

Contact:

Andrew P. Werbowski
Enforcement Counsel
(416) 943-5789

For distribution to relevant parties within your firm

BULLETIN # 3499

January 16, 2006

Discipline

Jory Capital Inc., Patrick Michael Cooney and Rees Merthyn Jones – Violations of By-laws 30.3(iv)(3), and 29.1

Persons
Disciplined

A Hearing Panel appointed pursuant to IDA By-law 20 has imposed disciplinary penalties on Jory Capital Inc. (Jory) a Member of the Investment Dealers Association of Canada (Association), Patrick Michael Cooney (Mr. Cooney), who was at all material times the Ultimate Designated Person, Chief Executive Officer and a director of Jory and Rees Merthyn Jones (Mr. Jones) who was at all material times the Chief Financial Officer of Jory.

By-laws,
Regulations,
Policies
Violated

A Disciplinary Hearing was held on April 5 and 6, 2005 in Winnipeg, Manitoba. An Association Hearing Panel (Panel) released its decision on liability (Liability Decision) on July 28, 2005. The Panel reconvened at a Penalty Hearing to consider appropriate sanctions on November 28, 2005 in Winnipeg, Manitoba and released its decision on penalty (Penalty Decision) on January 5, 2006.

In its Liability Decision, the Panel concluded that:

- Jory violated certain Early Warning Restrictions placed upon it by the Association by paying an advance in the sum of \$10,000 to Mr. Cooney, a director and officer of Jory at the time, contrary to Association By-law 30.3(iv)(3).
- Mr. Cooney violated certain Early Warning Restrictions placed upon Jory by the Association by requesting and permitting the payment of an advance in the sum of \$10,000 to himself, contrary to Association By-law 30.3(iv)(3) and thereby engaged in conduct that was unbecoming or detrimental to the public interest contrary to Association By-law 29.1.
- Mr. Jones violated certain Early Warning Restrictions placed upon Jory by the Association by acquiescing in the payment of an advance in the sum of \$10,000 to Mr. Cooney, contrary to Association By-law 30.3(iv)(3) and thereby engaged in conduct that was unbecoming or detrimental to the public interest contrary to Association By-law 29.1.

Penalties to be Assessed In its Penalty Decision, the Panel imposed the following sanctions:

Mr. Cooney:

- A suspension of 5 years, commencing on February 5, 2006, from registration in any of the following categories:

IDA Category	Prohibited = X
Associate Portfolio Manager	
Branch Manager	X
BC Designated Compliance Officer	X
Chief Compliance Officer	X
Chief Financial Officer	X
Designated Registered Futures Options Principal	X
Director	X
Designated Registered Options Principal	X
Futures Contract Options Supervisor	X
Investment Representative	
Investor	
Officer	X
Partner	X
Portfolio Manager	
Registered Representative	
Sales Manager	X
Trader	
Ultimate Designated Person	X

- A fine of \$25,000

Jory

- A fine of \$25,000

Mr. Jones

- A reprimand
- A fine of \$5,000

Costs were awarded to the Association in the sum of \$12,000, to be paid in the following proportions:

- Mr. Cooney - \$7,000
- Jory - \$4,000
- Mr. Jones - \$1,000

Summary of Facts

IDA By-law 30 describes the Early Warning System, which measures the capital, profitability and liquidity position of Members to monitor their financial health.

The Early Warning System measures the Member's "risk adjusted capital" against certain arithmetical benchmark tests designed to detect the risk of insolvency of the Member. If a Member fails any of the arithmetical early warning tests, or if a Member's condition is unsatisfactory for any reason in the discretion of the IDA's Vice-President, Financial Compliance, the Member may be designated in Early Warning Level 1 or Level 2.

In December of 2003, Jory's status within the Early Warning System was changed from Level 2 to discretionary Early Warning Level 1. Certain Early Warning restrictions and requirements were imposed upon Jory and conveyed to Mr. Cooney and Jory by letter dated December 22, 2003 (the "December 22 letter"). One of the permissible exceptions to the Early Warning restrictions contained in the December 22 letter was the payment to Mr. Cooney of a 20% bonus to be based on pre-tax profit.

