

Re Magna Partners

IN THE MATTER OF:

**The Market Integrity Rules of the Investment Industry Regulatory
Organization of Canada**

and

The Universal Market Integrity Rules

and

Magna Partners Ltd

2010 IIROC 49

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

Heard: October 20, 2010
Decision: October 28, 2010
(14 paras.)

Hearing Panel:

The Honourable Fred Kaufman, C.M., Q.C., Chair
Charles F. Macfarlane, Member
Terry Bourne, Member

Counsel:

Kathryn Andrews, Senior Enforcement Counsel, and Milton Chan, Enforcement Counsel
Kevin Richard, Groia & Company, for the Respondent

DECISION

¶ 1 By Notice of Hearing dated August 4, 2010, IIROC Enforcement notified Magna Partners Ltd. (“the Respondent” or “Magna”) that a hearing would be held to determine what sanctions and costs should be imposed on Magna, given that it had admitted the following contraventions:

Count 1:

Between October 2008 and May 2010, the Respondent failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2.

Count 2:

Between October 2008 and May 2010, the Respondent 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.

¶ 2 The relevant facts and conclusions are set out in the Statement of Allegations filed with the Notice of Hearing, all of which are admitted by the Respondent. The only issue, therefore, as stated in the Notice, is to

determine the appropriate penalty and, if deemed appropriate, costs.

¶ 3 The facts and conclusion, as agreed upon by the parties, are as follows:

Overview:

3. Magna admits all of the facts and conclusions contained in this Statement of Allegations.
4. During the period October 2008 to May 2010, Magna failed to comply with UMIR 5.2, 7.1 and Policy 5.2. During this time, IIROC required all Participants, including Magna, to comply with these Rules, however, it did not do so.

Magna background:

5. Magna has been a member with the IDA and now IIROC since August 2007. Magna is registered as an investment dealer, is a Participating Organization of the Toronto Stock Exchange (the “TSX”) a Member of the TSX-V, and therefore a Participant under UMIR.
4. (*sic*) Magna's carrying broker is National Bank Financial Inc (“National Bank”). Magna's trading platform provider is Belzberg Technologies Inc. (“Belzberg”). Magna is a small firm. It is presently an institutional brokerage, focusing on agency and proprietary trading. Until March of 2010, its CEO, CCO and UDP was NA. MM was the President and head of sales. The firm had a part time CFO. Magna hired a new compliance officer in July 2009. Magna also told IIROC staff in 2009 that they were in the process of selling the firm.

Overview of UMIR 5.2:

5. On May 16, 2008, Market Regulation Services Inc. instituted amendments to UMIR 5.2, which required that a Participant make reasonable efforts at the time of execution of an order to ensure that
 - (a) In the case of an offer, the order is executed at the best bid price; and
 - (b) In the case of a bid, the order is executed at the best ask price.
6. Policy 5.2, which accompanied the Rule, further provided that “reasonable efforts” did not require that a Participant become a member, user or subscriber of each protected marketplace. A Participant will have been found to have made “reasonable efforts” to comply with the best price obligation if the Participant has:
 - (a) entered the order on a marketplace that will ensure compliance with the best price obligation;
 - (b) used an acceptable order router; or
 - (c) provided the order to another Participant for entry on a marketplace.
7. The best price obligation set out in UMIR 5.2 and Policy 5.2 is a general duty each Participant owes to the market as a whole. The best price obligation ensures fairness to all market participants, promotes competition, efficiency, and transparency and is essential to maintain investor confidence in the market. [Following general principles set out in CSA discussion paper 23-403]
8. Each Participant must adopt policies and procedures to ensure compliance with its best price obligation. Each Participant must review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure. [From Policy 5.2]
9. Magna was provided with ample notice of its best price obligation under UMIR and RS delineated a process that allowed for ample time to comply. Magna failed to make reasonable efforts to comply with the best price obligation until May 5, 2010.

Protected marketplaces:

10. There are six protected marketplaces- TSX, TSX Venture, CNQ (includes Pure), Alpha, Omega and Chi-X. These were in existence as of May 16, 2008, with the exception of Alpha, which was launched in November 2008.
11. A Participant has an obligation to execute against better price orders on these protected marketplaces before executing at an inferior price on any marketplace or foreign organized regulatory market.
12. On April 17, 2009, IIROC issued a Rule Notice, Notice of Approval of UMIR 09-0107. This Rule Notice advised that the Rule effected on May 16, 2008 had been retroactively approved by the recognizing securities regulators.

