

Re Rochon

IN THE MATTER OF:

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

and

Joseph Marcel Denis (Denis) Rochon

2020 IIROC 03

Investment Industry Regulatory Organization of Canada
Hearing Panel (Manitoba District)

Heard: January 20, 2020, in Winnipeg, Manitoba

Decision: January 20, 2020

Written Reasons for Decision: February 7, 2020

Hearing Panel:

Sean Shore, Chair, Alan McLaughlin and Bernie Plett

Appearance:

David McLellan, Enforcement Counsel

Thor Hansell, for Joseph Marcel Denis (Denis) Rochon

Joseph Marcel Denis (Denis) Rochon, absent

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

Introduction

¶ 1 On January 14, 2020, the Investment Industry Regulatory Organization of Canada (IIROC) issued a Notice of Motion to hold a settlement hearing on January 20, 2020, at 10:00 a.m. at the Radisson Hotel, 288 Portage Avenue, in Winnipeg, Manitoba.

¶ 2 The purpose of the hearing was to consider whether, pursuant to Section 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC (the Rules), a hearing panel (Hearing Panel) should accept the settlement agreement (Settlement Agreement) entered into between the staff of IIROC (Staff) and Joseph Marcel Denis (Denis) Rochon (Rochon).

¶ 3 At the settlement hearing, Staff and Counsel for Rochon jointly recommended that the Hearing Panel accept the Settlement Agreement agreed to by Rochon and Staff on January 10, 2020. The Settlement Agreement was prepared and executed in accordance with Section 8215 of the Rules, with the Hearing Panel and Settlement Hearing being constituted in accordance with Section 8203 of the Rules, and this matter then proceeded in accordance with Section 8428 of the Rules.

¶ 4 Following the presentation of oral submissions by Enforcement Counsel and Counsel for Rochon, and after conducting its deliberations, the Hearing Panel decided that it would approve the Settlement Agreement as presented, with written reasons to follow. The Hearing Panel's reasons are set out below.

¶ 5 It should be noted that Rochon did not personally appear at the settlement hearing due to health issues and his Counsel appeared on his behalf.

Issues

¶ 6 By accepting the Settlement Agreement and admitting the facts stated therein, Rochon admitted to the following contraventions of IIROC's Rules:

- a) Between November 2011 and May 2017, Rochon failed to use due diligence to learn and remain informed of essential facts relative to the investment objectives and risk tolerance parameters with respect to four clients (as noted in the Settlement Agreement) contrary to IIROC Dealer Member Rule 1300.1(a); and
- b) Between January 2012 and July 2017, Rochon failed to use due diligence to ensure that investment recommendations were suitable for four clients (as noted in the Settlement Agreement) contrary to IIROC Dealer Member Rule 1300.1(q).

¶ 7 The sole issue for this Hearing Panel is whether it should accept or reject the Settlement Agreement. The Settlement Agreement, which is attached to these reasons, sets out in Part III, the Agreed Facts between the parties in support of the contraventions noted above.

Facts

¶ 8 The relevant facts as agreed to by the parties are fully set out in paragraphs 8 to 64 of the Settlement Agreement. A summary of these facts as noted by the Hearing Panel is as follows:

Rochon

- a) Rochon was a Registered Representative (RR) with Industrial Alliance Securities Inc. (IAS) in Winnipeg, Manitoba. Although he has been in the financial industry since 1973, he has been an RR since 2004. Rochon is presently 72 years of age, and effective December 31, 2019, retired as an RR.
- b) Rochon was responsible for the accounts of four clients, two married couples: SN/GN and RW/HW (the Clients).
- c) The Clients were seniors with limited investment knowledge.
- d) Rochon failed to know the Clients.
- e) Rochon failed to use due diligence to ensure that his investment recommendations were suitable for the Clients when he pursued an investment strategy in their accounts focused primarily on growth.

