

# Re Deeb

IN THE MATTER OF:

**Dealer Member Rule of the Investment Industry Regulatory  
Organization of Canada (IIROC)**

**and**

**Peter Michael Deeb**

2012 IIROC 8

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Ontario District Council)

Hearing: January 23, 2012  
Decision: January 23, 2012  
(17 paras.)

**Hearing Panel:**

Fred Webber (Chair), Selwyn Kossuth, Sandy Grant

---

## MOTION DECISION

---

### 1. MOTION

¶ 1 This is a motion by the Respondent, pursuant to a Notice of Motion (NOM) dated January 11, 2012, for an order compelling IIROC to remove the Notice of Hearing (NOH) issued September 1, 2011, and all references to it, from the IIROC website immediately.

### 2. REASONS

#### A. S. 10(a)(i)(A) of Appendix A of the Recognition Order (RO)

¶ 2 In his NOM, the Respondent relied on Section 10(a)(i)(A) of Appendix A of the RO of the Ontario Securities Commission(OSC) whereby the OSC recognized the authority of IIROC to regulate its members. This section reads as follows:

“ ... IIROC must:

(i) Promptly notify the Commission, the public and the news media of:

(A) The specifics relating to each disciplinary or settlement hearing once the hearing date is set...”

¶ 3 The NOM stated that on November 14, 2011, this hearing panel adjourned this matter sine die pending the results of an application to the Divisional Court to quash the NOH. The Respondent’s position is that, since this matter has been adjourned sine die, no date has been “set”, and as a result, IIROC has no “obligation or right” to publish the NOH or any specifics of allegations against the Respondent pursuant to S. 10(a)(i)(A) of Appendix A of the RO. At the hearing of this motion, the Respondent made it clear that he was only seeking removal of the NOH from the IIROC website and was not seeking a publication ban.

¶ 4 This panel does not agree with position of the Respondent. It is clear that S. 10(a)(i)(A) of Appendix A of the RO only requires IIROC to publish the NOH once a date has been set; it does not prohibit its publication prior to the date being set. Therefore, contrary to the Respondent’s position, prior to setting a hearing date

IIROC has no obligation, but it has a right to publish the NOH. As pointed out by IIROC counsel, citing the case of *Taub v. Investment Dealers Association of Canada*, [2009] O.J. No. 3552; 2009 ONCA 628; 255 O.C.A. 126; 311 D.L.R. (4<sup>th</sup>) 389; 180 A.C.W.S. (3<sup>rd</sup>) 6, IIROC does not get its authority from the OSC. Its authority comes from its contract with its members and their registered representatives. Membership in IIROC is voluntary and is a contractual commitment by which registrants agree to be bound by, and observe and comply with IIROC's rules and to submit to its jurisdiction. In applying for membership with IIROC, the Respondent agreed to be bound by its rules and that he would be subject to discipline by it. IIROC may set by-laws, policies and procedures within its jurisdiction to which the Respondent has agreed to be bound unless there is something in applicable legislation or rules (e.g. the Ontario Securities Act or the RO) prohibiting it. There is nothing in S.10(a)(i)(A) of Appendix A of the RO prohibiting IIROC from publishing the NOH on its website and communicating the publication to its subscribers.

## **B. S 10 of Schedule 1 of the RO**

¶ 5 Although this section was not raised in the NOM, it was cited by the Respondent orally at the hearing and not objected to by IIROC counsel. Consequently, the Panel heard both parties regarding the application of this section to the motion by the Respondent.

¶ 6 S. 10 of Schedule 1 of the RO provides that

“The process for discipline must be fair and transparent.”

¶ 7 Essentially, the Respondent's position was that the publication of the NOH on the IIROC website was unfair to the Respondent.

¶ 8 The Respondent's affidavit in support of his motion pointed to harm which he has suffered as a result of the publication of the NOH, essentially loss of business. This Panel does not agree with the Respondent's position that any harm to the Respondent which may have been caused by IIROC, resulted in unfairness to him.. Harm to the Respondent does not necessarily equate to unfairness to him.

¶ 9 The Respondent also stated that no courts or other regulatory organizations post allegations on their websites in support of his “unfairness” argument. However, as pointed out by IIROC counsel, this was merely an allegation by the Respondent's counsel without any proof in support and therefore should not be relied on by the Panel. The members of the Panel agree with the IIROC position (and also doubted the accuracy of the Respondent's allegation) and did not take the Respondent's allegations into account in its decision.