The December 22 letter was acknowledged in writing by Mr. Cooney and Jory's then-CFO.

On December 30, 2003, Jory's then-CFO advised Association Financial Compliance staff ("FC Staff") that Mr. Cooney was requesting a \$2,500 advance on his December Commissions. Association Staff was advised that Jory's expected profit was, on a conservative estimate, at least \$60,000 for the month. On the basis of that information, the advance was approved.

Jory was profitable for the period of January through April 2004. During this time period, Mr. Cooney received several payments from Jory that appeared to be advances on the amounts due to him. These payments were evidently approved by Jory's then-CFO. These advances were not noted on Jory's monthly financial reports ("MFR") because Jory was profitable during that time. FC staff was not aware of the advances at the time. Mr. Jones took over as CFO of Jory on April 20, 2004.

In May, 2004, Jory's net losses were in excess of \$100,000 and no payment was made to Mr. Cooney. On June 22, 2004, Mr. Cooney requested \$10,000 as an advance on his share of the profits for June. At that point, Jory's books showed a loss for June of approximately \$50,000, but Mr. Cooney advised Mr. Jones that he projected a significant profit for that month. Mr. Jones approved the \$10,000 payment and the cheque was issued on June 22. June did not prove to be profitable and total losses for May and June were approximately \$220,000.

Jory's MFR for June was first submitted to FC Staff on July 29, 2004. Certain methods of reporting were questioned by FC Staff and a revised June MFR was submitted on August 5, 2004. The June MFR identified the \$10,000 advance to Mr. Cooney and FC Staff immediately took the position that the payment was a violation of the Early Warning restrictions.

The Hearing Panel rejected a number of arguments advanced by the Respondents, including:

- FC Staff approved the practice of Jory paying advances to Mr. Cooney based on Jory's projected profits for the month and that this practice contemplated advances being repaid if Jory's projected profits were not realized in the final figures for the month;

- When Mr. Jones took over as CFO on April 20, 2004, he was aware of the previous CFO's good working relationship with FC Staff and it was therefore reasonable to assume that the February – April advances had been approved by FC Staff;
- The June 22 payment reflected the same practice as the previous advances paid to Mr. Cooney;
- The December 22 letter was not clear as to what payments to Mr. Cooney were approved by FC Staff;
- Since Mr. Cooney's 20% bonus was cumulative and calculated on an annual basis, every payment to Mr. Cooney based on monthly profit figures was an advance; and
- FC Staff overreacted harshly to the June 22 payment because they were upset over settlement negotiations between the Association, Jory and Mr. Cooney dealing with previous violations of Early Warning Restrictions.

The Hearing Panel concluded that the circumstances of the June 22 payment were not consistent with the practice which had developed and that it was categorically different from earlier advances to Mr. Cooney. The June 22 payment was made when Jory was in a significant loss position. It was not approved by FC Staff nor was it made when Jory was in a profit situation, as previous advances had been. In addition, the Hearing Panel concluded that the projections supporting the request for the June payment showed no measure of caution, unlike previous projections which had been based on cautious projections.

As a result, the Hearing Panel concluded that the June 22 payment was a violation of the early warning restrictions, and that the allegations made against each of the Respondents had been established.

In the Penalty Decision, the Panel found that the circumstances of the violations, considered together with Mr. Cooney's disciplinary history, show that he is practically ungovernable in relation to financial compliance matters. In order to be an effective preventative sanction, the suspensions imposed addressed Mr. Cooney's ungovernability in this area.

The Panel also confirmed that repeated violations must attract progressively escalating sanctions. In addition, the Panel confirmed that even though the improper payment in this case was small, posed no significant risk to the public and was repaid, fines were necessary as a further general deterrent and to signal the importance of financial compliance and intolerance of repeated violations.

The Panel drew a distinction between the conduct of Mr. Cooney and Mr. Jones and considered Mr. Jones' role to be more passive and deserving of a more modest sanction.

Kenneth A. Nason
Association Secretary