Clients – SN/GN

Failure to know your client

- f) SN and GN both had limited investment knowledge and relied on Rochon for his investment expertise and recommendations. At the time of initial account opening in 2011, SN was 81 years old and GN was 72.
- g) In November, 2011, SN opened a cash account, a RIF and a LIF with Rochon. GN opened a cash account, a RIF and a spousal RIF; in November, 2012, SN and GN also opened a joint margin account (collectively referred to as the N Accounts).
- h) The client documentation for the N Accounts reflected the following information:
 - i. Investment Objectives: Growth

- ii. Investment Knowledge: Good
 - iii. Annual Income (GN): \$80,000; Annual Income (SN): \$50,000
 - iv. Combined Net Worth: \$500,000 to \$550,000 (with \$300,000 of this amount being designated as liquid assets).
- i) The IAS client documentation defines a growth investment objective to include an asset allocation split and risk tolerance as follows:
- i. Cash & Cash Equivalents: 0-40%
 - ii. Fixed Income: 0-50%
 - iii. Equities: 30-100%
 - iv. Aggressive Investments and Strategies: 0-30%
 - v. Risk is high.
- j) In May 2013, the client documentation for the N Accounts was updated and included the following changes:
- i. Investment Knowledge (SN): Average
 - ii. Time Horizon (non-registered accounts): less than 3 years
 - iii. Time Horizon (registered accounts): 3 to 7 years
 - iv. Purpose of the N Accounts were to finance part of retirement and the joint account included speculation.
- k) In September 2015, the N Accounts were changed from commission or transaction based accounts to fee based accounts with an annual fee of 2% (charged monthly).
- l) There was very little trading activity in the N Accounts once they became fee based.
- m) In February 2016, the client documentation for the N Accounts was updated and included the following changes:
- i. Investment Objectives: Balanced
 - ii. Investment Knowledge: Average
 - iii. Time Horizon (registered and non-registered accounts): 3 to 7 years
 - iv. Annual Income (GN): \$10,000; Annual Income (SN): \$60,000
 - v. Combined Net Worth: \$500,000 to \$550,000 (with \$150,000 of this amount being designated as liquid assets).
- n) The client documentation for the N Accounts also indicated that SN and GN were retired.
- o) The IAS client documentation defined a balanced investment objective to include an asset allocation split and risk tolerance as follows:
- i. Cash & Cash Equivalents: 0-40%
 - ii. Fixed Income: 30-70%
 - iii. Equities: 30-70%
 - iv. Aggressive Investments and Strategies: 0-20%

- v. Risk is moderate to high.
- p) Although the investment objectives for the N Accounts were broadly listed as growth and subsequently changes to balanced, SN and GN were actually seeking a steady, conservative, long-term growth investment strategy.
- q) Rochon's decision to allow high, and moderate to high, risk tolerance for clients at an advanced age like SN and GN was inconsistent with appropriate investment objectives and risk tolerance parameters for them. In addition, it failed to consider that a portion of the funds were borrowed.
- r) Rochon failed to learn and remain informed of the essential facts relative to the N Accounts for SN and GN as the stated investment objectives and risk tolerance for the N Accounts were inconsistent with their true financial circumstances, investment knowledge, investment objectives and risk tolerance.

Suitability

- s) SN and GN relied on Rochon for investment advice and recommendations.
- t) Rochon, based on his own research, investment ideas and trading activity, pursued an aggressive investment strategy for the N Accounts which involved an elevated degree of risk.
- u) SN and GN invested borrowed funds, which were obtained through a home equity line of credit. Rochon discussed and recommended this strategy (the use of borrowed funds to invest) with SN and GN for several years.
- v) Between December 2012 and May 2017, the N Accounts decreased in value by 30.38%.
- w) The holdings in the N Accounts were concentrated and speculative and in combination with the use of leverage were inconsistent with the stated investment objectives and risk tolerance, as well as their true financial circumstances.
- x) The recommendations made by Rochon were not suitable for SN and GN in light of their age, financial situation, investment knowledge and investment experience.

