Re Martens

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Henry Gerald Martens

2013 IIROC 40

Investment Industry Regulatory Organization of Canada
Hearing Panel (British Columbia District)

Heard: May 21, 2013
Decision: July 10, 2013

Hearing Panel:
John Rogers, Chair, Barbara Fraser and L. Karen Henderson
Appearances:
Wietkze Gerber, Enforcement Counsel for the Investment Industry Regulatory Organization of Canada
Teresa Tomchak, Farris, Vaughan, Wills and Murphy LLP, Barristers and Solicitors, for the Respondent

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DECISION OF A HEARING PANEL OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on May 21, 2013 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement ("Settlement Agreement") dated the 17th day of May, 2013 negotiated between the Enforcement Department of IIROC and Henry Gerald Martens ("Respondent") in accordance with Rule 20.35 to 20.40, inclusive, of Part 10 of the IIROC Dealer Member Rules (the "Rules") and Rule 15 of the Dealer Member Rules of Practice and Procedure.

Statement of Facts

¶ 2 The Settlement Agreement contains certain facts agreed to by IIROC Staff and the Respondent for the purpose of the Settlement Agreement. A summary of these facts is as follows:

1. The Respondent was employed as a Registered Representative by IIROC Member, Wolverton Securities Ltd. ("Wolverton"), from May 2004 until December 2012. The Respondent first became registered in the investment industry in 1980 and, except for a two and a half year period, continued his registration until he resigned in December, 2012. The panel was advised by Respondent's counsel that since his resignation the Respondent has not been registered or employed in the investment industry. The Respondent does not have a disciplinary history.
2. Clients, IS and SP, are a married couple who first opened investment accounts at Wolverton's

Vancouver office in 2001. IS achieved a high school education. He has been employed in the swimming pool industry for most of his working life. Currently, he is working for a restoration company as an independent contractor doing house repairs. He suffered a heart attack and had open heart surgery in late 2008. SP also achieved a high school education. She has worked in the retail industry as a sales clerk for more than 30 years. IS and SP have limited investment knowledge, a low risk tolerance, and are not able to sustain any significant decline in the value of their investments as they are nearing retirement.

3. In January 2007, when IS was 60 years old and SP was 57 years old, IS' Spousal RRSP account and SP's RRSP and Locked-in RRSP accounts (collectively the "Accounts") came under the direction of the Respondent. Subsequently, in June 2009 IS and SP each opened Tax Free Savings Accounts (collectively "TFSA's") for which the Respondent was the registered representative. IS and SP invested their total retirement and life savings with the Respondent, a total of approximately $290,000. By September 2011, they had sustained a decrease in market value of their investment portfolio by approximately $231,000. As a result of this decrease, neither of them will be able to retire as planned.

4. Prior to coming under the Respondent's direction, the Accounts held a balanced portfolio of securities consisting of Income Trust funds and Bond and Treasury Bill Mutual Funds, with only 8% of the portfolio consisting of higher risk speculative securities.

5. IS and SP informed the Respondent that they wished to earn a higher return on their investments. The Respondent showed them a sample portfolio that he had created which indicated returns in excess of 20%-25% a year. The percentage of the higher return wished for by IS and SP was never discussed with the Respondent nor was the possibility that a higher return might involve a greater risk of loss. Although the Respondent informed IS and SP that his investment strategy was risky, he did not adequately explain the risks involved with this trading strategy, nor did he at any time advise them that based upon their personal circumstances and risk tolerance they should not undertake this investment strategy.

6. The Respondent purchased securities for IS and SP that all had prices of under $1.00 per share, with the majority of these securities having a price of under $0.50 per share. The trading pattern conducted by the Respondent indicated large dollar value purchases, attempting to achieve returns of 5% to 10% in a short time frame, and selling and locking in profits. However, this strategy was unsuccessful and the value of IS and SP's portfolio suffered an 80% decline from the account opening until September 2011.

7. The Respondent was responsible for completing the New Client Application Forms ("NCAF's") for both the Accounts and the TFSA's.

