Ontario Securities Commission | Commission des valeurs mobilières de l'Ontario | P.O. Box 55, 19th Floor 20 Queen Street West Toronto ON M5H 3S8 | CP 55, 19e étage 20, rue queen ouest Toronto ON M5H 3S8

IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW OF A DECISION OF A HEARING PANEL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA, PURSUANT TO SECTIONS 8 AND 21.7 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED

-and-

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

-between-

STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

-and-

MAGNA PARTNERS LTD.

REASONS AND DECISION

Hearing:	May 12, 2011	
Decision:	August 16, 2011	
Panel:	James E. A. Turner	– Vice-Chair and Chair of the Panel
	Christopher Portner	– Commissioner
Counsel:	Brent Bittner	– For Magna Partners Ltd.
	Charles Corlett	– For Staff of the Investment Industry Regulatory Organization of Canada
	Michelle Vaillancourt	– For Staff of the Ontario Securities Commission

TABLE OF CONTENTS

REASONS AND DECISION

I. BACKGROUND

1. Introduction

[1] On May 12, 2011, the Ontario Securities Commission (the "**Commission**") held a hearing to consider an application dated December 2, 2010 (the "**Application**") brought by Magna Partners Ltd. (the "**Applicant**") under section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "**Act**"), for a hearing and review of a decision and reasons (the "**Decision**") of a hearing panel (the "**IIROC Hearing Panel**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**") dated October 28, 2010. These are our reasons and decision relating to the Application.

[2] The Decision arose from a sanctions hearing that was based on an agreed statement of facts (the "**Agreed Statement of Facts**") in which the Applicant admitted breaches of Universal Market Integrity Rule ("**UMIR**") 5.2 (Best Price Obligation) and UMIR 7.1 (Trading Supervision Obligation). In the Decision, the IIROC Hearing Panel ordered the Applicant to pay a fine of $100,000 and costs of $10,000.

[3] The Applicant requests that the Commission set aside the Decision and substitute its own decision on sanctions for that of the IIROC Hearing Panel, or alternatively, make an order remitting the matter to a hearing panel of the Ontario District Council of IIROC, on the grounds that the IIROC Hearing Panel made serious and pervasive errors in its Decision.

2. The Application

[4] The Applicant applied for a hearing and review of the Decision by the Commission on the following grounds:

> (a) the IIROC Hearing Panel failed to deliver reasons that adequately explain how it arrived at the Decision, specifically that there was no indication as to how the IIROC Hearing Panel arrived at a fine of $100,000;
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> (b) the IIROC Hearing Panel erred by relying on the decision in *BMO Nesbitt Burns*, [2010] IIROC No. 39 (the "***BMO* Decision**");
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> (c) the IIROC Hearing Panel erred in law by not admitting as evidence certain e-mails (the "**E-mail Messages**") tendered by the Applicant, thereby preventing the IIROC Hearing Panel from becoming aware of facts as to how and when the Applicant complied with UMIR 5.2 and UMIR 7.1;
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> (d) the IIROC Hearing Panel was not apprised of specific and relevant evidence that was necessary in order for the Applicant to receive a fair hearing; and
>
> (e) the Decision was unreasonable.

[5] Staff of IIROC ("**IIROC Staff**") submits that the Decision is fair and reasonable and that this Application amounts to an attempt to have this matter retried on a new basis.

[6] IIROC Staff submits that the IIROC Hearing Panel carefully considered the submissions on sanctions made by both parties, the principles applicable to a sanctions hearing, the relevant aggravating and mitigating factors, and gave appropriate consideration to all of those factors.

[7] IIROC Staff submits that the Applicant, with the benefit of advice from its counsel, made the decision to proceed to a sanctions hearing on admitted contraventions of UMIR and the Agreed Statement of Facts, and it is inappropriate to now ask a panel of the Commission to "second-guess" that decision.

3. The Decision of the IIROC Hearing Panel

[8] IIROC made allegations in a Notice of Hearing and Statement of Allegations, both dated August 4, 2010, that between October 2008 and May 2010, the Applicant failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2, and failed to have adequate policies and procedures in place in order to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1.

