

**INVESTMENT DEALERS ASSOCIATION OF CANADA**

**IN THE MATTER OF:**

**THE BY-LAWS OF THE INVESTMENT DEALERS  
ASSOCIATION OF CANADA**

**AND**

**JEFFREY BRADFORD KASMAN AND CLINTON ANDERSON**

**REASONS ON MOTION FOR STAY OF PENALTY ORDER**

**OF THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT DEALERS  
ASSOCIATION OF CANADA**

Hearing: March 28, 2008

Panel:

Paul M. Moore, Q.C, Chair  
Guenther W.K. Kleberg

Association Counsel:

Andrew Pilla  
Milton Chan

Respondents' Counsel:

Alistair Crawley

March 31st, 2008

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**REASONS ON MOTION FOR STAY OF PENALTY ORDER OF THE ONTARIO  
DISTRICT COUNCIL OF THE INVESTMENT DEALERS ASSOCIATION OF  
CANADA**

**Notice of Motion**

[1] By letter dated March 27, 2008 from respondents' counsel to the National Hearing Coordinator of the Association, respondents' counsel requested a stay of the penalty order in this matter until the disposition of a hearing and review that the Association intended to apply for with the Ontario Securities Commission.

[2] All parties consented to the hearing on short notice and all parties were represented at the hearing.

**Background**

[3] We rendered our decision and reasons on the merits in this matter on November 13, 2007.

[4] On February 19, 2008 we signed our decision and reasons on penalty in this matter which included a penalty order.

[5] The decision and reasons, including the penalty order, was not released to the parties until February 26, 2008.

[6] On Tuesday, March 25, 2008 respondents' counsel and counsel to the Association, Mr. Ricardo Codina, had discussions about the Association's intention to seek a hearing and review of the decision on penalty. They agreed that they would attempt to work out on a consensual basis what effect the penalty order should have pending the Association's hearing and review application.

[7] The sudden death of Mr. Codina later on March 25 left the parties unable to deal with the questions of a hearing and review of the decision and the effect of the penalty order pending the hearing and review.

[8] Association staff advised the panel that it was filing on March 28, 2008 a notice of request for a hearing and review with the Ontario Securities Commission.

[9] Respondents' counsel advised the panel that the respondents consented to this action and would not object as to the timeliness of the filing of the notice of request for hearing and review.

[10] The panel advised the parties that since the decision and reasons on penalty was not released to them until February 26, 2008, it was the panel's view that the effective date of the document should be viewed as February 26, 2008 and not the date that it was signed, February 19, 2008.

### **Position of Respondents**

[11] The respondents submitted that it was appropriate that a stay of the penalty order be implemented until a final disposition of the hearing and review of the matter by the Ontario Securities Commission.

### **Position of Staff**

[12] Counsel for staff consented to the request for a stay on the terms requested by the respondents and confirmed it was not disputing the authority of this panel to grant the stay.

### **Decision**

[13] The panel ordered that the implementation of the penalty order for this matter, dated February 19, 2008 and released on February 26, 2008, be stayed until a final disposition of the hearing and review of the matter by the Ontario Securities Commission.

### **Reasons**

[14] Although the question of functus was mentioned by counsel, they submitted that in the circumstances the panel had authority to issue the stay order. We were not presented with argument by counsel on the question of functus.

[15] Section 20.2(1) of the Association's by-laws provide that a panel may make any determination, hold any hearing and make any decision, order, interim order or impose any terms required to implement such order, required or permitted under by-law 20 or under the IDA Rules of Practice and Procedure.

[16] The provision does not specifically state that such exercise of authority may only be done prior to or at the time of the making of a penalty order.

[17] Although the Ontario District Counsel is not a tribunal subject to the *Statutory Powers Procedures Act of Ontario*, it ought to interpret its rules with the same liberality required from statutory tribunals.

[18] Section 2 of the *Statutory Powers Procedures Act* provides that rules "shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits."

[19] It is reasonable and in the interest of a just, most expeditious and cost-effective determination of this proceeding to interpret the rules liberally to allow us to make the stay order consented to by the Association. We are not functus in this.

[20] When the panel issued its penalty order, it appeared that the panel was finished with this matter. However, there has arisen an issue that is intertwined with the penalty order: in light of the hearing and review, when should the penalty order come into force. This is not a revival of an issue that was relevant to the matters before the panel on February 19 (or 26), but is the emergence of a nascent issue bound up with the penalty order that has become relevant because of the pending hearing and review.

[21] Section 20.50 of the Association's by-laws provides the Association and a respondent with a right of appeal of a disciplinary decision to an Appeal Panel. Section 20.53 of the by-laws provides that an appeal to the Appeal Panel from a decision of a hearing panel shall operate as a stay of the decision, unless ordered otherwise by the Appeal Panel. While the Association has not chosen to follow the path of an appeal to an Appeal Panel under Section 20.50, but rather to seek a hearing and review by the Ontario Securities Commission, if the appeal route had been chosen a stay would automatically have been available.

[22] In the decision and reasons on penalty the panel made it clear that it did not view the two months suspension as necessary to protect the public interest from ongoing public harm. Rather, the suspension was provided for deterrent reasons.

[23] Accordingly, the stay will not be contrary to the public interest, and will be consistent with the approach provided for in a parallel appeal procedure that was available to the parties.

DATED at Toronto this 31st day of March, 2008.

Executed on original by:

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"Paul M. Moore"  
Paul M. Moore, Q.C.

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"Guenther W.K. Kleberg"  
Guenther W.K. Kleberg