensure that Jory complied with Early Warning restrictions and thereby engaged in conduct which was unbecoming or detrimental to the public interest, contrary to By-law 29.1; and
- admitted that in failing to promptly report the results of certain profitability tests which could have required Jory to be designated in Early Warning Level 1 or Level 2, he engaged in conduct which was unbecoming or detrimental to the public interest, contrary to By-law 29.1.

Penalty
Assessed

The discipline penalties assessed are as follows:

Jory:

- a fine in the amount of \$ 35,000

Mr. Cooney:

- a fine in the amount of \$45,000;
- the imposition of a condition upon his continuing approval and registration with a Member of the Association that he re-write and pass the Partners, Directors and Officers examination administered by the Canadian Securities Institute within 180 days;
- a suspension from receiving approval as Ultimate Designated Person (“UDP”), with any Member of the Association for a period of 18 months; and
- a suspension from receiving approval as Chief Executive Officer for a period of 6 months.

Mr. Wormie:

- a fine in the amount of \$5,000;
- as a condition of his re-approval as Chief Financial Officer with a Member of the Association, writing and passing the Chief Financial Officer Qualifying Examination prior to his return to the industry;
- a prohibition from acting as a Chief Financial Officer with any Member of the

Association for a period of six (6) months from May 16, 2003, the date he left the industry.

In addition, Jory must pay costs to the Association in the sum of \$10,000.

Summary
of Facts

Early Warning Restriction Violations

On May 10, 2001, Jory was designated in Early Warning Level 2. The monthly financial report ("MFR") for May 2001, filed with the Association on June 15, 2001 indicated no capital deficiency. The Association did not advise Jory that it was no longer subject to Early Warning Restrictions. On July 5, 2001, Jory's CFO resigned without notice and on July 9, 2001, the Association advised that Jory would remain in Early Warning Level 2 as a result.

In August, 2001, at the request of the Association, Jory confirmed that, until a new CFO was hired, its external audit firm would perform reviews of the MFRs. On November 12, 2001, Jory hired Mr. Wormie as its CFO effective December 10, 2001. Mr. Wormie ultimately received Association approval in April 2002. Mr. Wormie had no prior experience in the securities industry and, at the time, there was no training course for CFO's of brokerage firms.

On January 17, 2002, the Association notified Jory that it was capital deficient based on its January 11, 2002 RAC calculation and that the deficiency had been corrected on January 14, 2002. The Association further notified Jory that it was designated in Early Warning 2 as a result of the capital deficiency.

On October 31, 2002, the Association confirmed in writing to Jory that the Early Warning restrictions had been lifted. This was the first such specific advice since May 10, 2001.

During the period that Jory was designated in Early Warning Level 2, payments in the sum of \$195,600 were made to Mr. Cooney. In addition, non-allowable assets were permitted to increase in the sum of \$30,089.80. These payments and increase in non-allowable assets were prohibited while in early warning. The Respondents, with the exception of a payment to Mr. Cooney in July 2002, misunderstood the rules pertaining to Early Warning Level 2 and believed that Jory was no longer designated in Early Warning when the triggering event had been addressed.

In regard to the July 8, 2002 payment to Mr. Cooney, approval for this payment was sought on July 4, 2002. Mr. Cooney was advised that approval from senior management of the Association's Financial Compliance division would have to be obtained. Jory made the payment to Mr. Cooney before it had received any response to the request.

Capital Deficiencies

On four occasions between December 31, 2001 and February 19, 2002, Jory was capital deficient. In each instance, the deficiency was remedied promptly upon discovery.

Failure to Promptly Report the Results of Profitability Tests

Daily profitability tests performed by Mr. Wermie on November 25, 26, 28 and 30, 2002 demonstrated that, based on the results of those tests, the Association would have grounds to possibly designate Jory in Early Warning Level 1 or 2. Certain addition revenue attributable to the month of November 2002 had not yet been received and was, in fact, not received. The profitability test for the month of November 2002 was not provided to the Association until January 6, 2003.

Remedial Actions

Since the events in question, Jory has made the following changes:

- it has hired an experienced CFO
- officers are not permitted to sign any cheques payable to themselves; and
- all payments to Mr. Cooney, other than regular salary, are approved in advance by an independent shareholder (who is not an employee of Jory).

Kenneth A. Nason
Association Secretary