[9] The Applicant admitted to the contraventions of UMIR in the Agreed Statement of Facts, and an IIROC hearing was scheduled to determine the sanctions and costs that should be imposed on the Applicant.

[10] The matter was heard on August 16, 2010 by the IIROC Hearing Panel. The Applicant was represented by counsel at that hearing.

[11] At the beginning of the sanctions hearing, the Applicant sought to introduce as evidence the E-mail Messages. IIROC Staff objected. After hearing submissions from both parties, the IIROC Hearing Panel decided that it would not admit the E-mail Messages as evidence.

[12] Following the sanctions hearing, the IIROC Hearing Panel ordered the Applicant to pay a fine of $100,000 and costs of $10,000.

II. THE ISSUES

[13] In considering the Application, we will address the following issues:

(a) the Commission's jurisdiction to intervene in this matter;

(b) the appropriate standard of review under section 21.7 of the Act;

(c) whether the Applicant has established any of the grounds upon which the Commission may intervene in the Decision; and

(d) if there are grounds to intervene in the Decision, what the appropriate disposition is in the circumstances.

III. SUBMISSIONS OF THE PARTIES

1. Applicant's Submissions

[14] The Applicant submits that the Decision contains serious and pervasive errors which justify the intervention of the Commission.

Adequacy of Reasons

[15] The Applicant submits that the IIROC Hearing Panel failed to compare the Applicant's misdeeds with similar misdeeds of others and placed the Applicant on an inappropriate scale of culpability. In addition, the Applicant submits that the Decision does not disclose what other disciplinary decisions or settlements were considered or relied on by the IIROC Hearing Panel in reaching the Decision. The Applicant also submits that the Decision lacks appropriate analysis and reasoning.

Admission of E-mails

[16] The Applicant submits that the IIROC Hearing Panel, by refusing to admit the E-mail Messages at the hearing, was not aware of all of the relevant facts, including the dates on which the Applicant came into compliance with UMIR 5.2 and UMIR 7.1. The Applicant submits that, by not allowing the E-mail Messages to be introduced into evidence, the IIROC Hearing Panel denied the Applicant procedural fairness.

Reasonableness of Decision

[17] The Applicant submits that the IIROC Hearing Panel in imposing sanctions relied unduly on the *BMO* Decision. The Applicant submits that any comparison of the Applicant, which made no profit in 2010, to the Bank of Montreal, which had a net income of $2.8 billion in 2010, is completely unreasonable.

[18] The Applicant submits that it was unreasonable for the IIROC Hearing Panel to identify only cooperation with IIROC enforcement staff as a mitigating factor. The Applicant submits that the IIROC Hearing Panel ignored the following mitigating factors:

(a) evidence to determine the cost of connecting to the alternative trading systems ("**ATSs**") as required under UMIR;

(b) telephone inquiries made by the Applicant regarding connectivity to the ATSs;

(c) the Applicant's inability to afford to connect to the ATSs;

(d) the prohibitive cost to the Applicant of connecting to the ATSs;

(e) the Applicant's decision to connect to the Toronto Stock Exchange ("**TSX**") Smart Order Router;

(f) the sale of the Applicant and its new management's attitude toward complying with UMIR;

(g) follow-up conducted on the status of the TSX Smart Order Router;

(h) the fact that trade-through alerts were small relative to the Applicant's trading volume;

(i) the Applicant's actions to become compliant with UMIR 5.2 and 7.1; and

(j) the Applicant's financial ability to pay a fine and costs.

[19] The Applicant submits that the Decision is unreasonable in concluding that the Applicant chose not to comply with UMIR and in concluding that the Applicant should be fined on a basis consistent with the settlement reached in the *BMO* Decision. The Applicant submits that it did not *choose* not to comply. Rather, the Applicant could not afford to join all four ATSs and communicated that inability to IIROC.

[20] The Applicant submits that the decision to levy a $100,000 fine in all of the circumstances is unreasonable. The Applicant submits that the appropriate fine and costs should not exceed $40,000.