8. The January 30, 2007 NCAF's for the Accounts indicated the following:

Investment Knowledge	Good
Investment Objectives	100% Speculative
Risk Tolerance	100% High Risk
Total Net Worth	$900,000
Investable Assets of 50%	$300,000

9. The information contained these NCAF's was inaccurate as:

   a. IS' investment knowledge was fair and SP's investment knowledge was limited;

   b. rather than a net worth of $900,000, IS and SP's Total Net Worth was approximately $600,000, of which $150,000 rather than $300,000 represented 50% of their investable

assets; and

c. the investment objectives and risk tolerance in these NCAF's were recorded as 100% high with a 100% speculative weighting even though IS and SP had advised the Respondent that they wished to be semi-retired in a few years.

10. The information contained in the June 9, 2009 NCAF's for the TFSA's was inaccurate in that these NCAF's indicated that each of IS and SP owned net liquid assets of $150,000 when the value of the net liquid assets in the Accounts had decreased to approximately $15,000 for each client.

11. The total gross commission and ticket charges incurred by this trading by the Respondent amounted to $25,462, with the total net commission earned by the Respondent amounting to $12,072.

12. The Respondent knew that IS and SP had invested in a high risk private mine through a private offering and that the funds of IS and SP's were mainly invested in high risk speculative securities. IS and SP had used $35,000 from their home equity line of credit to fund the investment in the private mine, but the Respondent was unaware of the source of these funds.

13. Respondent's counsel advised the panel that in March of 2012, following a complaint made by IS and SP, Wolverton compensated these clients for a portion of their losses in return for releasing both Wolverton and the Respondent from liability. It was the intention of Wolverton to recover this amount from the Respondent.

14. Again, the panel was advised by Respondent's counsel that following this settlement with IS and SP, the Respondent, at that time working under close supervision with Wolverton, was put on strict supervision and was required to take and pass the Conduct and Practices Handbook course, which, in August 2012, he successfully completed. In September 2012, the Respondent's supervision was reduced back to close supervision.

Contravention

¶ 3 The Settlement Agreement contains the Respondent's admissions that:

1. From approximately January 26, 2007 to June 2, 2009, he failed to use due diligence to learn and remain informed of the essential facts relative to two customers, contrary to IDA Regulation 1300.1(a) (IIROC Rule 1300.1(a) after June 1, 2008); and

2. From approximately February 1, 2007 to April 13, 2008, he failed to use due diligence to ensure the recommendations he made for two customers were suitable based on their financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IDA Regulation 1300.1(q).

Terms of Settlement

¶ 4 In the Settlement Agreement, IIROC and the Respondent agree to the following terms of settlement:

1. That the Respondent shall not be permitted to re-apply for registration in any capacity for one (1) year;

2. That the Respondent would pay a fine in the amount of $50,000; and

3. That the Respondent would pay costs to IIROC in the amount of $5,000.

Decision

¶ 5 We accept the Settlement Agreement agreeing with the submissions of IIROC Staff counsel and counsel for the Respondent that it is in the public interest to do so.

Reasons

¶ 6 Rule 20.36 empowers a Hearing Panel upon the conclusion of a settlement agreement hearing to either accept or reject the settlement agreement under consideration. However, neither in Rule 20.36 nor elsewhere in the Rules is there guidance as to what criteria a Hearing Panel should use in making this decision.

Appropriateness of Penalty

¶ 7 Past decisions of Hearing Panels determining whether or not to accept a settlement agreement are of assistance in providing such guidance criteria. In *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, *Re: Bereskin* [2010] IIROC No. 37, and *Re: CIBC World Markets Inc.* 2011 IIROC 38 the test for a Hearing Panel to use in determining whether or not to accept the sanctions contained in a settlement agreement was one which considered a number of factors. These factors include whether or not the agreed upon sanctions strike a reasonable balance between fairness to the respondent in the circumstances but at the same time encouraging the prevention of a repetition of the acknowledged offense; and the need to protect the investing public, the industry membership, the integrity of the disciplinary process, and the integrity of the securities markets.