Magna not connected to all of the protected marketplaces:

13. From November 2008 to April 2010, Magna was not connected to all of the six protected marketplaces. Magna had only been trading with the TSX and TSX-V through Belzberg.

Lack of reasonable efforts:

14. Magna did not make reasonable efforts to have access to the following protected marketplaces: Alpha, CNQ, Omega and Chi X. Magna's efforts are set out in the following paragraphs.

2008 and 2009:

15. In the late spring or summer of 2008, Magna's employee DK made phone inquiries into the issue of connecting. In terms of the costs of becoming a member of each protected marketplace, Magna decided that the costs were too great.
16. Magna did not make inquiries into any of the other methods of accessing the various marketplaces, for example by way of jitney or Smart Order Router.
17. During 2008, Magna did not make any other efforts to comply with UMIR 5.2.

Trading conduct compliance review:

18. In January 2009, IIROC's Trading Conduct Compliance group ("TCC") conducted a review of the Respondent for the period of September 1, 2008 to October 31, 2008. TCC indicated failures by Magna to make reasonable efforts to obtain the best price for orders and to have procedures in place to ensure that trade throughs do not occur.
19. TCC noted during their review that there was no reference to multiple marketplaces or best price obligation in Magna's policies and procedures manual.
20. Magna's response in May 2009 indicated that the firm had made an effort to acquire best price information but that it was deemed too expensive to be worthwhile to the firm or its clients. Magna also advised that this particular rule should be reviewed by IIROC for consistency. Magna advised that the time and cost constraints to comply were too great.

Commencement of IIROC investigation:

21. In July 2009, Magna was advised that it was under investigation by IIROC Enforcement staff regarding the issue of compliance with UMIR 5.2 Best Price Obligation.

TSX Smart Order Router:

22. Magna hired DS as a compliance officer in July 2009. DS looked into the issue of complying with UMIR 5.2 by making inquiries with the TSX and Belzberg. The firm decided that they were going to connect to the TSX Smart Order Router ("SOR") through Belzberg

23. Magna advised IIROC staff in August 2009 that the firm's solution was to connect to the TSX Smart Router through Belzberg and then utilize National Bank for orders/trades other than the TSX and TSXV.
24. Magna also indicated in August 2009 that the firm had been in a state of very limited trading as a result of the "imminent sale" of the firm.
25. In October 2009, Magna wrote to the TSX, Belzberg and National Bank, authorizing them to proceed to direct Magna's equity order flow to the TSX SOR, once the connection between the TSX and Belzberg was complete. Magna advised that they wanted to be operating on the Belzberg TSX connection at the earliest possible time and asked for any updates on the completion date of this project.
26. On November 5, 2009, Magna and the TSX Inc. signed a Smart Order Router Services Agreement.
27. In November 2009, Magna advised IIROC staff that they were waiting for Belzberg to complete its testing with the TSX.

2010:

28. In February 2010, in response to a query from IIROC Enforcement Staff, Magna advised that the firm was trying to determine the status of the connection. Magna advised IIROC Staff subsequently that the firm had been advised by the TSX that connection should be in place by June or July 2010.
29. As of April 30, 2010, Magna did not have access to the following protected marketplaces: Alpha, CNQ, Omega and Chi X, as required by UMIR 5.2.

UMIR 7.1 Inadequate policies and procedures:

30. At all material times, the Respondent did not have adequate policies and procedures in place pursuant to UMIR 7.1.
31. The Respondent failed to:
 - (a) set out the steps to be followed by the firm to test for trade throughs,
 - (b) make reasonable efforts to comply with its UMIR 5.2 obligation, and
 - (c) keep adequate records to monitor and document the levels of trading on each marketplace.
32. In November 2009, Magna advised that the firm would update its manual to refer to UMIR 5.2 once they had a date of completion from Belzberg and the TSX on the SOR connection.

Other factors:

33. In March 2010, the Ontario District Council approved a change in ownership of the firm, with conditions, including that Magna would not conduct retail business post acquisition.
34. A "trade through" alert identifies a possible trade through violation. During the six month period of December 2008 to April 2009, the percentage of trade through alerts attributed to Magna as a result of its failure to connect to all protected marketplaces was small relative to its trading volume, ranging from .84 % to 7.04% compared to the overall number of trades, during this time period.
35. In April 2010, Magna met with TSX representatives to discuss the status of the Smart Order Router. In May 2010, Magna met with Chi X representatives to discuss use of the Chi X order

router.