2. IIROC Staff Submissions

[21] IIROC Staff submits that the Application is without merit and that the Commission should defer to the IIROC Hearing Panel's Decision and to the factual determinations central to its specialized expertise. IIROC Staff submits that disagreeing with the outcome of a decision rendered on an agreed statement of facts is an insufficient basis to intervene in an IIROC decision. IIROC Staff submits that while the Applicant would have preferred a different outcome, it does not follow that the Applicant should be permitted to "re-litigate" a matter before the Commission when the Applicant has already had a full opportunity to present its case at first instance before the IIROC Hearing Panel.

Adequacy of Reasons

[22] IIROC Staff submits that the IIROC Hearing Panel provided reasons that were sufficiently detailed to demonstrate that the applicable legal principles and the relevant evidence were properly considered.

[23] IIROC Staff submits that the IIROC Hearing Panel set out fully its conclusions, referred in detail to the guiding principles relating to imposing sanctions and set out the key facts it considered in applying the sanctioning principles.

[24] IIROC Staff submits that the IIROC Hearing Panel looked to the closest available precedent, which was the *BMO* Decision, which had somewhat similar facts, and drew a distinction between the facts in that case and the facts in the current matter.

Admission of E-mail Messages

[25] IIROC Staff submits that the IIROC Hearing Panel's decision not to admit the E-mail Messages did not lead to procedural unfairness. IIROC Staff submits that it was well within the IIROC Hearing Panel's discretion to make a determination as to the admissibility and relevance of the E-mail Messages. After hearing submissions from both parties, the IIROC Hearing Panel determined that the evidence should be restricted to the Agreed Statement of Facts.

Reasonableness of Decision

[26] IIROC Staff submits that there is no error on the part of the IIROC Hearing Panel in making the Decision.

[27] IIROC Staff submits that the Applicant is attempting to resile from the facts that it admitted in the Agreed Statement of Facts, which the IIROC Hearing Panel relied on in its Decision, as proof of the unreasonableness of the Decision.

[28] Further, both IIROC Staff and the Applicant understood that by proceeding by way of an Agreed Statement of Facts, they would not be able to provide additional evidence that might explain, elaborate on or qualify what was agreed to in the Agreed Statement of Facts. Both parties had the opportunity to make submissions as to the weight to be given to the agreed facts and the IIROC Hearing Panel used its discretion and considered the facts agreed upon by the parties. Merely because the IIROC Hearing Panel considered factors other than those the Applicant would have chosen, does not render the Decision unreasonable.

[29] IIROC Staff submits that the Applicant has not discharged the heavy burden of demonstrating any ground that justifies intervention by the Commission and that, accordingly, the Application should be dismissed.

3. OSC Staff Submissions

[30] Staff of the Commission ("**OSC Staff**")filed a factum to assist us regarding the appropriate scope of review of a decision of an IIROC hearing panel.

[31] OSC Staff took no position on whether the Applicant has satisfied any valid ground for us to intervene in the Decision.

IV. COMMISSION RULING ON MOTION REGARDING E-MAIL MESSAGES

[32] At the outset of the hearing before us, the Applicant sought to introduce the E-mail Messages as evidence for our consideration.

[33] IIROC Staff submitted that the Applicant should not be permitted to introduce new documents in its hearing and review before the Commission for the purpose of arguing its case on a factual basis that differs from the factual basis set out in the Agreed Statement of Facts.

[34] OSC Staff agreed with IIROC Staff's position in this respect.

Analysis

[35] We have the discretion to admit new evidence on the Application. In order to do so, we should generally find that the evidence is "new and compelling" (*Canada Malting Co.* (1986), 9 OSCB 3565 ("***Canada Malting***") at 21).

[36] At the time that the Agreed Statement of Facts was entered into, the E-mail Messages existed and they were not referred to in the Agreed Statement of Facts. The Applicant submits that, while the E-mail Messages existed, they were not compelling at that time and therefore were not included in the Agreed Statement of Facts. The Applicant submits that the E-mail Messages are now compelling evidence.

