

# Re Squires

IN THE MATTER OF:

**The Universal Market Integrity Rules**

**and**

**Clark Alexander Squires**

2010 IIROC 44

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

Heard: September 21, 2010  
Decision: September 23, 2010  
(2 paras.)

**Hearing Panel:**

The Honourable John B. Webber, Peter Gribbin, Dave Lang

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## ORDER

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¶ 1 THIS SETTLEMENT HEARING was heard on Tuesday, September 21, 2010, pursuant to Universal Market Integrity Rule 10.8; and upon reviewing the Settlement Agreement; and on hearing from counsel for both parties.

¶ 2 THIS HEARING PANEL ORDERS:

The Settlement Agreement attached as Schedule “A” is hereby accepted.

DATED at Toronto, Ontario this 23rd day of September, 2010.

The Honourable John B. Webber

Peter Gribbin

Dave Lang

### Schedule “A”

\*\*\*\*\* OFFER OF SETTLEMENT \*\*\*\*\*

**A. INTRODUCTION**

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Clark Alexander Squires (the Respondent).
2. The Investigation was commenced by the Investigations and Enforcement Department Staff of IIROC on February 25, 2009.

3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).
4. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).
5. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.
6. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
7. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

**B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED**

8. The Respondent agrees that on February 11, 2009 he engaged in conduct that resulted in contraventions of UMIR 2.1 for which he is liable under UMIR 10.3(4).

**C. ADMITTED FACTS**

9. For the purposes of this Settlement Agreement, Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Appendix A to this Settlement Agreement.

**D. DISPOSITION**

10. For the contraventions in paragraph 8 above, Staff and the Respondent have agreed upon disposition as follows:
  - (i) a fine of \$20,000.00 payable by the Respondent to IIROC; and
  - (ii) costs of \$5,000.00 payable by the Respondent to IIROC.
11. Staff acknowledges the immediate notification to the regulator and same-day correction of the impugned transactions. But for the immediate self-reporting and correction, Staff would have sought higher sanctions.
12. If this Settlement Agreement is accepted by a Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 10 within 30 days of such acceptance.

**E. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT**

13. The Respondent shall have until the close of business on Friday, September 29, 2010 to accept the Offer of Settlement and serve an executed copy thereof on Staff.
14. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.
15. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.
16. In the event the Settlement Agreement is accepted by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC

will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.

17. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.
18. The Respondent agrees that, in the event he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.
19. The Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement as of the dates noted below.

DATED at Toronto on the 13<sup>th</sup> day of September, 2010.

"Witness Signature"

Witness Signature

"Nigel Campbell"

Name of Witness

"Blakes"

Address of Witness

"Clark Alexander Squires"

CLARK ALEXANDER SQUIRES

DATED at Toronto, Ontario on the 8th day of September, 2010.

Per: "Jeff Kehoe"

JEFF KEHOE

VICE-PRESIDENT, ENFORCEMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Suite 1600, 121 King Street West

Toronto, Ontario M5H 3T9

**\*\*\*\*\* STATEMENT OF ALLEGATIONS \*\*\*\*\***

**I. REQUIREMENTS CONTRAVENED**

1. Clark Alexander Squires (the "Respondent"), at all material times a Registered Representative at Brant Securities Ltd. ("Brant"), is alleged to have engaged in conduct that resulted in the following contravention of Rule 2.1 (Just and Equitable Principles of Trading) of the Universal Market Integrity Rules ("UMIR") for which he is liable pursuant to UMIR 10.3(4):
  - (i) on February 11, 2009, he failed to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace by entering sell orders for three clients in securities of Canadian Superior Energy Inc. ("SNG").
2. Schedule "A" sets out the text of the relevant Requirements.

**II. OVERVIEW**

3. The Respondent is a registered representative and the managing partner at Brant Securities Ltd. In addition to his employment with an IIROC-regulated firm, the Respondent also held the position of a

director of SNG, a publicly-traded company listed on the TSX. Five of the Respondent's clients at Brant held shares of SNG in their accounts.

