



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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Toronto ON M5H 3S8

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

- and -

**IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW OF A DECISION OF
A HEARING PANEL OF MARKET REGULATION SERVICES INC.**

- and -

**IN THE MATTER OF
REQUEST BY TSX INC. TO INTERVENE IN THE HEARING AND REVIEW**

- and -

**IN THE MATTER OF
DAVID BERRY**

ORDER

WHEREAS on February 20, 2007, RS issued a Notice of Hearing and Statement of Allegations with respect to Berry, and an amended Notice of Hearing was issued by RS on June 12, 2007 (the “RS Proceeding”);

AND WHEREAS on December 10, 2007, in the context of the RS Proceeding, Berry moved before the RS Panel to permanently stay the RS Proceeding on the basis that, *inter alia*, the Universal Market Integrity Rules (“UMIR”) are invalid (“Berry’s Motion”);

AND WHEREAS on February 29, 2008, the RS Panel released its decision dismissing Berry’s Motion (the “RS Decision”);

AND WHEREAS on March 7, 2008, Berry filed its Notice for Request for Hearing and Review with the Commission pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5;

AND WHEREAS the Hearing and Review in this matter was scheduled for October 29, 2008 at 10:00 a.m.;

AND WHEREAS on August 8, 2008, the TSX Inc. (the “TSX”) filed its Notice of Motion for standing to intervene in the Hearing and Review (the “TSX’s Motion”);

AND WHEREAS on September 29, 2008, a hearing was held before the Ontario Securities Commission (the “Commission”) to address the TSX’s Motion;

AND WHEREAS the Commission considered the submissions of the TSX, Staff of the Commission, RS and Berry;

AND WHEREAS the Commission considers it to be in the public interest;

AND FOR THE REASONS provided orally, and to be released in written form in due course;

IT IS HEREBY ORDERED that the TSX be given limited intervenor status to participate at the Hearing and Review on October 29, 2008 on the following terms:

- a. the TSX shall deliver its factum to the parties by the end of day, Friday, October 3, 2008;
- b. the TSX factum shall be limited to 15 pages and be confined to the matters at issue in this proceeding that directly affect or concern the TSX and shall not duplicate materials and/or submissions of RS;
- c. the TSX shall otherwise abide by the timetable agreed to by the existing parties to this proceeding; and
- d. the extent of oral submissions of the TSX, if any, will be as agreed upon by the parties or as directed by the hearing Panel.

Dated at Toronto on this 30th day of September, 2008.

“Lawrence E. Ritchie”

Lawrence E. Ritchie

“Patrick J. LeSage”

Patrick J. LeSage