[37] We held that it was within the discretion of the IIROC Hearing Panel not to admit additional evidence, given that an Agreed Statement of Facts had been voluntarily entered into by the Applicant. We also found that there was no valid basis in these circumstances upon which to allow the introduction of the E-mail Messages on the Application.

[38] Accordingly, we denied the Applicant's motion to admit the E-mail Messages into evidence. We indicated to the Applicant, however, that it was free to make whatever oral submissions it wished on that subject.

V. ANALYSIS OF SUBSTANTIVE ISSUES RAISED ON THE APPLICATION

1. The Law

(a) Jurisdiction to Intervene

[39] The Commission has the authority and discretion to review and intervene in the Decision. The Commission has authority under section 21.7 of the Act to hold a hearing and review of any direction, decision, order or ruling of a self-regulatory organization (an "**SRO**") such as IIROC. That section provides as follows:

> **21.7 (1) Review of decisions –** The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by–law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self–regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
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> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[40] Subsection 8(3) of the Act provides that, upon a hearing and review, the Commission may confirm the decision or make such other decision as it considers proper. That section provides as follows:

> **8(3) Power on review –** Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

(b) Standard of Review and Grounds for Intervention

[41] In a section 21.7 hearing and review, the Commission exercises original jurisdiction akin to a trial *de novo* and may admit new evidence. A hearing and review is broader in scope than an appeal, which is usually limited to determining whether there has been an error in law or the contravention of a principle of natural justice (*Investment Industry Regulatory Organization of Canada v. Vitug* (2010), 33 OSCB 3965 at para. 43; aff'd 2010 ONSC 4464 (Div. Ct.) ("***Re Vitug***"); *Boulieris v. Investment Dealers Association of Canada*, (2004) 27 OSCB 1597 at paras. 29-30; aff'd (2005) 198 OAC 81 (Div. Ct.) ("***Re Boulieris***")).

[42] Although the broad scope of our authority on a hearing and review is well established, in practice the Commission takes a more restrained approach to applications under section 21.7 of the Act (*Re Boulieris, supra*, at para. 31).

[43] The Commission will generally defer to determinations central to IIROC's specialized expertise, such as interpreting and applying its own by-laws or making factual determinations central to its expertise (*HudBay Minerals Inc.*, (2009), 32 OSCB 3733 at paras. 103-104 ("***HudBay***"); *Investment Dealers Association of Canada v. Kasman* (2009), 32 OSCB 5729 at paras. 40-48 ("***Re Kasman***"); *Re Boulieris, supra,* at paras. 27 and 32, *Re Vitug, supra,* at paras. 45-47).

[44] Nonetheless, there are circumstances in which the Commission will intervene in a decision of an SRO. Those grounds were established in *Canada Malting, supra*. Based on the *Canada Malting* test, the Commission may intervene in the Decision on any of the following grounds:

> (a) the IIROC Hearing Panel has proceeded on an incorrect principle;
>
> (b) the IIROC Hearing Panel has erred in law;
>
> (c) the IIROC Hearing Panel has overlooked material evidence;
>
> (d) new and compelling evidence is presented to the Commission that was not before the IIROC Hearing Panel; or
>
> (e) the IIROC Hearing Panel's perception of the public interest conflicts with that of the Commission.
>
> (*Canada Malting, supra,* at 21)

[45] The *Canada Malting* test has been endorsed in a number of subsequent Commission decisions, including *Boulieris, supra,* at para. 31, *HudBay, supra,* at para. 105 and *Kasman, supra,* at para. 44. In *HudBay,* in discussing when the Commission may intervene in a decision of the TSX, the Panel described the burden on an applicant as follows:

