

Re Maison Placements Canada Inc

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Maison Placements Canada Inc

2011 IIROC 22

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

Heard: April 5, 2011

Decision: April 20, 2011

(9 paras.)

Hearing Panel:

Hon. Robert S. Montgomery, Q.C. (Chair), Dusty Graham, Nick Savona

Appearances:

Charles Corlett, Senior Enforcement Counsel, IIROC

James Doris, Counsel for Maison Placements Canada Inc.

DECISION AND REASONS

¶ 1 The parties entered into a Settlement Agreement, which the Panel approved on March 5, 2011.

¶ 2 The Enforcement Department Staff of the Investment Industry Regulatory Organization of Canada conducted an investigation into the conduct of Maison Placements Canada Inc. (the “Respondent”).

¶ 3 The Respondent agrees that between December 2008 and January 2011, it contravened the following Requirements of the Universal Market Integrity Rules (“UMIR”):

- (i) failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and
- (ii) failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and UMIR Policy 7.1.

¶ 4 During the relevant period, Maison Placements failed to adopt policies and procedures to ensure compliance with its “best price” obligation.

FACTS

¶ 5 The best price obligation set out in UMIR 5.2 is a general duty owed to the market as a whole to ensure fairness to all market participants and promote competition, efficiency and transparency while maintaining investor confidence in the market. UMIR Policy 5.2 requires a Participant to adopt policies and procedures that will ensure compliance with its ongoing best price obligation and to review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.

¶ 6 UMIR 7.1 and UMIR Policy 7.1 set out the regulatory obligations for trading supervision. UMIR Policy 7.1, Part 6 requires that each Participant must adopt written policies and procedures that are adequate, taking

into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace.

¶ 7 During the relevant period, Maison Placements failed to make reasonable efforts to ensure compliance with UMIR 5.2 and did not adopt adequate policies and procedures to ensure compliance with the best price obligation.

¶ 8 The parties have agreed to settlement on the following terms:

- (i) a fine of \$95,000 payable to IIROC.
- (ii) costs of \$5,000.

¶ 9 We are all of the view that this is a reasonable settlement.

Dated at Toronto, this 20th day of April 2011.

The Hon. Robert S. Montgomery, Q.C., Chair

Dusty Graham, Member

Nick Savona, Member

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 Maison Placements Canada Inc. (the Respondent).
2. 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).
3. 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).
4. 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.
5. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

7. The Respondent agrees that between December 2008 and January 2011, it contravened the following Requirements of UMIR:
 - (i) failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and
 - (ii) failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and UMIR Policy 7.1.

C. ADMITTED FACTS

8. For the purposes of this Settlement Agreement only, 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

9. For the contraventions in paragraph 7 above, Staff and the Respondent have agreed upon disposition as follows:

- i. a fine of \$95,000.00 payable by the Respondent to IIROC; and
- ii. costs of \$5,000.00 payable by the Respondent to IIROC.

10. If this Settlement Agreement is accepted by a Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 9 within 30 days of such acceptance.

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

11. The Respondent shall have until the close of business on March 11, 2011 to accept the Offer of Settlement and serve an executed copy thereof on Staff.

12. 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.

13. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.

14. 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.

15. 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 shall be treated as confidential and may not be referred to without the consent of both parties.

16. The Respondent agrees that, in the event it 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.

17. The Respondent agrees that neither it, nor anyone on its 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, Ontario on the 25th day of March, 2011.

“Witness Signature”

“MAISON PLACEMENTS CANADA INC “

Witness Signature

“Name of Witness”

Name of Witness

“Address of Witness”

Address of Witness

DATED at Toronto, Ontario on the 25th day of February, 2011.

Per: “Jeff Kehoe”

JEFFREY KEHOE

VICE-PRESIDENT, ENFORCEMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Suite 1600, 121 King Street West

Toronto, Ontario M5H 3T9

This foregoing Settlement Agreement is hereby approved this 5th day of April 2011, by the following hearing panel constituted to review the terms thereof:

Per: “Robert Montgomery”

Panel Chair

Per: Dusty Graham

Panel Member

Per: “Nick Savona”

Panel Member

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. Between December 2008 and January 2011, Maison Placements Canada Inc. (“Maison Placements”) contravened the following Requirements of UMIR:
 - (i) failed to make reasonable efforts to ensure that orders were executed at the best price, contrary to UMIR 5.2 and UMIR Policy 5.2; and
 - (ii) failed to have adequate policies and procedures in place to ensure reasonable efforts were made to execute orders at the best price, contrary to UMIR 7.1 and UMIR Policy 7.1.

II. RELEVANT FACTS AND CONCLUSIONS

Overview

2. The best price obligation set out in UMIR 5.2 is a general duty owed to the market as a whole to ensure fairness to all market participants and promote competition, efficiency and transparency while maintaining investor confidence in the market. UMIR Policy 5.2 requires a Participant to adopt policies and procedures that will ensure compliance with its ongoing best price obligation and to review its policies and procedures on an ongoing basis to reflect changes to the trading environment and market structure.
3. UMIR 7.1 and UMIR Policy 7.1 set out the regulatory obligations for trading supervision. UMIR Policy 7.1, Part 6 requires that each Participant must adopt written policies and procedures that are adequate,

taking into account the business and affairs of the Participant, to ensure compliance with the “best price obligation”. The policies and procedures must set out the steps or process to be followed by the Participant that constitute the “reasonable efforts” that the Participant will take to ensure that orders receive the “best price” when executed on a marketplace.

4. During the relevant period, Maison Placements failed to make reasonable efforts to ensure compliance with UMIR 5.2 and did not adopt adequate policies and procedures to ensure compliance with the best price obligation.

