



ONTARIO SECURITIES COMMISSION

IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW OF A DECISION OF THE HEARING PANEL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA, PURSUANT TO SECTION 21.7 OF *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

- AND -

IN THE MATTER OF DISCIPLINE PROCEEDINGS PURSUANT TO THE UNIVERSAL MARKET INTEGRITY RULES 5.2 AND 7.1 RESPECTING THE BEST PRICE OBLIGATION

- AND -

STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

- AND -

MAGNA PARTNERS LTD.

AMENDED NOTICE OF REQUEST FOR A HEARING AND REVIEW

TAKE NOTE THAT Magna Partners Ltd. ("Magna"), requests a hearing and review by the Ontario Securities Commission ("the Commission"), pursuant to section 21.7 of the Ontario *Securities Act*, a penalty decision of an Investment Industry Regulatory Organization of Canada (IIROC) Hearing Panel dated October 28, 2010, ordering Magna to pay a fine in the sum of \$100,000 and associated costs of \$10,000.

THE RESPONDENT REQUESTS:

1. An Order setting aside the Decision and Reasons on the Merits of a Hearing Panel of the IIROC (the "Hearing Panel"), dated October 28, 2010, which was delivered to the Respondent on October 28, 2010 (the "Decision").

2. In the alternative, an Order remitting the matter to a Hearing Panel of the Ontario District Counsel.
3. Such further and other relief as Magna may request and the Commission deems just.

THE GROUNDS OF THE REQUEST ARE:

1. The Hearing Panel was provided with incorrect and misleading information by IIROC enforcement counsel when responding to a question as to how and when Magna came to comply with the Best Price Obligation UMIR Rules 5.1 and 7.2.
2. The Hearing Panel erred because it was not cognisant of IIROC staff blocking and censoring relevant facts regarding Magna's reasonable steps taken to comply with the Best Price Obligation rules.
3. The Hearing Panel was not apprised of specific and relevant evidence in order for Magna to receive a fair hearing. Specifically, the Panel should have been apprised of the following facts that concerned technical aspects of the Best Price Obligation and Magna's attempts to take reasonable steps to comply with the rule.
4. The Hearing Panel was not aware that the securities industry and certain IIROC enforcement staff were unaware that a dealer member need not be connected to the five ATSS in order to comply with UMIR 5.2. The second paragraph of page 8 of the subject decision is clearly demonstrative of the Panels misunderstanding of the intricacies of the rule in that a dealer member had "to *connect* to any of the required marketplaces".

5. The Hearing Panel was not made aware of certain emails which contain important and relevant facts that explain how Magna came to comply with UMIR 5.2 and 7.1 and explain the Paradox of the Best Price Obligation Rules.

6. The Hearing Panel was not apprised of the fact that Magna was not advised by IIROC that it was not required to pay the prohibitive costs of joining the ATSS but simply have a data feed and jitney solution in place, until after the receipt of an enforcement notice and after Magna requested information from IIROC market surveillance.

7. The Hearing Panel was not apprised of the fact that the new management of Magna (sale approved by the Ontario District Council as of March 19, 2010; the transaction closing shortly thereafter), on the same day of being advised by IIROC that the Best Price Obligation file remained a serious outstanding issue April 28, 2010), that Magna arranged for the firm to obtain a data feed to the ATSS from Belzberg, which was put in place on May 5, 2010.

8. The Hearing Panel was not apprised of the fact that Magna was not aware that it actually complied with UMIR 5.2 on May 5, 2010, until the receipt of a certain email on June 17, 2010.

9. The Hearing Panel was not apprised of the fact that Magna became compliant with UMIR 7.1 upon receipt of a certain email — then Magna immediately amended its Procedure Manual (PPM) by addressing the "Jitney" solution and monitoring the ATSS with a data feed.

10. The Hearing Panel was not apprised of the correct dates of when Magna complied with the said rules.

11. IIROC Enforcement Counsel submitted to the Hearing Panel, following a question from a member of the Panel as to how and when Magna complied with the Rules, that Magna complied with UMIR Rule 7.1 in May, 2010, when Counsel knew that Magna the true facts were otherwise (data feed established May 5; PPM amended June 17) and potentially embarrassing to IIROC enforcement staff.
12. The Hearing Panel was not apprised of an email exchange between Magna and the VP of IIROC Enforcement, which is vital in providing a proper measuring stick to compare Magna's steps in attempting to become compliant and an important factor that convinced IIROC staff that Magna was compliant with both rules as of June 17, 2010.
13. The Hearing Panel was not apprised of the technical challenges with UMIR Rule 5.2 and its multiple revisions.
14. The Hearing Panel erred in law by not admitting the aforesaid emails into evidence, thereby preventing itself from knowledge as to how and when Magna became compliant with UMIR 5.2 and 7.1.
15. The Hearing Panel relied on incorrect factors therefore resulting in a substantial fine at the highest end of the spectrum. The Panel failed to consider the size and capital of Magna in its decision.
16. The Hearing Panel relied on incorrect submissions from Enforcement Counsel when Counsel new the truth of same to be otherwise.
17. The Hearing Panel was not apprised of the fact that Magna erroneously believed that a signed Smart Order Router ("SOR") agreement would satisfy the requirements of making reasonable efforts under the rule. Magna was not corrected by its own Self Regulatory Organization that the signing of a SOR agreement did not constitute reasonable efforts.

18. The Hearing Panel failed to deliver proper reasons for its decision. Specifically, the Hearing Panel failed to undertake to review relevant enforcement decisions in arriving at its decision. No indication was provided as to how it made its finding — a fine of \$100,000.

19. The Hearing Panel failed to consider that there was no need for future general deterrence for UMIR 5.2 and 7.1 as the rules are to be abolished in a few months time.

20. The Hearing Panel was not provided with expert opinion on UMIR 5.2 thereby preventing itself from fully understanding the history and workings of best price obligations, best execution obligations, and the imminent Order Protection Rule (that will replace UMIR 5.2 and 7.1 and place the financial burden on the marketplace).

21. The Hearing Panel was not provided with advice from counsel on UMIR 5.2 thereby preventing itself from fully understanding the history and workings of best price obligations, best execution obligations, and the imminent Order Protection Rule (that will replace UMIR 5.2 and 7.1 and place the financial burden on the marketplace).

22. The Hearing Panel erred by considering *BMO Nesbitt Burns*. BMO breached the rules and had a large number of trade *throughs*. Magna had one trade through for one trade of one hundred shares of RIM for a penny difference resulting in a loss of one dollar; ergo, real damages of one dollar. The penalty — one-hundred-thousand-fold.

23. The Hearing Panel was not apprised of the fact that Magna was "bullied" into entering an agreed statement of facts that only provides a biased partial picture of the history of Magna making real reasonable efforts to comply with the rule regardless of Magna's past prejudice with the rule.

24. The Hearing Panel failed to provide reasons why it *felt in the circumstances* to levy a fine of \$100,000.

25. Magna will plead Section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.
26. Magna will plead Section 12 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c.22.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the review:

27. Notice of Hearing, dated August 4, 2010.
28. The documentary record filed in the proceeding.
29. The transcripts of the proceeding.
30. The decision of the Hearing Panel, dated October 28, 2010.
31. Affidavit of Colleen Macdonald, C.C.O. of Magna.
32. Relevant case-law, Regulation Notices, Industry Updates, and enforcement decisions.
33. Such further evidence as Magna may suggest and the Commission may allow.

December 2, 2010.

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