> We recognize, however, that if the Commission is too interventionist in reviewing decisions made by an exchange, that would introduce an unacceptable degree of uncertainty in our regulatory regime and in capital markets. In *Canada Malting*, the Commission stated:
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> > The TSE supported the Applicants in their request for standing. However, it went on to note the difficulty that would be created for listed companies if the TSE could be second–guessed by the OSC on the initiative of a company's shareholders every time a notice for filing is accepted under By–law 19.06 [the predecessor of section 604 of the TSX Manual].
> >
> > If the right of appeal meant that the OSC were to review every decision of the TSE on the merits, then companies issuing securities would be faced with the possibility of subsequently being forced to unwind the transaction or face delisting or trading sanctions on the basis that the Commission had decided to substitute its discretion for that of the TSE under By–law 19.06. In our view, this would introduce an unacceptable degree of uncertainty into the capital markets.
>
> (*HudBay*, *supra*, at para. 114)

[46] It is, therefore, only in rare circumstances that the Commission will intervene in an SRO decision. Before the Commission will do so, it must be satisfied that the applicant has met the "heavy burden" of demonstrating that its case fits within at least one of the five grounds for intervention identified in *Canada Malting*.

2. Analysis

[47] The Applicant submits that three of the grounds for intervention under the *Canada Malting* test have been met. The Applicant submits that the IIROC Hearing Panel proceeded on incorrect principles, erred in law, and overlooked material evidence by not admitting the E-mail Messages as evidence.

[48] Because we have ruled that the IIROC Panel was entitled to exclude the E-Mail Messages and because we have concluded that they will not be admitted as evidence on the Application, we reject the allegation that the IIROC Hearing Panel overlooked material evidence.

[49] We will therefore address whether the IIROC Hearing Panel proceeded on an incorrect principle or erred in law in making the Decision.

(a) Previous Decisions under UMIR 5.2 and 7.1

[50] Before doing so, we will review the decided cases referred to us on the Application that involved breaches of UMIR.

[51] There are no decided cases dealing with sanctions for breach of the provisions of UMIR 5.2 and 7.1 that were arrived at after a hearing on the merits. The only two relevant precedents that were submitted to us were settlements approved by IIROC, and not decisions on sanctions imposed after a hearing on the merits.

[52] The Applicant submits that the IIROC Hearing Panel placed undue reliance on the *BMO* Decision. In that case, the respondent bank was ordered under a settlement agreement approved by an IIROC panel, to pay a penalty of $250,000 and costs in the amount of $15,000. As noted above, the Applicant submits that the fine imposed on it by the IIROC Hearing Panel was not proportionate because of its size and the relative size of the Bank of Montreal.

[53] On March 29, 2011, a hearing panel of IIROC approved a settlement agreement between IIROC Staff and Beacon Securities Limited (the "***Beacon* Decision**"). The facts in the *Beacon* Decision are similar to those before us. From December 2008 to November 2010, Beacon Securities Limited ("**Beacon**") traded on the TSX but was not directly connected to the other four ATSs. Beacon is a small, full service, regionally-based firm with its head office in Halifax, Nova Scotia that employs approximately 40 individuals. The IIROC panel in that case found that Beacon co-operated with IIROC Staff throughout, the damage done to the market was slight, and the contraventions were eventually corrected. Accordingly, Beacon's violation was found to be more technical than substantive. The IIROC panel in *Beacon* approved the agreed penalty of $70,000 and costs of $5,000.

[54] The *Beacon* Decision was rendered subsequent to the Decision and was not before the IIROC Hearing Panel when it made its decision. In our view, the *Beacon* Decision is a more compelling precedent than the *BMO* Decision in these circumstances.

(b) Error in Principle

[55] The first relevant ground for intervention by the Commission is whether the IIROC Hearing Panel proceeded on an incorrect principle. However, it does not appear that, since *Canada Malting*, a clear distinction has been made in the decisions between "proceeding on an incorrect principle" and "erring in law".

