

## Re Paquette

IN THE MATTER OF:

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

and

**Jean-Pierre Paquette**

2019 IIROC 32

Hearing Panel of the Investment Industry Regulatory Organization of Canada  
(Québec District)

Hearing: September 26, 2019, Montréal, Québec

Decision: September 26, 2019

Reasons for Decision: December 16, 2019

### Hearing Panel

Stéphane Rousseau, Ad. E., Chair, Denis Marc Gagnon and François Gervais

### Appearances:

Francis Larin, Enforcement Counsel

Martin Couville, for Jean-Pierre Paquette

Jean-Pierre Paquette (present)

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## DECISION ON SETTLEMENT AGREEMENT

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### BACKGROUND

¶ 1 A Settlement Agreement was reached between IIROC and the Respondent on June 19, 2019.

¶ 2 Pursuant to Rule 8200 and Rule 8400 of IIROC's Consolidated Enforcement, Examination and Approval Rules [hereinafter the Consolidated Rules], the Settlement Agreement was presented to the Hearing Panel at a hearing held on September 26, 2019. The Respondent was present during the hearing.

¶ 3 At the hearing, the legal counsel for both parties jointly recommended acceptance of the Settlement Agreement. Said agreement, which is appended to this decision and forms an integral part hereof, complies with the provisions of Rule 8215 of the Consolidated Rules.

¶ 4 Following the submissions of counsel for both parties, the Hearing Panel deliberated. It subsequently accepted the Settlement Agreement, reserving the right to publish its reasons at a later date.

¶ 5 This decision states the reasons for the settlement acceptance.

### CONTRAVENTION

¶ 6 The parties agree that between May 25 and June 15, 2016, the Respondent executed 31 unauthorized trades in a client's account, thus contravening IIROC Dealer Member Rule 29.1.

## SANCTIONS

¶ 7 The Settlement Agreement proposes the following sanctions :

- a) A fine in the amount of \$50,000;
- b) Costs in the amount of \$5,000 payable to IIROC.

¶ 8 As well, the Settlement Agreement proposes that the Respondent have until December 15, 2019 to pay the above-mentioned sums.

## ROLE OF THE HEARING PANEL

¶ 9 A hearing panel has the authority to accept or reject a settlement agreement. In exercising its authority, the hearing panel has a duty to ensure that the settlement agreement and the disciplinary measures that it proposes fall within a reasonable range of appropriateness.<sup>1</sup>

¶ 10 Thus, in its analysis of this Settlement Agreement, the Hearing Panel intends to uphold the principle stated in *Re Maurice, Re M Partners and Isenberg* and *Re Jacob*, cited by Counsel for IIROC, and according to which the hearing panel “will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”<sup>2</sup>

¶ 11 To determine whether the Settlement Agreement and sanctions fall within a reasonable range of appropriateness, the Hearing Panel must consider the nature and seriousness of the contravention, as well as the circumstances. It must also consider the principles and key factors set out in the *IIROC Sanction Guidelines* [hereinafter the Guidelines]. Finally, it must examine the sanctions ordered in similar cases.

¶ 12 Before proceeding with the analysis of the proposed sanction in light of these criteria, the Hearing Panel presents a summary of the agreed-upon facts as set out in the Settlement Agreement.

## FACTS

¶ 13 The Respondent has been approved as a Registered Representative with IIROC, as well as its predecessor, the Investment Dealers Association of Canada (IDA), since 1997.

¶ 14 Since 2013, the Respondent has been registered as a representative of Industrial Alliance Securities Inc. (IAS).

¶ 15 As of April 2015, the Respondent was acting as the representative for Company A, which opened two (2) accounts. The goal of the accounts was to implement investment strategies that included options trading. Company A was composed of six (6) shareholders, including the brother and a client of the Respondent.

¶ 16 Up until May 2016, any trading by the Respondent in these accounts required written authorization by text message from Company A, and said authorization could not come from either the Respondent’s brother or his client.

