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Ontario Securities Commission
SECRETARY'S OFFICE

Via Facsimile No. (416) 593-2318

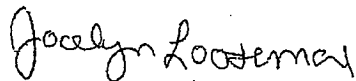
Mr. John Stevenson
Secretary to the Commission
Ontario Securities Commission
PO Box 55, Suite 1903
20 Queen Street West
Toronto, ON M5H 3S8

Dear Mr. Stevenson:

Re: Phillip Vitug - IIROC File No. 0177/Feb/05

Please find enclosed a copy of the Notice of Request for a Hearing and Review with respect to the above matter to be filed pursuant to the *Rules*.

Yours truly,



Jocelyn Loosemore

*smf
Enc.

Copy by email to: The Hearing Coordinator
Investment Industry Regulatory Organization of Canada

Copy by email to: Staff - Investment Industry Regulatory Organization of Canada

ONTARIO SECURITIES COMMISSION

**IN THE MATTER OF AN APPLICATION FOR A HEARING AND REVIEW OF
A DECISION OF THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT
INDUSTRY REGULATORY ORGANIZATION OF CANADA PURSUANT TO
SECTION 21.7 OF THE *SECURITIES ACT*, R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF DISCIPLINE PROCEEDINGS PURSUANT TO DEALER
MEMBER RULE 20 OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANANADA**

BETWEEN

**STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION
OF CANADA**

- AND -

JULIUS CAESAR PHILLIP VITUG

NOTICE OF REQUEST FOR A HEARING AND REVIEW

TAKE NOTICE THAT Julius Caesar Phillip Vitug ("Vitug"), requests a hearing and review by the Ontario Securities Commission (the "Commission"), pursuant to s. 21.7 of the Ontario *Securities Act*, of a decision of the Ontario District Council ("District Council") dated March 31, 2009, finding that Vitug engaged in business conduct or practice which is unbecoming or detrimental to the public interest in violation of IDA By-law 29.1.

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THE RESPONDENT RESPECTFULLY REQUESTS:

1. An Order setting aside the Decision and Reasons on the Merits of a Hearing Panel of the District Council dated March 31, 2009, which was delivered to the respondent on April 8, 2009 (the "Decision").
2. In the alternative, an Order remitting the matter to a newly constituted Hearing Panel of the District Council for a re-hearing.
3. Such further and other relief as counsel may request and the Commission deems just.

THE GROUNDS FOR THE REQUEST ARE:

1. The Hearing Panel of the District Council failed to deliver proper reasons for its Decision. Specifically, the Hearing Panel failed to undertake a review of the evidence to support its findings of fact and failed to explain adequately how it arrived at its Decision.
2. The Hearing Panel erred by making important findings of fact based on a misapprehension of evidence and on an incomplete factual record. The Hearing Panel provided no explanation for how it made findings in instances in which the evidentiary record was palpably incomplete. No reference was made to the inferences that the Hearing Panel must have drawn to make findings based on an incomplete or contradictory factual record. Further, no indication was provided as to how it made those findings in accordance with the required standard of proof.

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3. The Hearing Panel made numerous critical factual findings that were entirely unsupported by the evidentiary record and in many instances subject to contradictory evidence, including, *inter alia*:

- (a) The respondent had an interest in the Spectrum shares and the proceeds of the sale of these shares while they were in EB's Standard Securities Capital Corporation ("SSCC") account;
- (b) EB was either ignorant of or complicit in the respondent's financial dealings in her brokerage and bank accounts;
- (c) The respondent effectively managed DT's SSCC account;
- (d) The respondent directed that the proceeds of the sale of the Fareport common shares be reinvested rather than be applied to repay his loan;
- (e) DT was not in control of his SSCC account and was not familiar with what was transpiring in this account;
- (f) The respondent funded the EB account at SSCC;
- (g) The respondent chose the Fareport investment for DT and decided when and how the investment should be realized;
- (h) The respondent concealed his involvement in the EB and DT accounts;
- (i) The respondent acted deceitfully for his own personal benefit;
- (j) The respondent evaded firm scrutiny;

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- (k) The respondent's conduct placed him in a conflict of interest to the detriment of others;
- (l) The respondent's acts were intentional and his deceit motivated by personal financial gain;
- (m) That common shares of Fareport held in DT's account that were sold in the pre-arranged gypsy swap with the respondent's clients at TDW ultimately resulted in losses to the clients; and
- (n) That the respondent put his other brokerage clients into over 3 million shares of Spectrum which created a conflict of interest when he received benefits from the sale of the Spectrum shares in EB's account.

4. None of the above findings can be supported by clear, convincing and cogent evidence. As outlined above, the Hearing Panel failed to explain how it arrived at those findings in accordance with the required standard of proof.

5. The Hearing Panel made findings of a lack of credibility against the respondent and against another "witness", neither of whom testified at the hearing, without providing any adequate explanation. The one exception was a factual finding on a matter outside of the expertise of the Hearing Panel and with respect to which the evidentiary record was woefully incomplete.

6. The Hearing Panel further erred by proceeding to disregard the evidence of the respondent and the other "witness" without adequate explanation, beyond the erroneous findings in relation to their credibility.

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7. The Hearing Panel overlooked or disregarded material evidence, including evidence that directly contradicted the findings of fact ultimately made by the Hearing Panel. This included evidence by sworn affidavit that was unchallenged.

8. The Hearing Panel erroneously considered and made an adverse finding against the respondent with respect to an allegation of "conflict of interest" that was not included in the Notice of Hearing and was articulated for the first time in the closing submissions. The Hearing Panel was in error in concluding, in effect, that a material allegation could be imported into the proceeding by implication.

9. The Hearing Panel erred at law by admitting as evidence the transcripts of the interviews of the respondent that a prior decision of the District Council had determined could not be relied upon to support a charge of a breach of By-law 29.1. Due to the inadequate reasons in the Decision, it is not possible to determine to what extent and in relation to which issues the Hearing Panel may have relied on the inadmissible transcripts.

10. The Hearing Panel failed to recognize that shortcomings in the evidentiary record in relation to certain of the allegations could have been addressed by the exercise of a summoning power that IROC Staff had obtained in relation to this matter pursuant to an Order under s. 11 of the *Securities Act*. The Hearing Panel erred by failing to consider that the respondent had no equivalent power to summons evidence. Notwithstanding the asymmetrical power to adduce potentially relevant evidence, the Hearing Panel erred by drawing adverse inferences against the respondent in instances in which potentially material evidence was absent from the record.

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11. The Hearing Panel made a number of extremely serious findings of intentional and wrongful conduct that are not only unsupportable on the evidentiary record but were gratuitous in that they went well beyond and were unnecessary to prove the alleged misconduct pleaded in the Notice of Hearing. In so doing, the Hearing Panel exhibited a lack of impartiality.

12. The concern about a lack of impartiality by the Hearing Panel is compounded by the absence of adequate reasons to explain the basis of the very serious findings of intentional and wrongful conduct.

13. Section 8 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.

14. Section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5.

15. Section 12 of the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22.

16. Such further grounds as the Commission may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the review:

17. Notice of Hearing, dated September 3, 2008.

18. The documentary record filed in the proceeding.

19. The transcripts of the proceeding.

20. The decision of the Hearing Panel dated March 31, 2009.

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21. Such further evidence as counsel may suggest and the Commission may allow.

May 1, 2009

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FAX COVER SHEET

FROM	Jocelyn Loosemore	Fax:	(416) 217-0220
File.		Ph:	(416) 217-0886
		Date:	May 1, 2009
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Company	Ontario Securities Commission	Ph:	(416) 593-8145

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