¶ 10 The Respondent also pointed to the unfairness to the Respondent of the website publication if anything in the NOH is inaccurate or discloses confidential information, particularly since IIROC does not post the Respondent's contrary position or evidence in support thereof such as, in this case, exculpatory letters from clients. However as pointed out by IIROC counsel, it is clear from the wording of the NOH, that matters contained therein are only allegations and that a hearing must be held to determine if they amount to a breach of the IIROC Rules. Furthermore the Respondent (and the company of which he is a representative) are free to publish their position on their website or otherwise. It was Respondent's position at the hearing the he was only objecting to the use of the website as the means of publication of the NOH and was not seeking a publication ban. However, the Respondent's counsel never made clear to the Panel what form(s) of publication would be acceptable. The Panel does not agree that publication of the NOH on its website is “unfair” to the Respondent.

¶ 11 The Respondent advised the Panel that a number of the cases cited in IIROC'S Book of Authorities were not applicable in this case since the Respondent was not seeking a confidentiality order as had been done in the cases cited and did not disagree with principle cited in those cases, that court and other regulatory processes should be public unless there was a strong reasons to the contrary. Counsel for IIROC stated that the cases were cited primarily to support the principle of openness of the court and regulatory process.

¶ 12 IIROC counsel took the position that S.10 of Schedule 1 of the RO required that disciplinary process be fair and transparent, and that the Respondent was only one participant in the process. Even if publication of the NOH to the IIROC website were unfair to the Respondent as alleged by the Respondent (which IIROC counsel and this Panel concluded was not the case), that would not be sufficient to satisfy the requirement of S.10 of

Schedule 1 of the RO. It is the disciplinary process itself which must be fair and transparent.

¶ 13 It is clear that IIROC has a public interest mandate. S. 2 of Schedule 1 of the RO provides that “IIROC must regulate to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.” IIROC Dealer Member Rule 20.50 specifically contemplates that disciplinary hearings will be open to the public, except where the hearing Panel is of the opinion that the desirability of avoiding the disclosure of intimate financial, personal or other matters, in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be public. S.10(a)(1)A) of Schedule A of the RO requires IIROC to notify the public and news media of disciplinary hearings once the date is set. IIROC publishes the NOH on its website to meet this requirement. The RO requires public notice of disciplinary matters because it is in the public interest to know what allegations are made by IIROC regarding Dealer Members and Approved Persons.

¶ 14 The cases cited by IIROC and contained in its Book of Authorities simply reiterate and support the openness principle which is a fundamental legal principle which promotes public confidence in the integrity of the judicial process, and that the principle of openness is applicable to administrative tribunals, in particular in the securities industry where full and open disclosure is the foundational principle. Respondent’s counsel made it clear that he did not disagree with the openness principle as expressed in these cases. This Panel also agrees with the principle and does not need to review or cite the cases in these reasons.

¶ 15 This Panel concludes that S. 10 of Schedule 1 of the RO requires that the disciplinary process be fair and transparent and the public interest in a fair and transparent process overrides the Respondent’s personal interests.

¶ 16 The Panel also noted that the Respondent did not require the removal of the NOH from the IIROC website until raised in this NOM on January 11, 2012 notwithstanding that he had ample opportunity to raise the issue any time after the NOH was published on September 2, 2011. In particular, in an email response to IIROC staff on August 30, 2011 Respondent’s counsel agreed to accept service of the NOH without objecting to its publication on the IIROC website. He did not raise the matter at the set-date hearing on November 14, 2011 at which the matter was adjourned sine die. IIROC counsel pointed out that he would not have agreed to the sine die adjournment if the publication issue had been raised by the Respondent at that time. The Panel also noted a letter from Respondent’s counsel to IIROC counsel dated November 28, 2011 in which he “requests”, rather than requires or demands that the NOH be removed from the website. Failure to raise the issue at an earlier date does not dispose of the issue, but goes to the credibility of the Respondent’s argument at this late date in the process.

### **3. DECISION**

¶ 17 It is the decision of this Panel that the motion of the Respondent in the NOM be denied.

Dated as of January 23, 2012.

Fred Webber- Chairman

Selwyn Kossuth- Member

Sandy Grant- Member