¶ 17 Between May 25 and June 15, 2016, the Respondent executed 31 trades in the two accounts of Company A, without prior authorization from any of the latter’s authorized representatives.

¶ 18 On June 12, 2016, the Respondent informed Company A of substantial losses in both of its accounts. On June 14, 2016, after he was expressly notified not to trade in Company A’s accounts anymore, the Respondent nonetheless proceeded to sell 100 Put Options in Company A’s accounts.

¶ 19 Between May 24 and June 30, 2016, the total value of both of Company A’s accounts went from

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<sup>1</sup> *Re Maurice* 2019 IIROC 20.

<sup>2</sup> *Re Jacob* 2017 IIROC 17, par. 20, citing *Re Johnson* 2012 IIROC 19. See *M Partners and Isenberg* 2018 IIROC 25; *Re Maurice* 2019 IIROC 20.

\$462,303 to \$75,773.

¶ 20 Company A's representatives subsequently accepted the \$388,816 in compensation offered by IAS in respect of the losses incurred because of the unauthorized trades executed by the Respondent.

¶ 21 For his part, the Respondent has retaken and passed the Conduct and Practices Handbook exam. He was also under strict supervision by IAS for over three months.

¶ 22 The Respondent has also promised IAS to reimburse in full the amount paid in compensation to Company A, namely \$388,816. Thus, from January 2017 to June 2019, the Respondent repaid the sum of \$310,335 to IAS.

## **ANALYSIS**

¶ 23 The general objective of the Guidelines is to "promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives".<sup>3</sup> The Guidelines intend to assist hearing panels in the fair and efficient determination of appropriate sanctions. However, it should be noted that the Guidelines are not binding upon a hearing panel.

¶ 24 The Guidelines are divided into two parts: Part I states the Sanction Principles for the imposition of sanctions (the Principles). Part II identifies the Key Factors in Determining Sanctions. The Hearing Panel will refer to these principles, to the key factors and case law in the exercise of its discretion.

¶ 25 In this matter, Counsel for IIROC invited the Hearing Panel to consider the facts of the matter in respect of the Principles of the Guidelines in its analysis of the appropriateness of the sanction. In light of the submissions of Counsel for IIROC, the Hearing Panel makes the following remarks.

¶ 26 First, disciplinary sanctions are preventative in nature. Their purpose is to protect the investing public, strengthen market integrity, and improve overall business standards and practices. From this perspective, sanctions should strive for both specific deterrence and general deterrence. In short, sanctions must prevent and discourage future misconduct by the respondent, as well as deter others from engaging in similar misconduct.

¶ 27 Secondly, disciplinary sanctions should be more severe for respondents with prior disciplinary records. In this matter, the Respondent, who has been a registered representative since 1997, has no such prior record.

¶ 28 Thirdly, the Principles stipulate that for multiple violations, the total or cumulative sanctions should appropriately reflect the global misconduct. In this matter, Counsel for IIROC invited the Hearing Panel to consider that there were no multiple violations, in spite of the number of unauthorized trades. The Hearing Panel understands that this position reflects the observations expressed in the Guidelines which note that "a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive."

¶ 29 Fourthly, the Hearing Panel notes that the Principles mention that sanctions should ensure that a respondent does not financially benefit as a result of the misconduct. In this matter, the facts presented by the parties indicate that the Respondent derived no financial benefit from the unauthorized trades, which must be taken into account.

¶ 30 Fifthly, regarding the suspension penalty, the Principles indicate that a suspension should be considered notably where there have been one or more serious contraventions, a pattern of misconduct or the misconduct in question has caused some measure of harm to investors. In this matter, unauthorized trading constitutes a serious contravention that caused significant harm to Company A. Nevertheless, the

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<sup>3</sup> *IIROC Sanction Guidelines*, February 2, 2015, p. 2.

circumstances suggest that this is not a pattern of misconduct on the Respondent's part. In this context, the Hearing Panel defers to the case law review to enlighten it concerning a suspension penalty in this matter.

