



## Summary of Facts **Capital Deficiency**

In 2003, as part of the process to make an initial public offering, Jitney had to use the services of new auditors. In particular, these auditors redid the 2002 audit at which time they identified errors in Jitney's statements for the year ended December 31, 2002. Some non-allowable assets had been presented as allowable assets and some accrued charges had been undervalued.

On or around January 19, 2004, Jitney's new auditors confirmed to the IDA that Jitney's RAC as of December 31, 2002 showed a deficiency in the amount of \$233,000 due to the adjustments made. Jitney's capital employed was \$4,496,000 at that time. It should be noted that the monthly financial report dated December 31, 2002 before the adjustments showed a RAC of \$122,000.

Since Jitney specializes in the trading of securities on its own behalf, the volume of its trading and the categories of securities it trades in require that it maintain a high margin requirement. The combined effect of the audit adjustments and this high margin requirement also caused a capital deficiency for every day in January 2004.

On or around February 5, 2004, the IDA advised Jitney that it had been designated as being in Early Warning Category Level 2 due to its capital deficiency. At the IDA's request, Jitney confirmed to the latter that it was no longer capital deficient on February 6, 2004.

On or around February 24, 2004, Jitney indicated to the IDA that the new auditors had audited the financial statements for the year ended December 31, 2003 and the audit adjustments resulted in Jitney's RAC becoming - \$1,009,000. Jitney's capital employed was \$3,335,000 at that time. It should be noted that the monthly financial report dated December 31, 2003 before the adjustments showed a RAC of \$116,000.

Also, Jitney stated that it was capital deficient on February 20 and 24, 2004. It was subsequently determined that Jitney had been capital deficient for most of the month of February 2004.

The IDA then advised Jitney that it had triggered Levels 1 and 2 of the Early Warning System and that it had to correct its capital deficiency by noon on February 26, 2004 at the latest.

The capital deficiencies were corrected on February 26, 2004 with a \$500,000 subordinated loan. On or around March 1, 2004, an additional \$150,000 was injected.

Between January 1 and February 25, 2004, the capital deficiency was the highest on January 19, 2004 at \$1,877,000. The capital employed

was \$3,185,000 in January 2004 and \$3,418,000 in February 2004.

Since February 26, 2004, Jitney's RAC has been at a level greater than zero.

### **Failure to Comply with a Restriction**

In the context of Jitney's designation as being in Early Warning Category Level 2 due to its capital deficiencies and by virtue of the IDA's discretionary power under By-law 30.6, the IDA required, on March 2, 2004, that Jitney limit, starting on March 8, 2004, the size of their securities owned and sold short positions and the capital provided on such positions to \$150,000.

On or around March 8, 2004, Jitney did not comply with the imposed restriction in that the margin was \$179,000. Between or around March 8 and 17, 2004 and March 23, 2004, Jitney did not comply with the imposed restriction at all times. Also, on or around April 28, 2004, it did not comply with the restriction in that the margin was \$191,000.

The restrictions imposed on Jitney under Levels 1 and 2 of the Early Warning System were lifted on November 30, 2004.

### **Reasons for Hearing Panel's Decision**

The Hearing Panel decided to accept the settlement agreement for the following reasons:

- The failure to maintain, at all times, RAC at a level greater than zero was not detected, due to an error made by its auditors;
- Jitney's failure to limit the size of their securities owned and sold short positions and the capital provided on such positions to \$150,000 was spread over a short period of time;
- During the time period relevant to the alleged violations and up to the present, Jitney has been in constant communication with the IDA and has cooperated fully with it to improve its systems and prevent future compliance violations.

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*Association Secretary*