¶ 8 In addition, the Hearing Panel should determine whether or not a penalty clearly falls outside a "reasonable range of appropriateness". If in the opinion of the Hearing Panel the penalty falls outside this reasonable range, the Hearing Panel should not accept the settlement agreement. Otherwise it should do so. The rationale behind this approach is that a hearing panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

Disciplinary Sanction Guidelines

¶ 9 IIROC Staff counsel referred the panel to Section 3 of the General Principles of IIROC's Disciplinary Sanction Guidelines (the "Guidelines") which set out key factors a hearing panel should consider in conjunction with the imposition of sanctions, and specifically to subsections numbered 3.1 and 3.2, which are respectively entitled "Unsuitable Recommendations – Dealer Member Rule 1300.1(p) and "Failure to Know Your Client – Dealer Member Rule 1300.1(a) and (b)".

¶ 10 Subsection 3.2 of the Guidelines observes that "Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/her clients". It is noted that this is an ongoing obligation imposed upon the registrant. Therefore, it is important not only that the registrant have an accurate starting point at the commencement of his or her relationship with the client to fully understand the client's circumstances, but it is equally important that the registrant keep informed of the client's situation during the term of the client/broker relationship.

¶ 11 In the matter at hand, it is obvious that the NCAF's signed by IS and SP under the Respondent's watch did not accurately reflect the clients' situation at the commencement of the relationship. Both the clients' investment knowledge and available financial resources were overstated. But more importantly, the Respondent knew the ages, the health situation, the employment situation, and the retirement expectations of the clients. One is hard pressed to understand how knowing these factors, the Respondent could accept the clients' NCAF's with a risk tolerance reflecting a 100% high risk speculative trading approach.

¶ 12 Subsection 3.1 of the Guidelines states that "Where the recommendations are unsuitable for the client, the registrant has breached his position of trust and failed to fulfill the most basic responsibilities towards the client". Given the circumstances of IS and SP and the Respondent's admission in the Settlement Agreement that IS and SP had "little understanding of the risks involved" and "could not afford to sustain any significant decline in the value of their investments as they were nearing retirement" it is obvious that the Respondent failed to fulfill his basic responsibilities towards the clients.

¶ 13 It is to be noted that Subsection 3.1 refers to the recommendations being unsuitable for the client and not simply unsuitable in terms of the client's NCAF. In other words, even though a trading strategy employed by the registrant might be perfectly in accord with the terms of a client's documented NCAF, the onus will remain upon the registrant to clearly demonstrate that he or she has fulfilled his or her basic responsibility to the client if such trading strategy may not appear to be suitable in terms of the client's actual investment knowledge,

financial resources and risk tolerance.

Relevant Precedent Decisions

¶ 14 In *Re: Yanor* [2005] I.D.A.C.D. No. 46, Bulletin No. 478, November 21, 2005, following a disciplinary hearing, the hearing panel dealt with the question of suitability. Where the respondent had no previous disciplinary history and the losses sustained by the client were $75,000 over a three year period, the hearing panel imposed a fine of $30,000, a one year suspension followed by twelve months of strict supervision, a requirement to rewrite and pass the Conduct and Practices Handbook examination, and costs of $15,000.

¶ 15 *Re: Janiewicz* [2006] I.D.A.C.D. No. 3, Bulletin No. 3518, February 27, 2006, involved the trading in 64 transactions in put options over an eleven month period generating over $42,000 in losses from a starting amount of approximately $182,000. The client had no investment experience with options and had investment objectives of 50% income and 50% growth with a net worth of $500,000 of which approximately $200,000 were liquid assets. The hearing panel assessed a fine of $50,000 on a finding of both unsuitable trading and unauthorized discretionary trading together with a disgorgement of $8,345 USD in commissions, a six month suspension followed by a twelve month period of close supervision, and the requirement to rewrite and pass the Conduct and Practices Handbook Course.

¶ 16 In a more recent decision involving the acceptance of a settlement agreement, the hearing panel in *Re: Klemke* 2011 IIROC 14, March 15, 2011, considered a settlement agreement in which the respondent admitted to unsuitable trading in approximately forty client accounts and to selling and/or attempting to sell an unregistered security to approximately forty-nine purchasers. The hearing panel approved a fine in the amount of $35,000, a one year suspension, a year of strict supervision following re-approval, a requirement to write and pass the Conduct and Practices Handbook examination, and costs of $5,000.