4. While participating in an SNG board meeting in early February 2009, the Respondent came in to possession of information about a pending court application involving the company that he understood was not considered a material fact for statutory purposes and therefore would not be announced in a press release. The Respondent was aware that the information could become material and have a detrimental effect on the price of SNG shares once made public.
5. The Respondent solicited sell orders for SNG in three client accounts without informing either the client or Brant's compliance department about the precipitating events. Within two days of the initial board meeting, SNG issued a press release that had a significant negative effect on the price of its shares. Consequently, Brant's Chief Compliance Officer identified the sales of SNG in the Respondent's client accounts and with the concurrence of the Respondent, cancelled the transactions.
6. The Respondent failed to transact his business in a manner that was both open and fair when he traded on information that was not generally available to other market participants and by failing to inform his compliance department of the circumstances.

### **III. RELEVANT FACTS AND CONCLUSIONS**

#### **A. The Respondent's Registration History**

7. At all material times, the Respondent was employed by Brant. Since December, 1997, he has been the managing partner of Brant.
8. The following is the Registration history of the Respondent with Brant:

<b>Dates</b>	<b>Employer</b>	<b>Designation</b>
August 26, 1997 to present	Brant Securities Ltd.	Salesperson and RR
December 11, 1997 to present	Brant Securities Ltd	Trading Officer / Director (industry) & Managing Partner
January 20, 2005 to present	Brant Securities Ltd.	Industry Investor

9. In addition, the Respondent has been employed in registered capacities with RBC Dominion Securities (January 1981 to July 1991), Loewen Ondaatje (April 1993 to November 1995) and Brenark Securities Limited (November 1995 to August 1997).

#### **B. The Respondent's Role with Canadian Superior Energy Inc.**

10. SNG is a Calgary-based diversified global energy company engaged in exploration and production of oil and natural gas and liquefied natural gas products. At all material times, SNG was listed on the TSX.
11. In or about November 2004, the Respondent was appointed a director of SNG. He remained a director of SNG at all material times.
12. In addition to being a director of SNG, the Respondent sat on SNG's Disclosure Committee and was the chairperson for SNG's Audit Committee. The Disclosure Committee was responsible for ongoing disclosure to the TSX relating to SNG press releases. The Audit Committee was responsible for reviewing SNG's quarterly and annual financial statements.

#### **C. Chronology of Events**

##### **i – Offshore Operations in Trinidad and Tobago**

13. At the material times, SNG maintained certain operations offshore in Trinidad and Tobago. Specifically,

SNG was engaged in a multi-million dollar drilling operation with BG International Limited (“BGI”) and a third party, Challenger Energy Corp. (“Challenger”) regarding two separate natural gas discoveries on the “Intrepid” Block 5 (c) property in Trinidad and Tobago (the “Trinidad and Tobago Property”).

14. On or about October 31, 2008, the President of SNG instituted a trading ban on all trading activity of SNG common shares by SNG directors, management and Staff (employees and consultants) as a result of the significance of the exploration wells located on the Trinidad and Tobago Property.

**ii – Court Application for Appointment of Interim Receiver**

15. On or about February 9, 2009, at approximately 5:00 PM (MST), SNG was served with a court application brought by BGI. The court application sought the appointment of receiver over SNG’s interest in the Trinidad and Tobago Property.
16. In its court application, BGI alleged that SNG had failed to pay all the outstanding invoices relating to the operations from November 2008 and that the project was threatened because there was danger of an imminent departure of certain specialized drilling equipment from the site.
17. BGI’s court application was scheduled to be heard on February 11, 2009.

**iii – February 10 Press Release**

18. On February 10, 2009 SNG held a board meeting in which the Respondent participated by way of conference call. SNG issued a press release at approximately 1:00 PM (EST) (the “February 10 Release”) that it was proposing to monetize a 25% or larger interest in the Trinidad and Tobago Property, subject to acceptable terms and conditions and all necessary approvals. SNG also stated in the February 10 Release that it was in the process of retaining a financial advisor to assist in the sale of this asset. BGI’s pending court application was not mentioned.
19. In the telephone conference call legal advice was received that BGI’s pending court application was then likely not a material fact that required disclosure in the press release. The Respondent therefore believed that he was not restricted from recommending sell orders of SNG shares to 3 of his clients.
20. The Respondent took no further independent steps to determine whether trading in shares of SNG securities was appropriate and in accordance with just and equitable principles of trade in the circumstances. He did not seek legal advice during the conference call on February 10, 2009 regarding the propriety of trading in SNG shares in the circumstances, nor did he speak with members of Brant’s compliance staff prior to soliciting the sell orders.
21. The Respondent did understand that if BGI’s pending court application were successful, the appointment of the receiver would be a material fact which would require a press release.
22. The February 10 Release did not have a material impact on the price of SNG shares.

