

**ONTARIO SECURITIES COMMISSION**

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

**-AND-**

**IN THE MATTER OF DISCIPLINE PROCEEDINGS PURSUANT TO DEALER  
MEMBER RULE 20 OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**

**BETWEEN**

**STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION  
OF CANADA**

**-AND-**

**HECTOR WONG**

**AMENDED NOTICE OF A REQUEST  
FOR A HEARING AND REVIEW:**

**TAKE NOTICE THAT** Hector Wong (“**Wong**”), requests a hearing and review by the Ontario Securities Commission (“**the Commission**”), pursuant to s.21.7 of the Ontario *Securities Act*, R.S.O., of a decision of the Investment Industry Regulatory Organization of Canada’s (“**IIROC**”) Ontario District Council, dated June 16, 2010, wherein Wong was found to have engaged in conduct unbecoming or detrimental to the public interest by misappropriating funds from his previous employer, Hampton Securities Inc. (“**Hampton**”), contrary to IDA by-law 29.1.

**TAKE FURTHER NOTICE THAT** Wong requests a hearing and review by the Commission, pursuant to s.21.7 of the Ontario *Securities Act*, R.S.O., of the penalty decision of IIROC’s Ontario District Council, dated October 29, 2010, further to the Hearing in Respect of Penalty, heard September 29, 2010.

**THE RESPONDENT RESPECTFULLY REQUESTS:**

1. An Order setting aside the Decision and Reasons on the Merits of a Hearing Panel of the Ontario District Council (“**the Panel**”) dated June 16, 2010, which was delivered to the Respondent on June 17, 2010 (“**the Decision on the Merits**”);
2. An Order setting aside the Decision and Reasons as to Penalty of the Panel, dated October 29, 2010, which was delivered to the Respondent on November 1, 2010 (“the Penalty Decision”);
3. In the alternative, an Order remitting the matters to a newly constituted Hearing Panel of the District Council for a re-hearing;
4. Costs of this Review and of the Hearing below; and
5. Such further and other relief as counsel may request and this Honourable Commission deems just.

**THE GROUNDS FOR THE REQUEST ARE:**

1. The Panel failed to deliver proper reasons for its Decision on the Merits. Specifically, the Panel failed to properly undertake a review the evidence before it to support its findings of fact, and failed to adequately explain how it arrived at its Decision on the Merits.
2. The Panel erred in law by failing to apply the correct burden of proof in arriving at its Decision on the Merits. Specifically, and pursuant to IIROC’s own compliance manual, the Panel ought to have applied a burden of proof higher than a civil balance of probabilities, although lower than the criminal burden of beyond a reasonable doubt. The Panel erred by failing to apply this standard and instead applying a balance of probabilities to arrive at its Decision on the Merits.

3. The Panel erred by making important findings of fact based on a misapprehension of evidence and on an incomplete factual record. The Panel gave no explanation for how it made its findings in instances wherein the evidentiary record was obviously incomplete. No reference was made to the inferences the Panel inevitably drew in order to make the findings it did based on an incomplete and/or contradictory factual record. Further, no reasons were provided as to how the Panel made those findings in accordance with the requisite standard of proof.
4. The Panel made critical findings of fact in the Decision on the Merits that were entirely unsupported by the evidentiary record and in many instances, were subject to contradictory evidence, including, *inter alia*, that:
  - a. The respondents' profit from his investments in US Treasury Bills was inflated by the mispricing of his purchases;
  - b. The respondent's conduct was deliberate and deceptive of the firm and resulted in misappropriation of funds that would have accrued to Hampton's inventory account but for the mispricing;
  - c. US Treasury Bills were purchased from Hampton's inventory account;
  - d. The respondent was not a party to the purchase and sale of the US Treasury Bills;
  - e. The respondent and Hampton never agreed that the respondent could purchase and sell for his own account US Treasury Bills or other securities, by putting the transactions through Hampton's inventory account rather than Wong's own personal account;
  - f. The respondent did not inform Hampton of the true state of affairs and instead let his "mispricing fly under the firm's radar";
  - g. Hampton was shocked to find that the respondent had mispriced his purchases of US Treasury Bills from the firm's inventory account;
  - h. The respondent illegally used funds belonging to Hampton for his own unauthorized use;
  - i. The respondent intentionally set the price of the US Treasury Bills at way below market price, and did so without any reasonable justification;