36. Magna has an obligation to comply with UMIR 5.2 and UMIR 7.1 and they did not do so. The purpose of UMIR 5.2 is to help ensure the integrity of the marketplace and Magna failed in that duty by not making reasonable efforts to comply with UMIR 5.2.

Appropriate sanctions

¶ 4 Enforcement counsel submit that a global fine of \$160,000 would be appropriate. This figure is based in part on the UMIR Disciplinary Sanction Guidelines, which suggest, for violations of UMIR 5.2, fines up to \$200,000 per contravention, with the added possibility of suspensions or restrictions of access of up to six months. The suggested figure is also based on the recent decision in *BMO Nesbitt Burns Inc.*, [2010] IIROC No. 39, a somewhat similar case, where the Respondent was ordered (in virtue of a Settlement Agreement which was approved) to pay a fine of \$250,000 and costs in the amount \$15,000.

¶ 5 As the Guidelines point out (omitting what is irrelevant to this case), disciplinary sanctions are designed to:

- a. encourage Regulated Persons to comply with all applicable securities legislation and requirements;
- b.
- c. promote just and equitable principles of trade for participants and open and fair business practices by access persons;
- d. improve overall business standards in the securities industry; and
- e. promote public confidence in the SRO system.

¶ 6 Hearing panels must also consider a series of General Factors, including the “extent of harm to market integrity, reputation of the marketplace, or both, the extent of harm to other market participants, and the extent of harm to investors.” And then, of course, panels must also consider factors specific to the case, both aggravating and mitigating. And finally, in assessing a fine, panels may consider a respondent’s ability to pay, provided the latter produces evidence of financial hardship.

¶ 7 Applying these principles to the case now before us, we note that, at one point, Magna decided that the costs of becoming a member of each protected marketplace were simply too great. Nor did Magna make inquiries into any of the other methods then available of accessing the various marketplaces, with the result that nothing was done during 2008.

¶ 8 It was only in July 2009, when Magna was advised that it was under investigation by IIROC Enforcement staff, that Magna, through its compliance officer, began to make efforts to comply. But progress was slow, and as of April 30, 2010, Magna did not have access to four of the protected marketplaces.

¶ 9 On the mitigating side, we take cognizance of the fact that Magna fully co-operated with the Enforcement staff and that, by admitting all the facts alleged, a possibly lengthy (and costly) hearing has been avoided.

¶ 10 Respondent’s counsel suggested that a fine in the amount of \$10,000 to \$15,000 would be appropriate. He pointed to the fact that his client was a small operation (particularly when compared with BMO Nesbitt Burns), that UMIR 5.2, as it now exists, will be changed in 2011, and that Magna’s financial ability, while solvent, was not strong. To underline this fact, counsel filed Exhibit 2, a financial statement, which shows total assets, as of August 31, 2010, of \$454,642.32.

¶ 11 While *BMO Nesbitt Burns* also dealt with an offence under the Best Price Obligation rule, there was but one count, and it involved failure to connect to one of the protected marketplaces. In the case now before us, we have two violations (UMIR 5.2 and 7.1), as well as a deliberate failure (in the beginning, at least) to connect to any of the required marketplaces.

¶ 12 While we consider Enforcement counsel's suggestion of a fine in the amount of \$160,000 to be too high, we feel that in the circumstances a substantial fine is nevertheless required, and we therefore order that the Respondent pay a fine in the amount of \$100,000.

Costs

¶ 13 The Respondent submits that if we were to order a substantial reduction in the amount of costs suggested by Enforcement counsel, no costs should be assessed. However, while the reduction is significant, we see no reason why costs should not be assessed, and we find the amount recommended (\$10,000) to be reasonable, particularly since it represents a relatively small part of the actual costs incurred.

¶ 14 In the results, the Respondent is ordered to pay a fine of \$100,000 and costs of \$10,000.

Given in Toronto on the 28th day of October, 2010.

Hon. Fred Kaufman, Chair

Charles F. MacFarlane, Member

Terry Bourne, Member

Copyright © 2010 Investment Industry Regulatory Organization of Canada. All Rights Reserved.