**iv – February 11 – BGI’s Court Application is Heard / Client Trading Activity**

23. On February 11, 2009 SNG’s counsel unsuccessfully attempted to have the court application adjourned. The Court proceeded with the substantive hearing and at approximately 4:00 PM (EST), the Court granted BGI’s application and ordered the appointment of an interim receiver.
24. The Respondent became aware of this Court Order by telephone conference call on February 11, 2009 at 5:00 PM (EST).
25. On February 11, 2009, prior to the actual court appointment of the interim receiver, but with knowledge of the pending court application, the Respondent solicited sales of SNG shares for 3 clients as set out below:

Name	Time Order Entered	Number of Shares	Sale Price
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RL	3:15 p.m.	5,000	\$1.13
EM	3:16 p.m.	4,000	\$1.13
MM	3:43 p.m.	30,000	\$1.11 - \$1.15
	3:59 p.m.	5,000	

26. When soliciting the sell orders, the Respondent did not provide any specific advice to the clients as to why they should sell, other than that he felt it was an appropriate time to do so.

**The Client RL**

27. Prior to February 11, 2009, RL owned 5,000 shares of SNG. Her entire holdings of SNG were liquidated on February 11, 2009. RL had purchased the SNG shares several years ago and did not actively trade the security.
28. As of December 31, 2008, the only other security in RL’s account was Unitech Energy, valued at \$0.01 for a total value of \$429.11.

**The Client EM**

29. Prior to February 11, 2009, EM owned 4,000 shares of SNG. Her entire holdings of SNG were liquidated on February 11, 2009. EM had purchased the SNG shares several years ago and did not actively trade the security.
30. As of December 31, 2008, EM held two other securities in her portfolio, with a combined value of \$5,029.50.

**The Client MM**

31. Prior to February 11, 2009, MM held 110,000 shares of SNG. As of January 31, 2009, his account was valued at \$365,300, of which SNG represented \$129,800.
32. MM had been selling (on an unsolicited basis) SNG shares throughout January 2009. In total, MM sold 60,000 SNG shares at prices between \$1.19 and \$1.41.
33. On February 11, 2009, MM sold 30,000 shares of SNG.

**v – February 12 Press Release and Market Reaction**

34. During the evening of February 11, 2009, the Respondent (as a member of SNG’s Disclosure Committee) reviewed draft press releases regarding the appointment of the interim receiver.
35. On February 12, 2009 at 12:30 AM (EST), SNG’s president filed a draft press release with IIROC’s market surveillance personnel and noted:

“This will be seen as very material and we would expect the stock to react very poorly to this news.”

36. SNG issued a press release on February 12, 2009 at 8:20 AM (EST), (the “February 12 Release”) prior to the markets opening regarding the appointment of the interim receiver.
37. The February 12 Release had a significant negative effect on the price of SNG shares, as set out below:

Day	Trade date	Closing Price	Volume
Monday	2/9/09	\$1.19	84,300
Tuesday	2/10/09	\$1.18	50,800
Wednesday	2/11/09	\$1.11	99,000
Thursday	2/12/09	\$0.64	1,742,200
Friday	2/13/09	\$0.67	466,100
Tuesday	2/17/09	\$0.47	1,106,600

**E. Remedial Measures taken by Brant**

38. On February 12, 2009, Brant's Chief Compliance Officer identified the SNG sales noted above in paragraph 21 and that these client accounts were serviced by the Respondent, a director of SNG.
39. On February 12, 2009, Brant cancelled the SNG sales in the 3 client accounts noted above in paragraph 21. Each of the clients was notified that the sales from February 11, 2009 would not be completed.
40. Also on February 12, 2009, Brant, through its legal counsel, advised IIROC Staff of the trading activity and cancellation of SNG transactions.