[56] In *Kasman*, the panel had to determine whether an IDA panel had misapplied a principle relating to sanctions. The panel discussed the relevant principles regarding sanctions as follows:

> IDA Staff also relies on the following statement from *Re Mills*, [2001] I.D.A.C.D. No. 7 at paragraph 6:
>
> > Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the

> conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment.
>
> These principles have been incorporated in the IDA Sanctions Guidelines (the "Guidelines"). The Guidelines set out a list, which is "illustrative, not exhaustive", of "key considerations when determining sanctions": (i) harm to clients, employer and/or the securities market; (ii) blameworthiness; (iii) degree of participation; (iv) extent to which the respondent was enriched by the misconduct; (v) prior disciplinary record; (vi) acceptance of responsibilities, acknowledgement of misconduct and remorse; (vii) credit for co–operation; (viii) voluntary rehabilitative efforts; (ix) reliance on the expertise of others; (x) planning and organization; (xi) multiple incidents of misconduct over an extended period of time; (xii) vulnerability of victim; (xiii) failure to co–operate with the investigation; and (xiv) significant economic loss to the client and/or member firm.
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> (*Kasman, supra,* at paras. 51–52)

3. Lack of Proportionality as an Error in Principle

[57] When determining sanctions, an SRO or the Commission must apply the principle of proportionality. In *Kasman,* the Commission concluded that:

> We accept that a respondent's personal and financial circumstances are relevant factors to be considered, along with other appropriate sanctioning factors, in determining the amount of a fine. We also accept that considering ability to pay *is consistent with the principle of proportionality* in determining sanctions, and we are not persuaded that it is inconsistent with achieving general deterrence [emphasis added].
>
> (*Kasman, supra,* at para. 72)

[58] In this case, we believe that the Decision lacked proportionality in that the IIROC Hearing Panel did not appear to appropriately take into account the small size of the registrant and its limited regulatory capital. During the hearing before the IIROC Hearing Panel, IIROC acknowledged that the Applicant was a small firm, with a risk adjusted capital of $293,000 as of August 31, 2010. The Applicant had been in early warning since June 8, 2010. In our view, a penalty of $100,000 is not proportionate to the size of the firm and its regulatory capital. A penalty of that size would be considered a minor deterrence to a large member of the industry, but could cause the failure of a much smaller member firm such as the Applicant. We are not suggesting that the amount of a firm's risk adjusted capital should be a determining factor in imposing sanctions. We are simply saying that, in these circumstances, it should be a very significant factor. Further, in imposing sanctions, the IIROC Hearing Panel did not have the benefit of considering the *Beacon* Decision. The fine imposed in that decision seems to us to be very relevant to the Applicant's circumstances.

[59] We are influenced in reaching our conclusions in this matter by (i) the nature of the breach of UMIR involved and the limited harm arising from it; (ii) the fact that the Applicant was

unaware that it could have more cost-effectively complied with UMIR in the circumstances; (iii) the fact that the Applicant is now in compliance with UMIR 5.2 and 7.1; (iv) the fact that UMIR 5.2 is proposed to be repealed; (v) the fact that the Applicant is now carrying on business under new management; and (vi) the fact that there are no decisions of IIROC or the Commission reached after a hearing on the merits applying UMIR 5.2 and 7.1. It seems to us that almost all of the circumstances in this case lead one to mitigate the sanctions that should be imposed.

[60] Because of our conclusion, it is not necessary for us to address any of the Applicant's other submissions.

VI. CONCLUSION

[61] Based on the considerations referred to in Part V, Section 3 of this decision, we find that there is a lack of proportionality in the sanctions imposed by the IIROC Hearing Panel on the Applicant that resulted in an error in principle within the meaning of the *Canada Malting* test.

[62] In the circumstances, we have the option of substituting our decision for that of the IIROC Hearing Panel, or of remitting the matter to IIROC. We have concluded that it would be appropriate and in the public interest to allow the Application and to substitute our decision for that of the IIROC Hearing Panel. Accordingly, we order that as sanctions for its breach of UMIR 5.2 and 7.1:

1. the Applicant shall pay IIROC a fine of $30,000; and

2. the Applicant shall pay IIROC costs of $10,000.

[63] In our view, a more significant penalty is not necessary in these circumstances to deter others or to protect our capital markets.

DATED at Toronto this 16th day of August, 2011.

"*James E. A. Turner*"	"*Christopher Portner*"
James E. A. Turner	Christopher Portner