Clients – RW/HW

Failure to know your client

- y) RW and HW were novice investors and both had limited investment knowledge and exposure to the financial markets. Their investment experience was limited to mutual funds as well as a limited borrowing to invest strategy which was recommended to them by a previous mutual fund advisor.
- z) RW and HW were introduced to Rochon through their previous mutual fund advisor.
- aa) RW and HW believed that Rochon would continue to recommend similar investments to those of their previous advisor. They had limited investment knowledge and relied on Rochon for his investment expertise and recommendations.
- bb) Rochon was aware that RW and HW were using borrowed funds to finance some of their investments.
- cc) At the time of initial account opening in 2012, RW was 62 years old and HW was 64.
- dd) In January, 2012, RW opened a margin account and an RSP account with Rochon. HW opened an RSP accounts, Spousal RSP and a LIRA (collectively referred to as the W Accounts).

- ee) The client documentation for the W Accounts reflected the following information:
 - i. Investment Objectives: Growth
 - ii. Investment Knowledge: Good
 - iii. Annual Income (RW): \$55,600; Annual Income (HW): \$40,000
 - iv. Combined Net Worth: \$500,000 (with \$150,000 of this amount being designated as liquid assets)
- ff) The occupation for both RW and HW was noted as substitute teachers.
- gg) The IAS client documentation defines a growth investment objective to include an asset allocation split and risk tolerance as follows:
 - i. Cash & Cash Equivalents: 0-40%
 - ii. Fixed Income: 0-50%
 - iii. Equities: 30-100%
 - iv. Aggressive Investments and Strategies: 0-30%
 - v. Risk is high.
- hh) In May 2013, the client documentation for the W Accounts was updated and note the following changes:
 - i. Investment Knowledge (HW): Average
 - ii. Time Horizon (non-registered accounts): less than 3 years
 - iii. Time Horizon (registered accounts): 3 to 7 years
 - iv. Purpose of the Accounts were to finance part of retirement and the margin and RSP account for RW included speculation.
- ii) In July 2015, the W Accounts were changed from commission or transaction based accounts to fee based accounts with an annual fee of 2% (charged monthly).
- jj) There was very little trading activity in the W Accounts once they became fee based.
- kk) In June 2015, the client documentation for the W Accounts was updated and included the following changes:
 - i. Investment Objectives: Maximum Growth
 - ii. Purpose of the Accounts removed the reference to speculation.
- ll) The IAS client documentation defined a maximum growth investment objective to include an asset allocation split and risk tolerance as follows:
 - i. Cash & Cash Equivalents: 0-30%
 - ii. Fixed Income: 0-30%
 - iii. Equities: 60-100%
 - iv. Aggressive Investments and Strategies: 0-100%
 - v. Risk is high.
- mm) Although the investment objectives for the W Accounts were broadly listed as growth and

subsequently changed to maximum growth, RW and HW (who were retired) were actually seeking a steady, conservative, long-term growth investment strategy.

- nn) Rochon's recommendation to increase the level of risk in the W Accounts as RW and HW grew older was inconsistent with RW's and HW's intended investment objectives and risk tolerance. In addition, it failed to consider that a portion of the funds were borrowed.
- oo) Rochon failed to learn and remain informed of the essential facts relative to the W Accounts for RW and HW as the stated investment objectives and risk tolerance for the W Accounts were inconsistent with their true financial circumstances, investment knowledge, investment objectives and risk tolerance and too aggressive for these clients, who were retired seniors, with limited investment knowledge, and were seeking a steady, conservative, long term growth strategy.