#### **IV. CONCLUSION**

41. *On February 11, 2009, the Respondent failed to transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace by entering sell orders for three clients in securities of SNG in the circumstances described above.*

August 19, 2010

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### **SCHEDULE "A" - EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES**

#### **2.1 Just and Equitable Principles**

(1) A Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when:

- (a) trading on a marketplace; or
- (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

(2) An Access Person shall transact business openly and fairly when:

- (a) trading on a marketplace; or
- (b) trading or otherwise dealing in securities which are eligible to be traded on a marketplace.

#### ***POLICY 2.1 – Just and Equitable Principles***

##### ***Part 1 – Examples of Unacceptable Activity***

*Rule 2.1 provides that a Participant shall transact business openly and fairly and in accordance with just and equitable principles of trade when trading on a marketplace or trading or otherwise dealing in securities that are eligible to be traded on a marketplace. The Rule also provides that an Access Person shall transact business openly and fairly. As such, the Rule operates as a general anti-avoidance provision.*

*Participants and Access Persons who intentionally organize their business and affairs with the intent or for the purpose of avoiding the application of a Requirement may be considered to have engaged in behaviour that is contrary to the just and equitable principles of trade. For example, the Market Regulator considers that a person who is under an obligation to enter orders on a marketplace who “uses” another person to make a trade off of a marketplace (in circumstances where an “off-market exemption” is not available) to be violating just and equitable principles of trade.*

*Certain patterns of activity that can be undertaken that affect the marketplace but do not reach the level of manipulative and deceptive trading practices are nonetheless unavailable to Participant and Access Persons. For example, Rule 4.1 dealing with frontrunning is specifically tied to misuse of information when a Participant knows a client order will be entered. Somewhere between the Participant who acts on certain knowledge of a client order and the Participant who acts despite a single, uncertain expression of interest are the Participants that repeatedly take advantage of expressions of interest in particular securities. Such Participants are not conducting business openly and fairly and in accordance with just and equitable principles of trade. The “just and equitable principles” clause and the requirement to transact business openly and fairly prevent such activity.*

*Without limiting the generality of the Rule, the following are examples of activities by a Participant that would be considered to be in violation of just and equitable principles of trade:*

- (a) without the specific consent of the client, entering client and principal orders in such a manner as to attempt to obtain execution of a principal order in priority to the client order; (See Part 2 of Policy 5.3 – Client Priority for examples of the prohibition on “intentional trading ahead”.)*
- (b) without the specific consent of the client, to vary the instructions of the client to indicate that securities held by the client are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the client for the dividend in cash;*
- (c) without the specific consent of the lender of securities, to vary the arrangements in respect of securities borrowed by the Participant to indicate that the borrowed securities are to participate in a dividend reinvestment plan such that the Participant would receive securities of the issuer and would account to the lender for the dividend in cash; and*
- (d) when trading a combined board lot/odd lot order for a listed security on an Exchange, entering the odd lot portion of the order prior to executing the board lot portion of the order as such order entry exposes the Registered Trader on the TSE or the Odd Lot Dealer on the CDNX to automatic odd lot trades at unreasonable prices.*

## ***Part 2 – Moving Markets to Execute a Trade***

*A Participant or Access Person intending to execute a trade or a cross that will cause, during the course of a single trading day, a change in the price that is above the prevailing offer or below the prevailing bid by an amount greater than \$1 in a security selling below \$20, or greater than \$2 in a security selling at or above \$20, shall obtain the prior approval of the Market Regulator. The Participant or Access Person shall move the market to the price of the cross or the final trade of a one-sided order (the “clean-up price”) in an orderly manner over a time period as directed by the Market Regulator. The length of time required to move the market will depend on the circumstances and the particular security involved. As a guideline, 10 to 15 minutes will be required for each movement of \$1 in price. Particular securities may require a longer period of time.*

*If the Market Regulator is given notice of a proposed trade or cross under this Policy shortly before the close of trading on marketplaces or the principal market for the security, the Market Regulator may disallow the trade if, in the opinion of the Market Regulator, there is not sufficient time to move the market to the clean-up price in an orderly manner before the close.*