

**APPLICATION FOR HEARING AND REVIEW**

**IN THE MATTER OF:**

**DOUGLAS JOHN ELEY**

**(Applicant)**

**-and-**

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**(Respondent)**

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**APPLICATION**

**(For Hearing and Review of a Decision Under s.21.7(1) of the Securities Act, R.S.O. 1990, c. S.5)**

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**A. ORDER SOUGHT**

The Applicant requests that the Ontario Securities Commission make the following order pursuant to ss.21.7 and 8(3) of the Securities Act, RSO 1990, c S.5 as am. in connection with the decisions dated January 28, 2020 (merits) and October 6, 2020 (sanctions) issued by a Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”).:

1. That the decision of IIROC dated January 28, 2020 finding that the Applicant breached Dealer Member Rule 29.1 be set aside;
2. That the decision of IIROC dated October 6, 2020 imposing sanctions against the Applicant for breaching Dealer Member Rule 29.1, be set aside; and
3. That IIROC be directed that any further hearing it may wish to conduct in connection with the Notice of Hearing and Statement of Allegations dated November 22, 2020 be conducted in accordance with law.

## **B. GROUNDS**

The grounds for the Applicant's request and the reasons for seeking a hearing and review are as follows:

1. IIROC erred by permitting IIROC Staff to lead evidence, notwithstanding the Applicant's objection, in respect of alleged misconduct regarding Dealer Representative Change forms and New Client Application forms, which misconduct was not alleged in the Notice of Hearing and Statement of Allegations, and as a result breached the rules of natural justice and procedural fairness. (see: January 28, 2020 Decision, paragraphs 31-32, 38, 57-61, 62-65, 70, 83-84, 108)
2. IIROC erred by failing to recognize that in the context of a disciplinary proceeding, IIROC Staff bears the onus of proof (as distinct from the standard of proof required to meet that onus), which imposes the burden of proof on IIROC to prove each and every element of the alleged misconduct; instead, IIROC reversed the onus and imposed a burden of proof on the Applicant to prove his innocence. (see: January 28, 2020 Decision, paragraphs 25-27, 42-43, 46, 48-49, 66-69, 75-79, 91, 105-106)
3. IIROC erred in failing to order the disclosure of two relevant documents prepared by the IIROC investigator seeking authorization to commence an investigation into the Applicants conduct and recommending the commencement of proceedings against the Applicant. (see; January 28, 2020 Decision, paragraphs 105-110; Transcript, September 12, 2019, p.218 to 230; Transcript, September 13, 2019, p.4-53)
4. IIROC erred in making findings of fact and drawing factual inferences adverse to the Applicant based on conjecture, speculation and a misapprehension of the evidence, and thereby committed palpable and overriding errors. (s ee: January 28, 2020 Decision, paragraphs 25, 49, 66-68, 76-79, 91, 101-102, 108)
5. IIROC erred in imposing sanctions that were harsh and excessive having regard to the specific facts and circumstances. (see: October 6, 2020 Decision, paragraph 48)
6. IIROC erred in excluding from evidence on the sanction hearing three affidavits tendered by the Applicant and excluding a portion of a fourth affidavit, each of which related to the issue of what specific conduct the Applicant was to be sanctioned for, and a fifth affidavit that related to documentary evidence produced to the Applicant by IIROC Staff after the evidence phase of the

merits hearing had concluded, relating to the improper conduct of the investigator whose testimony was relied by IIROC at the hearing. (see: October 6, 2020 Decision, paragraphs 9-17)

7. Such further grounds as counsel may advise and the OSC may permit.

### **C. DOCUMENTS AND EVIDENCE**

The Applicant intends to rely on the following documents and evidence at the hearing of this application:

1. The Reasons for Decision of the Hearing Panel dated January 28, 2020 and October 6, 2020.
2. The transcripts of the merits hearing and sanctions hearing.
3. The exhibits tendered into evidence at the merits hearing and sanction hearing.
4. The two documents authored by the Investigator which IIROC refused to order disclosure of during the merits hearing and the five affidavits IIROC excluded from evidence at the sanction hearing and refused to mark for identification.
5. The Notice of Hearing and Statement of Allegations dated November 22, 2018.

DATED this 7<sup>th</sup> day of October, 2020.

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