¶ 31 Sixthly, based on the Principles, a ban from registration must be considered when the contraventions reveal a high degree of impropriety. The same applies when the contraventions involve significant harm to the investing public, the integrity of the market or the securities industry. Although we recognize the seriousness of the contravention in question, we uphold the position of Counsel for IIROC, according to which the circumstances, taken as a whole, do not justify a ban.

¶ 32 Finally, the Hearing Panel takes into account the Respondent's inability to pay, which was raised by Counsel for IIROC. Exceptionally, this consideration is due to the fact that the Respondent is in the process of reimbursing IAS for the sums paid to Company A pursuant to its commitment to IAS. This consideration applies only to the decision to delay payment of the fine, and not to the amount of said fine.

¶ 33 Counsel for IIROC referred the Hearing Panel to the abundant case law that aims to set limits on the reasonable range of appropriateness of the sanction proposed in a Settlement Agreement.

¶ 34 Regarding the monetary penalties, the range is between \$10,000 for one unauthorized trade (with a supervision and monitoring penalty)<sup>4</sup> and \$120,000 for unauthorized trades unsuitable for the client and executed over a three-year period (with a permanent ban from registration).<sup>5</sup> Within this broad range, many of the monetary penalties range between \$30,000 and \$50,000, depending on the duration of the contravention, the number of trades and the existence of other contraventions, such as a failure to meet the suitability requirement.<sup>6</sup>

¶ 35 Regarding suspension, which is not proposed in the Settlement Agreement, the Hearing Panel notes that suspension is found in most of the cases submitted by IIROC Staff, except for cases where a permanent ban was imposed. In fact, suspension is generally accompanied by the requirement of close supervision for a period of time ranging from a few months to a year. We will return to the lack of a suspension penalty later in this decision.

¶ 36 Among the cases submitted, the Hearing Panel considers *Re Bazilinsky*<sup>7</sup> to be especially relevant given that the factual framework is analogous to this matter, as Counsel for IIROC has already emphasized. In *Re Bazilinsky*, the respondent had executed over a hundred unauthorized trades in the accounts of several clients over a period of about nine months. Although they satisfied the suitability requirement, the trades generated commissions for the respondent. The hearing panel accepted a settlement agreement in the matter, imposing a fine in the amount of \$35,000, a suspension of registration, six months of close supervision, the obligation to take the Conduct and Practices Handbook course, and costs in the amount of \$2,000.

¶ 37 With regard to the foregoing, the Hearing Panel is of the opinion that the \$50,000 fine, with costs in the amount of \$5,000, falls within a reasonable range of appropriateness considering the circumstances in the matter.

¶ 38 Concerning the absence of an additional penalty with respect to the case law submitted, the Hearing Panel has taken into account the fact that the Respondent rewrote and passed the Conduct and Practices Handbook exam, and was subject to strict supervision by IAS for more than three months. Concerning the absence of a suspension penalty, the Hearing Panel considers that it must take care not to interfere with the

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<sup>4</sup> *Re Côté & Côté* 2018 IIROC 23.

<sup>5</sup> *Re Austin* 2017 IIROC 09.

<sup>6</sup> For a review of the cases, see *Re Tersigni* 2016 IIROC 19.

<sup>7</sup> 2018 IIROC 13.

process of negotiation between the parties, despite its reservations in this regard.<sup>8</sup> In this matter, the parties arrived at the proposed Settlement Agreement by considering the impact that suspension would have on the Respondent's capacity to repay the sums owed to IAS. As long as the conclusions of the Agreement are not "lenient or harsh to the point of being unreasonable, contrary to the public interest and/or of a nature to bring IIROC's disciplinary process into disrepute,"<sup>9</sup> the Hearing Panel must show deference.

## **CONCLUSION**

¶ 39 In conclusion, the Hearing Panel is of the opinion that the Settlement Agreement and the sanction it recommends are within a reasonable range of appropriateness given the circumstances of this matter.

