

ONTARIO SECURITIES COMMISSION

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

AND

**IN THE MATTER OF
THE UNIVERSAL MARKET INTEGRITY RULES**

AND

IN THE MATTER OF MARC MCQUILLEN

NOTICE OF REQUEST FOR HEARING AND REVIEW

The Applicant, Marc McQuillen (“McQuillen”), requests a hearing and review by the Ontario Securities Commission (the “Commission”) pursuant to sections 21.7, 21.1(4) and 127 of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended (the “Act”) of the approval by a Market Regulation Services Inc. (“RS”) Hearing Panel on February 27, 2007 (the “Settlement Approval”) of a settlement agreement between McQuillen and RS dated February 8, 2007 (the “Settlement Agreement”).

THE APPLICANT ASKS that the Commission make orders:

- (a) pursuant to section 21.7 of the Act setting aside the Settlement Approval and requiring that McQuillen’s disciplinary record be expunged;
- (b) in the alternative, pursuant to sections 21.1(4) and 127 of the Act, setting aside the Settlement Approval as contrary to the public interest and ordering that McQuillen’s disciplinary record be expunged;
- (c) in the further alternative, pursuant to section 21.1(4) of the Act, confirming that an IIROC panel may make an order revoking or varying a decision of an IIROC panel on the application of a person affected by the decision, if in the

IIROC panel's opinion the order would not be prejudicial to the public interest;
and

- (d) such further and other relief as the lawyers may request and the Commission may permit.

THE GROUNDS FOR THE APPLICATION ARE:

- (a) From July 2001 until September 2005, McQuillen was employed by Scotia Capital Inc. ("Scotia") as assistant to David Berry, Scotia's Head of Preferred Trading and the registrant responsible for trading Scotia's proprietary book of preferred shares ("Berry");
- (b) in late 2005, RS began an investigation of Scotia, Berry and McQuillen with respect to suspected breaches of the Universal Market Integrity Rules ("UMIR") for allegedly soliciting client orders during the distribution of new issues by Scotia, and conducting off-marketplace trades (the "Suspected Conduct");
- (c) out of work and lacking the resources to defend a regulatory proceeding, McQuillen entered the Settlement Agreement with respect to the Suspected Conduct on February 8, 2007;
- (d) pursuant to the Settlement Agreement, McQuillen agreed that between June 3, 2004 and April 18, 2005, he engaged in conduct which resulted in Scotia contravening UMIR 7.7(5) (pre-May 2005 version) and UMIR 6.4;
- (e) pursuant to the Settlement Agreement, McQuillen was fined \$25,000;
- (f) the Settlement Agreement was approved by an RS Hearing Panel on February 27, 2007, and came into effect thereafter resulting in, among other things, a permanent disciplinary record for McQuillen;

- (g) on June 1, 2008, the Investment Industry Regulatory Organization (“IIROC”) consolidated the regulatory and enforcement functions of RS and the Investment Dealers Association;
- (h) pursuant to the *Administrative and Regulatory Services Agreement* between IIROC and RS, effective June 1, 2008, RS retained IIROC to provide services for RS to carry out its regulatory functions, including the regulatory enforcement proceedings against Berry;
- (i) on January 14, 2013, the decision of an IIROC Hearing Panel in *Re Berry* (the “Berry Decision”) was released, which decision acquitted Berry for the very same conduct in respect of which McQuillen entered the Settlement Agreement;
- (j) in the Berry Decision, the IIROC Hearing Panel held, among other things, that the conduct in respect of which McQuillen entered the Settlement Agreement was not a violation of UMIR, and resulted in no client harm;
- (k) in an unusual and perhaps unique turn of events, the IIROC Hearing Panel determined that Berry’s conduct, and hence McQuillen’s conduct, was not a violation of UMIR, such that there is no legal or regulatory basis for the allegations in respect of which McQuillen entered the Settlement Agreement;
- (l) McQuillen continues to suffer prejudice as a result of the Settlement Agreement and his permanent disciplinary record;
- (m) Logic, fairness and the public interest dictate that the Settlement Agreement be revoked and that McQuillen’s disciplinary record be expunged;
- (n) IIROC lacks a procedural mechanism akin to section 144 the Act for revoking settlement agreements;
- (o) IIROC rejected McQuillen’s Notice of Motion dated March 17, 2014 on the grounds of lack of jurisdiction to act and inability to reconsider or reverse an earlier decision;

- (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 person, such as McQuillen, who is directly affected by a decision of IIROC is entitled to a hearing and review of IIROC's decision by the Commission; pursuant to section 21.1(4) of the Act, the Commission may, if it is satisfied that to do so would be in the public interest, make any decision with respect to any by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized self-regulatory organization;
- (q) the involvement of the Commission at this juncture will resolve a contradiction between the Berry Decision and the Settlement Agreement that is contrary to the public interest;
- (r) the facts underlying this request for hearing and review did not arise until well after the expiry of the time period set out in section 8 of the Act, which time period may be waived by the Commission where, as here, justice requires it;
- (s) *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended. ss. 8, 21.1, 21.7, 127 and 144;
- (t) OSC Rules of Procedure, Rules 2.2 and 14; and
- (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) the material that was before the RS Hearing Panel at the hearing to approve the Settlement;
- (b) the affidavit of Marc McQuillen sworn March 17, 2014; and
- (c) such further and other evidence as the lawyers may advise and the Commission may permit.

May 21, 2014

Marc McQuillen

168 King Street E., Suite 806
Toronto, Ontario M5A 4S4

Tel: (416) 902-7181

Applicant

TO: ONTARIO SECURITIES COMMISSION
PO Box 55, Suite 1903
20 Queen Street West
Toronto, ON M5H 3S8

Registrar@osc.gov.on.ca