

**ONTARIO SECURITIES COMMISSION**

**IN THE MATTER OF THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF DEUTSCHE BANK SECURITIES LIMITED**

**AND**

**IN THE MATTER OF A DECISION OF A HEARING PANEL OF  
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**NOTICE OF REQUEST FOR HEARING AND REVIEW**

The Applicant, Deutsche Bank Securities Limited (“DBSL”), requests a hearing and review by the Ontario Securities Commission (the “Commission”) pursuant to s. 21.7 of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended (the “Act”) of the Reasons for Decision of the Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) dated October 13, 2010 (the “IIROC Decision”).

**THE APPLICANT ASKS** that the Commission make orders:

- (a) pursuant to s. 21.7 of the Act setting aside the IIROC Decision;
- (b) pursuant to s. 21.7 of the Act setting aside or, in the alternative, staying the IIROC Notice of Hearing against DBSL dated December 9, 2009 (the “Notice of Hearing”);
- (c) staying further proceedings by the Hearing Panel of the Ontario District Counsel of IIROC (the “Hearing Panel”) until DBSL’s appeal of the IIROC Decision has been finally concluded; and
- (d) such further and other relief as the lawyers may request and the Commission may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

- (a) By way of the Notice of Hearing, IIROC commenced an enforcement proceeding against DBSL, following a broad-based investigation of the asset-backed commercial paper (“ABCP”) market in Canada, conducted jointly by the OSC, the Autorité des Marchés Financiers (“AMF”) and IIROC.
- (b) DBSL brought a motion to set aside the Notice of Hearing on the basis that IIROC did not have jurisdiction to try DBSL in this case because:
  - (i) IIROC exceeded its jurisdiction by taking the benefit of the investigatory powers of the OSC and the AMF;
  - (ii) IIROC’s inability to compel witnesses to appear and give evidence at DBSL’s hearing prevents DBSL from making full answer and defence to the allegations in the Notice of Hearing; and
  - (iii) it is an abuse of process for IIROC Staff to rely on evidence obtained through the powers of compulsion of the OSC and AMF, while denying DBSL access to the same powers.
- (c) DBSL’s motion was heard before the Hearing Panel on September 27, 2010 and October 6 and 7, 2010.
- (d) The Hearing Panel dismissed DBSL’s motion by Reasons for Decision dated October 13, 2010 and delivered to DBSL on October 15, 2010, holding that “the appropriate course is to allow the case to proceed to a hearing at which time the hearing panel will be able to assess whether prejudice has been demonstrated of such magnitude as to justify a stay.”
- (e) In dismissing DBSL’s motion, the Hearing Panel erred in law and principle by:
  - (i) holding that the prejudice to DBSL was attributable solely to “missing evidence” and that “the measurement of the extent of the prejudice in

the circumstances of this case could not be done without hearing all of the relevant evidence”;

- (ii) failing to recognize that the unique circumstances of this case prevent IIROC from assuring DBSL of its right to make full answer and defence, thereby creating prejudice of such magnitude as to deprive IIROC of its jurisdiction and require that the proceeding be stayed; and
- (iii) determining that the hearing of this matter should proceed before the Hearing Panel determines whether it has jurisdiction to hear this matter.

**Hearing not Required to Determine Prejudice to DBSL**

- (f) Probative and potentially exculpatory evidence in support of DBSL’s defences is available and known to Staff and DBSL, but cannot be adduced and tested by DBSL at its hearing because IIROC cannot compel the testimony of witnesses other than IIROC members, their approved persons and employees, and other persons subject to IIROC’s jurisdiction.
- (g) This is not a case where evidence is missing or otherwise unavailable. Rather, evidence is inaccessible to the tribunal because of IIROC’s limited jurisdiction.
- (h) DBSL adduced clear and compelling evidence before the Hearing Panel of the nature of the evidence that is known to the parties, available to the parties, and supportive of DBSL’s defences, but cannot be adduced at DBSL’s hearing because of IIROC’s limited jurisdiction. This evidence presented to the Hearing Panel is sufficient to assess that prejudice of such magnitude as to justify a stay has been demonstrated.
- (i) The Hearing Panel erred in law and principle by holding that the prejudice to DBSL was attributable solely to “missing evidence” and that “the measurement of the extent of the prejudice in the circumstances of this case could not be done without hearing all of the relevant evidence”.

### **Circumstances Require Stay**

- (j) The circumstances of this case are unique for IIROC. Staff has made broad allegations against DBSL that engage an entire segment of the financial services market, including a number of dealers and other market participants. These allegations are the product of a broad investigation conducted by multiple regulators with varying degrees of investigative power, involving witnesses and evidence from a spectrum of market participants.
- (k) Notwithstanding the unique circumstances of this case, IIROC's jurisdiction remains constrained in that it cannot compel witnesses to attend and give evidence at a hearing. Accordingly, there is an absence of procedural safeguards that is irreconcilable with the expansive approach taken to the investigations and allegations in this case.
- (l) The Hearing Panel erred in law and principle by failing to recognize that the unique circumstances of this case in conjunction with the limited jurisdiction of IIROC prevents IIROC from assuring DBSL, in advance of its hearing, the ability to make full answer and defence, thereby creating prejudice of such magnitude as to require that the proceeding be stayed.

### **Jurisdiction Must be Determined Before Hearing**

- (m) An IIROC hearing should not proceed where the tribunal clearly lacks jurisdiction, or where proceeding would result in an unfair hearing or a breach of natural justice.
- (n) A hearing in this matter, with DBSL unable to call the evidence necessary to establish a defence and to challenge the evidence called by Staff, would be so tainted by procedural unfairness and breaches of the principles of natural justice that it should not proceed.

- (o) The Hearing Panel erred in law and principle by determining that the hearing of this matter should proceed before the Hearing Panel determines whether it has jurisdiction to hear this matter.
- (p) IIROC is a self-regulatory organization which has been recognized by the Commission pursuant to s. 21.1 of the Act. Pursuant to s. 21.7 of the Act, any company such as DBSL that is directly affected by a decision of IIROC is entitled to a hearing and review of IIROC's decision by the Commission, and pursuant to s. 8(4) of the Act, the Commission is entitled to stay the IIROC Decision until disposition of the hearing and review.
- (q) The involvement of the OSC at this juncture will serve to dispose of this matter and prevent the abuse of an improper and unnecessary hearing.
- (r) *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended. ss. 8, 21.1 and 21.7.
- (s) OSC Rules of Procedure, Rules 2.2 and 14.
- (t) Dealer Member Rules 19 and 20 of the IIROC Rule Book and Rules 8 and 20 of the IIROC Rules of Practice and Procedure.
- (u) Such further and other grounds as the lawyers may advise and the Commission may permit.

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

- (a) Notice of Hearing dated December 9, 2009;
- (b) the material that was before the Hearing Panel on DBSL's motion;
- (c) the reasons of the Hearing Panel dated October 13, 2010;
- (d) the transcripts of the evidence at the motion hearing; and

- (e) such further and other evidence as the lawyers may advise and the Commission may permit.

November 2, 2010

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