

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, c. S.5, AS AMENDED
AND
IN RESPECT OF A DECISION OF A HEARING PANEL OF
MARKET REGULATION SERVICES INC.
AND
IN THE MATTER OF DAVID BERRY**

NOTICE OF REQUEST FOR HEARING AND REVIEW

DAVID BERRY ("BERRY") REQUESTS A HEARING AND REVIEW by the Ontario Securities Commission (the "Commission") of the Decision of a Hearing Panel of Market Regulation Services Inc. ("RS") dated February 29, 2008 (the "Decision"), pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*").

IN THE ALTERNATIVE, BERRY REQUESTS THAT THE COMMISSION consider, pursuant to section 21.1(4) of the *Act*, whether it is in the public interest to permit RS to enforce the Universal Market Integrity Rules ("UMIR") against him.

BERRY IS AFFECTED BY THE DECISION that denies his motion for a permanent stay of the proceedings commenced against him by RS by way of a Notice of Hearing dated February 20, 2007 (the "RS Proceedings").

BERRY REQUESTS:

1. An order pursuant to section 21.7 of the *Act* setting aside the Decision of RS denying Berry's motion for a permanent stay of the RS Proceedings;

2. An order pursuant to section 21.7 of the *Act* that the RS Proceedings are permanently stayed, as RS has no jurisdiction to commence and continue the RS Proceedings against Berry;
3. In the alternative, an order pursuant to section 21.1(4) of the *Act* prohibiting RS from enforcing UMIR against Berry; and
4. Such further and other relief as counsel may advise and the Commission deems just.
5. THE GROUNDS FOR REVIEW are as follows:
 1. RS erred in law in deciding:
 - (a) that RS has jurisdiction to commence and continue the RS Proceedings against Berry;
 - (b) that UMIR was validly adopted by the board of the Toronto Stock Exchange (the "TSE Board") on November 27, 2001; and
 - (c) that the OSC's approval of UMIR makes UMIR enforceable by RS against Berry.
 2. In particular, RS erred in law in its interpretation of:
 - (a) Section 21(5)(e) of the *Act*, as giving the OSC jurisdiction to make rules for the TSE Board;
 - (b) Section 14 of the *Toronto Stock Exchange Act*, R.S.O. 1990, c. T.15 (the "*TSE Act*"), as giving the OSC "a free hand" to make rules for the Toronto Stock Exchange, notwithstanding Section 13.08 of the *TSE Act*; and

- (c) UMIR 10.3(4), as giving RS jurisdiction to bring the RS Proceedings against Berry, who was neither a “participant” nor an employee of a participant when these proceedings were initiated, and now.
- 3. RS misapprehended the evidence concerning the business transacted by the TSE Board at its November 27, 1001 meeting, and erred in concluding:
 - (a) that a final version of UMIR was presented to and considered by the TSE Board;
 - (b) that the TSE Board adopted UMIR; and
 - (c) that it decided pursuant to the *Protocol for Commission Oversight of the Toronto Stock Exchange Rule Proposals* dated October 23, 1997 (referred to in the Decision as the “MOU”) that UMIR was not “public interest” in nature.
- 4. RS erred in law in concluding that the TSE Board complied with the *Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals* dated November 7, 1997 (referred to in the Decision as the “MOU”) and that any failure to comply is of no legal consequence.
- 5. RS misapprehended the evidence concerning the Notice of Approval issued by the Ontario Securities Commission on February 15, 2002, and erred in concluding:
 - (a) that the Ontario Securities Commission had approved UMIR; and
 - (b) that the Ontario Securities Commission had approved UMIR for the Toronto Stock Exchange;
- 6. RS erred in law in failing to consider and adjudicate in Berry’s favour his submission that UMIR 10.3(4) was never adopted by the TSE Board.

7. RS erred in law in concluding that UMIR gives RS jurisdiction to bring the RS Proceedings against Berry, a former employee of a participant.
8. RS erred in law in failing to consider and adjudicate in Berry's favour his submission that RS has no jurisdiction to enforce TSE rules 4-101, 4-102, 4-103 and 7-106(1)(b) against him.
9. As a result of the TSE board's failure to adhere to the MOU with respect to UMIR, it is not in the public interest for the OSC to allow RS to enforce UMIR against Berry.
10. Such further and other grounds as counsel may advise and this Commission may permit.

March 7, 2008

LENCZNER SLAGHT ROYCE

SMITH GRIFFIN LLP

Barristers

Suite 2600

130 Adelaide Street West

Toronto, Ontario

M5H 3P5

Peter H. Griffin (19527Q) 865-2921

Linda L. Fuerst (22718U) 865-3091

Usman Sheikh (52964H) 865-2972

Tel : (416) 865-9500

Fax: (416) 865-9010

Solicitors for Moving Party (Respondent),

David Berry

TO: ONTARIO SECURITIES COMMISSION

P.O. Box 56, Suite 1903

20 Queen Street West

Toronto, Ontario

M5H 3S8

John Stevenson

Secretary to the Commission

Telephone: (416) 593-8145

Facsimile: (416) 593-2319

AND
TO: **MARKET REGULATION SERVICES INC.**
145 King Street West, Suite 900
Toronto, Ontario
M5H 1J8

Beverley Sahota
Secretary to Market Regulation Services Inc.

Telephone: (416) 646-7299
Facsimile: (416) 646-7285

AND
TO: **STAFF OF MARKET REGULATION SERVICES INC.**
145 King Street West, Suite 900
Toronto, Ontario
M5H 1J8

Mr. Charles Corlett
Enforcement Counsel

Telephone: (416) 646-7216
Facsimile: (416) 646-7285

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended

REQUEST FOR HEARING AND REVIEW

LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP

Barristers
Suite 2600
130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Peter H. Griffin (19527Q) 865-2921
Linda L. Fuerst (22718U) 865-3091
Usman Sheikh (52964H) 865-2972

Tel: (416) 865-9500
Fax: (416) 865-9010

Solicitors for Requesting Party (Respondent),
David Berry