Suitability

- pp) RW and HW relied on Rochon for investment advice and recommendations.
- qq) Rochon, based on his own research, investment ideas and trading activity, pursued an aggressive investment strategy for the W Accounts, which involved an elevated degree of risk.
- rr) RW and HW invested borrowed funds, which were obtained through a line of credit. Rochon was aware that the W Accounts included borrowed funds.
- ss) Between June 2012 and July 2017, the W Accounts decreased in value by 38%.
- tt) The holdings in the W Accounts were concentrated and speculative and in combination with the use of leverage were inconsistent with the stated investment objectives and risk tolerance, as well as their true financial circumstances.
- uu) The recommendations made by Rochon were not suitable for RW and HW in light of their age, financial situation, investment knowledge and investment experience.

Analysis

¶ 9 As noted above, the sole issue for the Hearing Panel to consider is whether to accept or reject the Settlement Agreement. This is made very clear pursuant to Subsection 8215(5) of the Rules.

¶ 10 The Hearing Panel was provided a copy of the decision in *Re Milewski*, [1999] I.D.A.C.D. No. 17, which notes the following:

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 11 The task of the Hearing Panel is therefore to ensure that the Settlement Agreement (and the sanctions contained therein) as agreed to by the parties is within a reasonable range of appropriateness based on the authorities submitted to us, including both case law as well as the IIROC Sanction Guidelines.

¶ 12 In addition to *Re Milewski*, the Hearing Panel was provided with the following authorities which were referred to by Enforcement Counsel in his submissions:

- a) *Re Bodon* 2018 IIROC 12
- b) *Re Jones Kelly* 2015 IIROC 5
- c) *Re Yaskiw* 2017 IIROC 19

- d) *Re Renaud* 2016 IIROC 20
- e) *Re Matthews* 2015 IIROC 2
- f) *Re Gareau* 2011 IIROC 72

¶ 13 The Hearing Panel was also provided with IIROC Dealer Member Rule 1300.1(a) and IIROC Dealer Member Rule 1300.1(q) as well the IIROC Sanction Guidelines (dated February 2, 2015).

¶ 14 The parties jointly submitted that appropriate sanctions for Rochon were as follows:

- a) a fine in the amount of \$25000;
- b) an 18 month suspension from registration in any capacity with IIROC; and
- c) costs in the amount of \$5000.

¶ 15 The IIROC Sanction Guidelines provide a framework of both general principles to be considered with respect to the imposition of sanctions in all cases as well as key factors that a hearing panel should consider in assessing appropriate sanctions.

¶ 16 The Hearing Panel considered the following to be aggravating factors in this matter:

- a) The clients in question were seniors, all retired and with respect to SN and GN, were advanced in age, and all relied on Rochon to provide suitable advice and recommendations in light of their actual circumstances and financial needs;
- b) The contraventions and misconduct in question are similar with respect to each of SN, GN, HW and RW;
- c) The contraventions took place over an extended period of time;
- d) The losses to each client were significant;
- e) The losses were exacerbated by the use of a borrowing to invest strategy; and
- f) The conversion of all client accounts from transaction based to fee based, following which little trading activity occurred.

¶ 17 The Hearing Panel considered the following to be mitigating factors in this matter:

- a) Rochon has no prior disciplinary history with IIROC that was noted in the Settlement Agreement;
- b) Rochon cooperated in the execution of the Settlement Agreement and has accepted responsibility for the contraventions;
- c) Rochon cooperated in the execution of the Settlement Agreement, which has eliminated the necessity of a protracted hearing and IIROC was relieved of its burden of proving the allegations as noted.

¶ 18 Finally, the Hearing Panel further notes that Counsel for Rochon submitted that he was in agreement with the submissions of Enforcement Counsel and encouraged the Hearing Panel to approve the Settlement Agreement.

¶ 19 Having reviewed the foregoing authorities as well as the facts and contraventions as admitted by Rochon in the Settlement Agreement, and taking into consideration both aggravating and mitigating factors, the Hearing Panel concluded that the sanctions as agreed to by the parties in the Settlement Agreement are within an acceptable range and should therefore be accepted.

