

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA**

**AND**

**EARL MAREK**

## NOTICE OF HEARING

**TAKE NOTICE** that pursuant to Part 10 of Dealer Member Rule 20 of the Investment Industry Regulatory Organization of Canada (“IIROC”), a hearing will be held before a hearing panel of IIROC (“Hearing Panel”) on Monday February 8<sup>th</sup>, 2016 at IIROC offices, 121 King Street West, Suite 2000, Toronto, Ontario, at 10:00 am, or as soon thereafter as the hearing can be heard.

**TAKE FURTHER NOTICE** that pursuant to Rule 6.2 of IIROC’s Dealer Member Rules of Practice and Procedure (“Rules of Practice and Procedure”), that the hearing shall be designated on the:

- The Standard Track
- The Complex Track

**THE PURPOSE OF THE HEARING** is to determine whether Earl Marek (“Marek”) has committed the following contravention that is alleged by the Staff of IIROC (“Staff”):

**Count 1:** On or about February 2012, Earl Marek facilitated off book transactions for two clients without the knowledge or approval of his Member firm, contrary to IIROC Dealer Member Rule 29.1.

## **PARTICULARS**

**TAKE FURTHER NOTICE** that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

### **Overview**

1. In or around early 2012, Marek encouraged brothers and future clients PL and DL to each purchase 1000 Facebook shares, prior to these shares being made available to the public. Marek did not discuss this investment with his firm or obtain approval from the firm for these transactions. PL and DL each paid US\$28,900 for the Facebook shares. They subsequently opened accounts with Marek. Despite repeated requests made to Marek, neither brother has received any Facebook shares or the return of the funds.

### **Background**

2. Marek was a Registered Representative employed in Toronto by Macquarie Private Wealth Inc. (“Macquarie”) (now known as Richardson GMP Limited) from October 2011 until his departure from the firm in April 2014.
3. Marek is not currently registered with IIROC.

### **Clients DL and PL**

4. PL first met Marek in late 2011 at PL’s work place. Marek then met PL’s brother DL. Neither PL nor DL were experienced or knowledgeable investors.

### **Facebook shares**

5. In late 2011 or early 2012, Marek asked DL and PL if they were interested in purchasing 1000 Facebook shares each. Marek said that these shares were not yet available to the public as they were not yet listed for trading on an exchange.
6. PL and DL both understood that Marek would be buying a block of Facebook shares from a third party and then re-selling some of these shares.
7. Marek told PL and DL that they should purchase the stock as soon as possible as he had other buyers lined up. They understood that they were to purchase the shares at a price of approximately US\$28 per share and that these shares were later expected to sell in an Initial Public Offering (“IPO”) at approximately US\$31 or US\$32 per share.

8. Marek told PL and DL that he would open accounts at Macquarie for the brothers and would deposit the Facebook shares into those accounts. The brothers understood that the shares could then either be sold after six months or transferred into an RRSP account.
9. Both DL and PL told Marek that they wished to purchase 1000 Facebook shares each. The plan was for private companies held by DL and PL to purchase the shares.

### **February 2012 payment of funds**

10. On February 9, 2012, DL and PL each arranged to make a wire payment in the amount of US\$28,951 in order to purchase the Facebook shares. On that date they learned that they would not be purchasing the shares from Marek directly, but rather from a third party. On Marek's instructions, they wired their funds to a bank account held in the Cayman Islands in the name of a company called New Economy Holdings Limited ("NEHL").

### **Accounts opened at Macquarie**

11. PL's private company opened a Canadian and a U.S. cash account with Marek at Macquarie in October 2012. As of late 2014, no activity had occurred in the accounts.
12. DL opened a Canadian and a U.S. cash account as well as an RRSP account with Marek at Macquarie in December 2012. Some activity did occur in these accounts, however, there is no record of any Facebook share purchase in these accounts.

### **Facebook shares never received**

13. From time to time, PL asked Marek when he would receive his Facebook share certificate. Marek reassured him each time that the certificate was on its way.
14. On December 27<sup>th</sup>, 2012, DL asked Marek if he could transfer his Facebook shares into his RRSP account before the contribution deadline. Marek replied that he could do so.
15. In December 2012, as DL continued to ask when he would receive the Facebook shares, Marek sent DL a copy of a Stock Purchase Agreement ("SPA") dated December 6, 2011, between Five Oceans Limited (the seller) and NEHL (the purchaser). The SPA indicated that the purchaser had bought 25,000 common shares of Facebook at a price of US\$28 per share, for a total of US\$700,000.
16. Throughout 2013, DL continued to ask Marek when he would receive his Facebook shares. Marek reassured DL that the shares should be received shortly.

17. On June 13, 2013, when the brothers still had not received the Facebook shares, Marek told DL not to use his Macquarie email address to communicate with him but to use a gmail address instead. Marek also sent an email dated November 2, 2013 to PL, in which Marek asked him to delete his Macquarie email address effective immediately and to use only Marek's gmail address for all correspondence.
18. At the time, Macquarie's policies required that all securities-related correspondence be conducted from a Macquarie email address.

**Member firm not advised by Marek**

19. Marek did not inform Macquarie or seek approval from the firm for the Facebook share purchase by the brothers.
20. Neither DL nor PL have received any Facebook shares from Marek, nor have they received a return of the funds paid in February 2012.

**GENERAL PROCEDURAL MATTERS**

**TAKE FURTHER NOTICE** that the hearing and related proceedings shall be subject to the Rules of Practice and Procedure.

**TAKE FURTHER NOTICE** that pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

**RESPONSE TO NOTICE OF HEARING**

**TAKE FURTHER NOTICE** that the Respondent must serve upon the Staff of IIROC a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

### **FAILURE TO RESPOND OR ATTEND HEARING**

**TAKE FURTHER NOTICE** that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

### **PENALTIES & COSTS**

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

#### **Where the Respondent is/was an Approved Person:**

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$1,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty.

#### **Where the Respondent is/was a Dealer Member:**

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$5,000,000 per contravention; and
  - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;

- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Dealer Member from membership in the IIROC; or
- (g) any other fit remedy or penalty.

**TAKE FURTHER NOTICE** that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

**DATED** at Toronto, this \_\_\_\_ day of November, 2015.

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ELSA RENZELLA  
VICE-PRESIDENT, ENFORCEMENT  
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