¶ 40 For these reasons and as was decided at the hearing, the Hearing Panel accepts and approves the Settlement Agreement appended to this decision.

Dated at Montréal (Québec) this 16<sup>th</sup> day of December, 2019.

Stéphane Rousseau

Denis Marc Gagnon

François Gervais

## **SETTLEMENT AGREEMENT**

### **PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a notice of application to announce that a settlement hearing will be held before a hearing panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a settlement agreement (the Settlement Agreement) between IIROC Staff (Staff) and Jean-Pierre Paquette (the Respondent).

### **PART II - JOINT SETTLEMENT RECOMMENDATION**

2. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

### **PART III - AGREED FACTS**

3. For purposes of the Settlement Agreement, the Respondent agrees with the facts set out in Part III of this Settlement Agreement.

### **Registration History**

4. The Respondent has been a registered representative with IIROC, as well as its predecessor, the Investment Dealers Association of Canada (IDA), since December 1997.
5. Since January 2013, the Respondent has been registered as a representative of Industrial Alliance Securities Inc. (IAS).
6. Prior to then, the Respondent had no disciplinary history.

### **Particulars**

7. In April 2015, Company A opened two accounts with the Respondent in order to implement investment strategies that included options trading, with the following objectives:

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<sup>8</sup> *Re Côté & Côté* 2018 IIROC 23, par 38.

<sup>9</sup> *Re Kloda* 2016 IIROC 50, par. 15, cited in *Re Côté & Côté* 2018 IIROC 23, par. 41.

- Liquid assets: \$600,000
- Knowledge: Good
- Objective: Maximum growth
- Risk tolerance: Very high

- Company A was composed of six shareholders, including the brother and a client of the Respondent.
- Any trading in this account required written approval by text message, and the Respondent could not receive orders from his brother or his current client.
- The Respondent complied with this way of doing things until May 2016, when the market conditions at the time put him under greater pressure.
- Thus, between May 25 and June 15, 2016, the Respondent executed the 31 trades listed below in the two accounts of Company A, without prior authorization from any of the latter's authorized representatives:

<b>US Margin Account</b>			
<b>Trades Executed between May 25 and June 15, 2016</b>			
<b>Date</b>	<b>Buy/Sell</b>	<b>QT</b>	<b>Description</b>
25-May	Sell	100	Call spx 16 27MI@2075
25-May	Buy	100	Call spx 16 25MI@2075
27-May	Sell	100	Call spx 16 3JN@2085
27-May	Sell	100	Call spx 16 3JN@2075
27-May	Buy	100	Call spx 16 10JN@2085
02-June	Sell	100	Put spx 16 3jn@2065
02-June	Buy	100	Put spx 16 3jn@2065
03-June	Sell	100	Put spx 16 3jn@2075
03-June	Sell	100	Call spx 16 8jn@2080
08-June	Buy	5	Call spx 16 30jn@2120
08-June	Sell	5	Put spx 16 30jn@2120
08-June	Buy	100	Call spx 16 15jn@2090
08-June	Sell	100	Call spx 16 10jn@2085
09-June	Sell	100	Call spx 16 10jn@2115
10-June	Sell	100	Call spx 16 15jn@2090
10-June	Sell	1000	Put spx 16 10jn2075
10-June	Buy	1000	Put spx 16 10jn2075
10-June	Sell	1000	Call spx 16 10jn@2110
10-June	Buy	1000	Call spx 16 10 jn@2110
10-June	Buy	100	Call spx 16 10jn@ 2115

<b>US Margin Account</b>			
<b>Trades Executed between May 25 and June 15, 2016</b>			
<b>Date</b>	<b>Buy/Sell</b>	<b>QT</b>	<b>Description</b>
10-June	Sell	413	Put spx 16 10jn@2085
10-June	Buy	413	Put spc 18 10jn@2085
10-June	Sell	2000	Apple Inc.
13-June	Sell	5	Call spx 16 30jn@2120
13-June	Buy	5	Put spx 16 30jn@2120
14-June	Buy	100	Put spx 16 15jn@2070
15-June	Sell	100	Put spx 16 15 jn@2075