Background

5. Maison Placements is registered as an investment dealer, is a Participating Organization of the Toronto Stock Exchange (“TSX”), a Member of the TSX Venture Exchange (“TSXV”) and therefore a Participant under UMIR.
6. Maison Placements is an institutional investment firm located in Toronto, Ontario.

Overview of UMIR 5.2

7. 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.
8. 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.
9. 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.
10. Participants were provided with ample notice of best price obligations under UMIR and given ample time to comply with the amendments.
11. Maison Placements did not make reasonable efforts to comply with the best price obligation until January 2011 and did not update its written policies and procedures in this regard.

Protected marketplaces

12. During the relevant period, there were six protected marketplaces: TSX, TSXV, CNSX (includes Pure Trading), Omega ATS, Chi-X and Alpha ATS (Alpha did not begin trading a full list of TSX securities until Feb 20, 2009 and a full list of TSXV securities until March 30, 2009).
13. A Participant has an obligation to execute against better priced orders on these protected marketplaces before executing at an inferior price on any marketplace or foreign organized regulatory market.
14. 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.

Maison Placements not connected to all of the protected marketplaces

15. Between December 2008 and January 2011, Maison Placements was not connected to all of the six

protected marketplaces. Maison Placements was only connected to the TSX and TSXV and was not connected to any other protected marketplace.

Lack of reasonable efforts

16. Maison Placements did not make reasonable efforts during the relevant period to obtain the “best price.” It did not use an acceptable order router. It did not provide the order to another Participant for entry on a marketplace. In short, Maison Placements did not consider orders on any of the protected marketplaces other than the TSX or TSXV.
17. During the period October 2007 to March 2008, Maison Placements informed its clients that it would execute trades on the TSX or TSXV only. However, UMIR Requirements make it clear that despite client consent or instruction a Participant cannot trade-through a better bid or offer on a protected marketplace by making a trade at an inferior price.
18. In April 2009, IROC Trade Conduct Compliance (TCC) conducted a trade desk review of Maison Placements, encompassing the period December 1, 2008 through January 31, 2009. The TCC review confirmed that Maison Placements did not have access to protected marketplaces other than the TSX and TSXV. TCC noted failures by Maison Placements to make reasonable efforts to obtain the best price for orders and to have written policies and procedures in place to ensure that trade-throughs did not occur.
19. In or around April 2009, Maison Placements made inquiries with the TSX about its TSX Smart Order Router (“SOR”), which allows subscribers to access orders on protected marketplaces.
20. In August 2009, TCC informed Maison Placements that it was not making reasonable efforts to comply with the best price obligation.
21. In or around early 2010, Maison Placements learned that the TSX was developing an automated jitney service that would allow subscribers to execute orders at the best price across all protected marketplaces without requiring subscribers to join each of the marketplaces.
22. On August 18, 2010, after making inquiries on more than one occasion of a representative of the TSX, Maison Placements learned that the automated jitney service was in the process of being tested.
23. On August 30, 2010, IROC Staff advised Maison that during the period December 1, 2008 through January 31, 2009, Maison was apparently not satisfying its best price obligation under UMIR 5.2. IROC further advised Maison that it had decided to close its file; however, in light of the foregoing, it cautioned Maison to ensure that it was taking reasonable steps to fulfill its best price obligation.
24. On September 18, 2010, Maison Placements received a TSX SOR Subscriber Agreement, including an addendum for jitney users.
25. During a meeting on October 14, 2010, Maison informed IROC Staff that it had not taken any steps to ensure compliance with its best price obligation, other than to wait for a third party solution, despite the letter sent on August 30, 2010.
26. On October 26, 2010, Maison Placements completed and signed the TSX SOR Subscriber Agreement.
27. On January 17, 2011, Maison Placements implemented and began using the TSX SOR Automated Jitney Service to comply with the best price obligation.
28. During the time period December 2008 to October 2010, Maison Placements generated trade through alerts. A trade through alert occurs when a possible trade through violation has been identified by IROC Market Surveillance Staff. During the relevant period, the percentage of trade through alerts generated by Maison Placements as a result of its failure to comply with the best price obligation was small relative to its overall trading volume.
29. On May 16, 2008, RS (now IROC) issued guidance in Market Integrity Notice 2008-010 (Complying

with “Best Price” Obligations) that it would no longer be providing Participants with notification of trade through alerts to assist firms in their efforts to ensure compliance with the “best price” obligation”. RS advised in the guidance that it “may issue Potential Violation Alert Notifications (‘PVAN’) if the facts of the ‘trade-through’ of better-priced orders warrant.” During the relevant period, Maison Placements did not receive a PVAN from IIROC.

Failure to have adequate policies and procedures in place

30. During the relevant period, Maison Placements failed to adopt policies and procedures to ensure compliance with its “best price” obligation.
31. Maison Placements has not set out the steps or process to be followed by it that constitute the “reasonable efforts” the firm will take to ensure that orders receive the “best price” when executed on a marketplace.
32. During the relevant period, Maison Placements did not monitor or review its order flow for compliance with the “best price” obligation.

III. CONCLUSION

33. During the relevant period, Maison Placements did not make reasonable efforts to comply with the best price obligation.
34. Maison Placements had an obligation to comply with UMIR 5.2 and UMIR 7.1 and they did not do so.
35. The purpose of UMIR 5.2 is to help ensure the integrity of the marketplace and Maison Placements failed in that duty by not making reasonable efforts to comply with UMIR 5.2.

February 25, 2011

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

121 King St. West, Suite 1600

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