Conclusion and Decision

¶ 20 Based on the facts as referenced above, the admissions of the contraventions by Rochon in the Settlement Agreement and the joint submissions and recommendations of both Counsel, the Hearing Panel is satisfied that Rochon committed the following contraventions of IIROC's Rules:

- a) Between November 2011 and May 2017, Rochon failed to use due diligence to learn and remain informed of the essential facts relative to the investment objectives and risk tolerance parameters of clients SN, GN, RW and HW contrary to IIROC Dealer Member Rule 1300.1(a); and
- b) Between January 2012 and July 2017, Rochon failed to use due diligence to ensure that the investment recommendations he made were suitable for clients SN, GN, RW and HW contrary to IIROC Dealer Member Rule 1300.1(q).

¶ 21 The Hearing Panel concludes that the proposed sanctions are appropriate to the conduct of Rochon, taking into account the goal of promoting general adherence to industry rules and standards as well as the goals of the disciplinary process which has as its primary functions the protection of the public interest, strengthening of market integrity and improving overall business standards and practices.

¶ 22 Accordingly, the Hearing Panel accepts the terms of the Settlement Agreement and gives effect to it as of January 20, 2020.

Dated at Winnipeg, Manitoba, this 7 day of February 2020.

Sean Shore

Alan McLaughlin

Bernie Plett

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Joseph Marcel Denis Rochon ("Rochon").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and Rochon jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

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

Overview

4. Rochon is a Registered Representative ("RR") in Winnipeg, Manitoba, who was responsible for the accounts of four clients, both married couples: SN/GN and RW/HW (together the "Clients").
5. Rochon failed to know the Clients, who were seniors with limited investment knowledge.

6. He failed to use due diligence to ensure that his investment recommendations were suitable for the Clients, when he pursued an investment strategy in their accounts focused primarily on growth.
7. Over an approximately 5 year period, each couple sustained losses in their accounts, which Staff calculate to be 30% and 38% respectively.

Registration History

8. At all material times, Rochon was an RR with Industrial Alliance Securities Inc. (“IAS”) in Winnipeg, Manitoba. Although he has been in the financial industry since 1973, he has been an RR since 2004. Rochon is presently 72 years of age, and effective December 31, 2019, retired as an RR.

Clients – SN/GN

(i) Failure to Know Your Client

9. SN and GN are a retired, senior couple in Winnipeg. SN was born in 1931, and GN was born in 1939. SN worked as a family physician, and GN worked as an office manager.
10. SN and GN were clients and friends of Rochon for more than 20 years.
11. SN and GN had limited investment knowledge, and relied on Rochon for his investment expertise and recommendations. They moved with him to IAS in October, 2011.
12. In November, 2011, SN opened a cash account, a RIF and a LIF with Rochon. GN opened a cash account, a RIF and a spousal RIF. The accounts were funded through a transfer in of securities (mostly mutual funds) with a market value of approximately \$87,000. These securities were mostly mutual funds which had been managed by Rochon at his previous firm.
13. At the time, SN was 81 years old and GN was 72.
14. The new client application forms (NCAF) for the SN and GN accounts all contained investment objectives of “growth”, and each were listed as having “good” investment knowledge. GN had a stated annual income of \$80,000, and SN had a stated income of \$50,000. Their combined net worth was stated to be between \$500,000 and \$550,000 (\$300,000 liquid assets).
15. The NCAFs defined “growth” investment objectives and risk tolerance as follows:
 - Cash & Cash Equivalents: 0-40%
 - Fixed Income: 0-50%
 - Equities: 30-100%
 - Aggressive Investments and Strategies: 0-30%
 - Risk is high
16. In November, 2012, SN and GN opened a joint margin account. It contained the same financial and investment objective information as the November, 2011 forms.
17. In May, 2013, account updates were completed. Investment objectives were still listed as “growth”. Investment knowledge was changed to “average” for SN but remained as “good” for GN. A time horizon was identified as less than 3 years for the non-registered accounts, and 3 to 7 years for the registered accounts. It further indicated that the purpose of the accounts was to finance part of retirement. The joint margin account also referred to speculation.
18. At the time of this account update, SN was 82 years old and GN was 73.
19. In September, 2015, the accounts were all changed from commission based accounts to 2% annual

(charged monthly) fee-based accounts.