- j. The respondent improperly transferred funds from the firm's inventory account to his own personal account;
  - k. The respondent's payment of funds to Hampton of approximately \$1 million dollars can be taken as an admission of guilt by the respondent;
  - l. The doctrine of *mens rea* does not apply to contraventions of IIROC by-law 29.1, even where misappropriation of funds is alleged; and
  - m. In any event, the respondent had the *mens rea* necessary to substantiate misappropriation.
5. None of the above findings can be supported by clear, convincing and cogent evidence. As outlined above, the Panel failed to explain how it arrived at these findings in accordance with the requisite standard of proof. This is especially in light of the fact that IIROC's own evidence was initially that the respondent benefitted from a "glitch in the system" at Hampton, which was previously unknown to the firm. After IIROC staff found this conclusion to be incorrect, counsel submitted that the respondent profited by intentionally failing to fill out the exchange rate box on the trade tickets. Neither allegation proffered by IIROC made any mention of mispricing, nor was there any evidence submitted by either party to this effect.
6. The Panel overlooked or disregarded material evidence in arriving at its Decision on the Merits and the Penalty Decision, including evidence that directly contradicted the findings of fact ultimately made by the Panel.
7. The Panel failed to recognize that shortcomings in the evidentiary record in relation to certain allegations could, and should have been addressed by the exercise of a summoning power that IIROC staff is given pursuant to section 13(1) of the *Securities Act*. The Panel erred by failing to consider that the respondent had no equivalent power to summons evidence and was unable to obtain documents such as, *inter alia*:
- a. Trade Tickets;

- b. Blotters, including the N/U and T/U markets;
- c. Wong's account records at Hampton; and
- d. Hampton's Y/U and Y/V inventory account reports, including profit and loss statements,

all of which would have further corroborated the respondent's assertions.

Notwithstanding this unilateral power to adduce potentially relevant evidence, the Panel erred by drawing adverse inferences against the respondent in instances in which potentially material evidence was absent from the record.

8. The Panel further erred by failing to draw an adverse inference against IIROC staff for failing to properly conduct its investigation in order to meet its evidentiary burden, including, *inter alia*, IIROC's failure to:
  - a. Investigate Hampton's actual procedures and policies for trades;
  - b. Investigate whether Hampton suffered any financial loss as a result of the respondent's personal trades, despite the respondent's evidence that his trades never caused Hampton any loss whatsoever and in fact, that Hampton profited from each of the respondent's trades;
  - c. Follow up with Hampton representatives once IIROC determined that there was no glitch in the system from which the respondent could have benefitted;
  - d. Investigate or follow up with the respondent's consistent explanation of his trading activity, given during his sworn interviews with IIROC investigators on both December 2007 and May 2008; and
  - e. Provide any evidence whatsoever that the respondent used funds other than his own personal funds in order to effect the trades in question; and
  - e. Investigate or follow up in respect of Hampton's assertion that it prepared a forensic audit which purported to quantify the profits made/losses suffered as a result of Wong's personal trading strategy.

In fact, IIROC's own evidence was that its entire interview and investigation of Hampton's representatives lasted approximately 20 minutes and was conducted

prior to Wong ever being interviewed so as to give his explanation of his trading activity.

- 8A. With respect to the Penalty Decision, the Panel erred by overlooking and/or disregarding material evidence including evidence of mitigating circumstances that directly contradicted the findings of fact ultimately made by the Panel. Specifically, the Panel erred in disregarding evidence of, *inter alia*:
- a. Wong's impecunious financial situation;
  - b. Wong's co-operation with Hampton and his overpayment to Hampton in the amount of \$1 million dollars; and
  - c. Wong's co-operation with IIROC staff and his full and frank disclosure of his trading strategy.

9. Section 8 of the Ontario *Securities Act*, R.S.O. 1990, c.S.5.
10. Section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c.S.5.
11. Section 12 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c.S.22.
12. Such other and further grounds as this Honourable Commission may deem just.

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

13. Notice of Hearing, dated November 17, 2009;
14. The documentary record to be filed in the proceeding;
15. The transcripts of the proceeding;
16. The Decision on the Merits of the Panel, dated June 16, 2010;

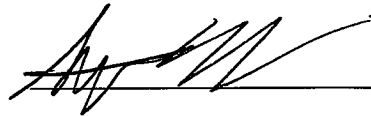
16A. The Confirmation Memo in Respect of the Penalty Hearing, dated July 19, 2010;

16B. The Penalty Decision of the Panel, dated October 29, 2010; and

17. Such other and further evidence as counsel may suggest and the Commission may allow.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

July 12, November 11, 2010



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