¶ 17 *Re: Gareau* 2011 IIROC 72, January 2, 2012, involved a penalty hearing following a disciplinary hearing at which the hearing panel found that the respondent had incorrectly completed NCAF's for two client families and then had failed to ensure that recommendations he made to purchase and hold securities were suitable for the circumstances of these families, incurring at least $600,000 in trading losses by the date of the hearing. Following the penalty hearing, the hearing panel imposed a fine of $100,000, a one year suspension, disgorgement of $47,383 in commissions, a year of strict supervision following re-approval to be, in turn, followed by a further six months of close supervision, a requirement to write and pass the Conduct and Practices Handbook examination, and costs of $20,000.

Mitigating Factors

¶ 18 In her submissions, Respondent's counsel stressed the fact that the Respondent, prior to his resignation from the industry in December 2012, had been disciplined by his employer. He had been placed by Wolverton on both close and strict supervision during 2012 and was required to write the Conduct and Practices Handbook examination, which he wrote and passed in August 2012.

¶ 19 She noted, as well, that the Respondent had cooperated completely with IIROC Staff investigators and had entered into the Settlement Agreement.

Sanctions Reasonably Appropriate

¶ 20 There are a number of factors either disclosed in the Settlement Agreement or of which we were advised by Respondent's counsel which give us pause in our determination of whether or not the sanctions agreed to in the Settlement Agreement are reasonably appropriate.

¶ 21 We note that the Settlement Agreement states that the Respondent's clients, IS and SP, used $35,000 from their home equity line of credit to fund an investment in a private offering of the securities of a high risk private mine. The Settlement Agreement also states that the Respondent was unaware of the source of these funds. It appears from these statements that the clients were being introduced to high risk securities from sources other than the Respondent. Given the state of the junior resource market from 2008 until 2011, if these clients were heavily invested in junior resource securities commencing at the beginning of this period, the losses

to their portfolio are quite understandable.

¶ 22 In the Settlement Agreement, the Respondent admitted that the NCAF's of IS and SP misrepresented the assets of the clients, their investment objectives and their trading sophistication. At the hearing, we were advised by counsel for the Respondent that each of these NCAF's had been signed by the clients and, in accordance with Wolverton's standard practice, a copy of each of the signed NCAF's was delivered to them. Although in no way absolving the Respondent from his responsibility for ensuring that these NCAF's properly represented the clients' situation, one is wont to ask what obligation is placed upon a client to ensure that a NCAF properly reflects that particular client's situation. This question is especially germane if the client's intended trading strategy requires that the NCAF disclose a particular situation to enable the client to meet the criteria necessary to conduct that intended trading strategy.

¶ 23 We note, as well, that the Respondent has had no previous disciplinary experience, that he was disciplined by his employer after the complaint by IS and SP, and that he was expected to contribute financially to the settlement reached with IS and SP by his employer.

¶ 24 Although in an actual disciplinary hearing on this matter further facts might have come forward which might further mitigate the Respondent's action and relationship with the clients IS and SP, upon the facts before us in the Settlement Agreement, the Respondent clearly admitted to enabling the completion of NCAF's which he knew to be inaccurate. In addition, he clearly failed to use due diligence to ensure that the recommendations he made were suitable for these clients in their actual situation rather than that recorded in the NCAF's. In addition, the advice of Respondent's counsel that the Respondent's employer had settled with IS and SP for a certain portion of the account losses incurred by them suggests an admission of a certain portion of liability on the part of both the Respondent and his employer towards these clients.

¶ 25 In considering the sanctions agreed to by IIROC Staff and the Respondent in the Settlement Agreement and considering the precedents cited above, we believe that a more appropriate fine to be assessed against the Respondent might have been in the neighbourhood of $35,000 rather than the $50,000 agreed to by the parties. However, we are comforted with the advice of counsel that a disgorgement of commissions was taken into account by the parties when agreeing to this fine. In other words, by adding the Respondent's commissions of $12,072 to the $35,000 amount we approach the $50,000 fine agreed to by the parties.