<b>CDN Margin Account</b>			
<b>Trades Executed between May 25 and June 15, 2016</b>			
<b>Dates</b>	<b>Buy/Sell</b>	<b>QT</b>	<b>Description</b>
13-June	Sell	4629	Powershares Monthly Income Fd
13-June	Sell	4187	Sentry Conservative Balanced Income Fd
13-June	Sell	4436	Dynamic Premium Yield Fd
13-June	Sell	1354	Trimark Global Endeavour Fd

12. On June 12, 2016, in a meeting with one of the authorized representatives of Company A, the Respondent informed the latter of the substantial losses in both of its accounts.
13. On June 14, 2016, this authorized representative expressly requested that the Respondent no longer execute trades in Company A's accounts.
14. Notwithstanding the foregoing, the Respondent nonetheless proceeded the very next day to sell 100 Put Options in Company A's account, as described in paragraph 11 above.
15. Between May 24 and June 30, 2016, the total value of both of Company A's accounts entrusted to the Respondent went from \$462,303 to \$75,773.
16. Company A's representatives subsequently accepted the \$388,816 in compensation offered by IAS in respect of the losses incurred because of the unauthorized trades executed by the Respondent and described in paragraph 11.
17. After that, the Respondent retook and passed the Conduct and Practices Handbook exam and was under the strict supervision of IAS for more than three months.
18. The Respondent promised IAS to reimburse it in full for the compensation paid to Company A.
19. Between January 2017 and April 2019, the Respondent thus repaid IAS the amount of \$310,335.
20. The Respondent's current financial situation prevents him from paying immediately the monetary penalties agreed with IIROC Staff under the terms of this Settlement Agreement, while at the same time meeting his commitment to reimburse IAS in full for the compensation paid to Company A.

21. In this context, it is agreed that the Respondent shall pay the amounts provided in Part V of the Settlement Agreement by December 15, 2019.

#### **PART IV – CONTRAVENTIONS**

22. By engaging in the conduct described above, the Respondent contravened IIROC Dealer Member Rule 29, as follows:

Between May 25 and June 15, 2016, the Respondent executed 31 unauthorized trades in a client's account, contrary to IIROC Dealer Member Rule 29.1.

#### **PART V - TERMS OF SETTLEMENT**

23. The Respondent accepts the following penalties and costs:
- a) A fine of \$50,000;
  - b) Costs in the amount of \$5,000 payable to IIROC.
24. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to pay the amounts referred to above by December 15, 2019, unless otherwise agreed between Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

25. If the Hearing Panel accepts the Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
26. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

#### **PART VII – SETTLEMENT ACCEPTANCE PROCEDURE**

27. The Settlement Agreement is subject to acceptance by the Hearing Panel.
28. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
29. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
30. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
31. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement, or Staff may proceed to a disciplinary hearing in relation to the same allegations or to related allegations.
32. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
33. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

34. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf will make a public statement inconsistent with this Settlement Agreement.
35. The Settlement Agreement is effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

**PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT**

36. This Settlement Agreement may be signed in one or more counterparts which, together, will constitute a binding agreement.
37. The fax or electronic copy of any signature will be treated as an original signature.

**SIGNED** this 29<sup>th</sup> day of June 2019.

(S) GUY BEAUPRÉ

Witness

(S) JEAN-PIERRE PAQUETTE

Jean-Pierre Paquette

Respondent

**SIGNED** this 28<sup>th</sup> day of June 2019.

(S) LINDA VACHET

Linda Vachet

Witness

(S) FRANCIS LARIN

Francis Larin

Senior Enforcement Counsel, on behalf of  
Enforcement Staff of IIROC

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