¶ 26 As importantly, we are cognizant of the settlement process and the various elements involved with it, provided both sides are represented by counsel. In the matter at hand, both sides were represented by counsel and both counsel have recommended we approve the Settlement Agreement. We find that the agreed upon sanctions meet the test of being within a reasonable range of appropriateness and we have, therefore, approved the Settlement Agreement.

Dated at Vancouver, British Columbia, this 10th day of July, 2013.

John Rogers, Chair

Barbara Fraser

L. Karen Henderson

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and Henry Gerald Martens (the Respondent), consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).

2. The Enforcement Department of IIROC has conducted an investigation (the Investigation) into the conduct of the Respondent.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. The Respondent consents to be subject to the jurisdiction of IIROC.

5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

   a) From approximately January 26, 2007 to June 2, 2009, he failed to use due diligence to learn and remain informed of the essential facts relative to two customers, contrary to IDA Regulation 1300.1(a) (IIROC Rule 1300.1(a) after June 1, 2008); and

   b) From approximately February 1, 2007 to April 13, 2008, he failed to use due diligence to ensure the recommendations he made for two customers were suitable based on their financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IDA Regulation 1300.1(q).

8. Staff and the Respondent agree to the following terms of settlement:

   a) The Respondent shall not be permitted to re-apply for registration in any capacity for one (1) year.

   b) The Respondent shall pay a $50,000 fine.

9. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. Staff and the Respondent agree with the facts set out in Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

OVERVIEW

11. The Respondent failed to adequately know his clients IS and SP. He inaccurately stated their net worth, percentage of investable assets, risk tolerance, and investment knowledge on their New Client Application Forms (NCAF's) in January 2007. The Respondent further in June 2009 when he opened their Tax Free Savings Accounts (TFSA's), indicated on the NCAF's net liquid assets of $300,000 although their net liquid assets had decreased to approximately $31,000.

12. The Respondent made unsuitable investment recommendations for IS and SP, a married couple aged 60 and 57 respectively in January 2007. They wanted to be semi-retired in a few years. However, within three months of transferring their accounts to the Respondent, the accounts changed from a balanced portfolio to one consisting entirely of speculative high risk securities as a result of the changes made by the Respondent with respect to risk tolerance on the NCAF.

THE RESPONDENT

13. The Respondent became a registrant of the IDA (now IIROC) in 1980 with Pemberton Securities Limited and except for in total, a two and a half year period, has been continuously registered. The Respondent has been employed by Wolverton as a registered representative from May 2004.

14. The Respondent does not have a disciplinary history.

REGULATORY REQUIREMENTS

15. IDA Regulation 1300.1(a) and IIROC Rule 1300.1(a) require that each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

16. IDA Regulation 1300.1(q) (IIROC Rule 1300.1(q) after June 1, 2008) requires that each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

CUSTOMERS

17. IS and SP opened investment accounts in Wolverton's Vancouver office in 2001. In January 2007, they transferred IS's Spousal RRSP account, SP's RRSP and Locked-in RRSP accounts (collectively, the Accounts) to the Respondent.

18. IS achieved a high school education. He has been employed in the swimming pool industry for most of his working life. Currently he is working for a restoration company as an independent contractor doing house repairs. He suffered a heart attack and had open heart surgery in late 2008.

19. SP also achieved a high school education. She has worked in the retail industry as a sales clerk for more than 30 years.

20. They invested $290,000 with the Respondent which represented their entire retirement and life savings, and as a result of the decline in the Accounts, neither of them will be able to retire as planned.

The Respondent failed to adequately know his clients

21. The Respondent completed the NCAF's for IS and SP in January 2007 when they transferred the Accounts and again in June 2009 when they opened TFSA's.

22. The January 30, 2007 NCAF's for the Accounts indicated the following:

Investment Knowledge	Good
Investments Objectives	100% Speculative
Risk Tolerance	100% High Risk
Total Net Worth	$900,000
Investable Assets of 50%	$300,000

23. The information contained in these NCAF's were inaccurate as IS's investment knowledge was fair and SP's limited. IS and SP's Total Net Worth was approximately $600,000 of which $300,000 represented 100% of their investable assets.

24. Although the investment objectives and risk tolerance noted on the NCAF's were recorded as 100% high, with a 100% speculative weighting, IS and SP wanted to be semi-retired in a few years.

25. The June 9, 2009 NCAF's for the TFSA's indicated net liquid assets of $150,000 each for IS and SP. However, from 2007 to 2009, the value of the net liquid assets in the Accounts had decreased to approximately $15,000 each.

The Respondent Failed to Ensure his Recommendations were Suitable

26. The Accounts held a balanced portfolio consisting of Income Trust funds, Bond and Treasury Bill Mutual Funds, and 8%, in higher risk speculative securities, prior to the transfer to the Respondent.

27. The Respondent invested for his customers in junior resource exploration companies trading on the TSX Venture Exchange. The Respondent showed IS and SP a sample portfolio he had created that indicated returns in excess of 20% – 25% a year and sometimes more; and returns of 4% - 5% in the space of a week.

28. IS and SP informed the Respondent that they wanted to earn a higher return on their investments. However the percentage of higher returns required by IS and SP was never discussed. Although the Respondent informed IS and SP that his investment strategy was risky he did not adequately explain the risks involved or that they could lose their entire investment. He did not advise them that they should not undertake this investment strategy based on their personal circumstances and risk tolerance.

29. The Respondent purchased securities for IS and SP that all had prices of under $1.00 per share, with the majority having a price of under $0.50 per share. The trading pattern indicated large dollar value purchases, attempting to achieve returns of 5% to 10% in a short time frame, and then selling and locking in profits. However this strategy was unsuccessful and the Accounts declined in value.

30. The Respondent further knew that IS and SP had invested through a private offering, in a high risk private mine, and that the funds of IS and SP were mainly invested in high risk speculative securities. IS and SP used $35,000 from their home equity line of credit to fund this purchase, however, the Respondent was unaware of the source of the funds.

31. The table below shows an 80% decline in the value of their portfolio from account opening to September 2011:

Account	**Opening Balance**	**September 2011**	**Withdrawals Transfers**	**Decrease in Market Value**	**Percentage Change**
638-0122-5 IS RRSP Jan 2007	$138,857.95	$9,931.83	$26,485.00	($102,441.12)	(74%)
638-0124-7 SP RRSP Jan 2007	$96,600.30	$5,503.94	$24,215.00	($66,881.36)	(69%)
638-0123-6 SP LRSP Jan 2007	$54,339.91	$2,687.36		($51,652.55)	(95%)
Sub-Totals	**$289,798.16**	**$18,123.13**	**$50,700.00**	**($220,975.03)**	**(76%)**
648-0012-1 IS TFSA June 2009 *Transferred in*	$5,000.00	$ 0.31	($5,000.00)	$ 4,999.69	100.0%
648-0011-0 SP TFSA	$5,000.00	$ 0.31	($5,000.00)	$ 4,999.69	100.0%

Account	Opening Balance	September 2011	Withdrawals Transfers	Decrease in Market Value	Percentage Change
June 2009 *Transferred in*					
TOTALS	**$289,798.16**	**$18,123.75**	**$40,700.00**	**($230,974.41)**	**(80%)**

32. The Respondent's investment strategy and trading pattern were not suitable for IS and SP as they had limited investment knowledge, a low risk tolerance, little understanding of the risks involved, low income and could not afford to sustain any significant decline in the value of their investments as they were nearing retirement.

33. The total gross commission and ticket charges incurred on the Accounts amounted to $25,462. Total net commission earned by the Respondent was $12,072.

IV. TERMS OF SETTLEMENT

34. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

35. The Settlement Agreement is subject to acceptance by the Hearing Panel.

36. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

37. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the Settlement Hearing) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

38. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/it's right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

39. 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 matters disclosed in the Investigation.

40. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

41. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

42. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

43. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Kelowna in the Province of British Columbia, this 13th day of May, 2013.

"Henry Martens"

Witness **Respondent**

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 17th day of May, 2013.

"Wesley Chan"

Witness

"Wietzke Gerber"

Wietzke Gerber

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Vancouver in the Province of British Columbia,

this 21st day of May, 2013, by the following Hearing Panel:

Per: "John Rogers"

Panel Chair

Per: "Barbara Fraser"

Panel Member

Per: "Karen Henderson"

Panel Member