20. In February, 2016, the accounts were updated, with the investment profile changed to “balanced”, with a time horizon of 3 to 7 years for both registered and non-registered accounts. The forms state that SN and GN were now retired, although the stated income was \$60,000 for SN and \$10,000 for GN. The net worth remained at \$550,000, but with liquid assets of \$150,000. Investment knowledge remained as “average”.
21. The NCAF’s defined “balanced” investment objectives and risk tolerance as follows:
 - Cash & Cash Equivalents: 0-40%
 - Fixed Income: 30-70%
 - Equities: 30-70%
 - Aggressive Investments and Strategies: 0-20%
 - Risk is moderate to high
22. There was very little activity in the accounts once they became fee-based.
23. Although the investment objectives and risk tolerance parameters for SN and GN were broadly listed as “growth” and “balanced”, SN and GN state that they were actually seeking a steady, conservative, long-term growth investment strategy.
24. In particular, Rochon’s decision to allow high, and moderate to high, risk tolerance parameters for clients of an advanced age was inconsistent with appropriate investment objectives and risk tolerance parameters for them. It also failed to consider that some of the invested funds were borrowed, which further increased the level of risk in their accounts.
25. For the period of January, 2012 to May, 2017, the stated investment objectives in the accounts were too aggressive for seniors who were either retired or approaching retirement, with limited investment knowledge, and who should have been seeking a steady, conservative, long-term growth strategy.
26. Rochon failed to learn and remain informed of the essential facts relative to their accounts, as the stated investment objectives for their accounts were inconsistent with their true financial circumstances, investment knowledge, investment objectives and risk tolerance.
27. Rochon maintains that SN and GN refused his advice that they needed to significantly reduce their monthly spending, which was funded by way of a Systemic Withdrawal Plan (“SWP”). He further maintains that SN and GN insisted that they wanted to be able to continue to live in their home for as long as possible, which meant the equity in their home would have to be used to support their lifestyle, and that this was discussed with SN, GN and their two children on numerous occasions.
 - (ii) Suitability
28. SN and GN relied on Rochon for investment advice and recommendations.
29. Through Rochon’s own research, investment ideas and trading activity, he pursued an aggressive investment strategy in SN and GN’s accounts which involved an elevated degree of risk.
30. In addition to the \$87,000 in kind transfer of securities deposited in November, 2011, in December, 2012, SN and GN transferred an additional \$52,000 to their accounts. At that time, the combined market value of all the SN/GN accounts was \$137,452. Subsequently, they added to the accounts with an additional \$130,000 (\$30,000 in June, 2013; \$100,000 in December, 2013), which was borrowed through a home equity line of credit (“HELOC”). Rochon says that this strategy had been discussed with SN and GN for several years, and with their children, one of whom worked in the financial industry in the United States.

31. Rochon recommended that SN/GN borrow funds with a HELOC in order to invest the proceeds. Rochon maintains that this was necessary as SN and GN wanted to stay in their home but had limited available liquid assets.
32. Rochon recommended that SN/GN invest in a combination of mutual funds, and large capitalization US issuers. Rochon employed what he described to Staff as a “deep value contrarian” investment strategy based on momentum and technical analysis. He also made use of a commercial service known as “Vector Vest” to identify investment opportunities.
33. Rochon would recommend concentrated positions in securities whose price had declined, and hold them in anticipation of a price recovery. His strategy was to roll any profits from these positions into lower risk mutual funds. This strategy, and the use of borrowed funds, increased the level of risk.
34. Many of the securities were purchased in a US margin account, in order to avoid currency conversion charges. However, as a result, SN/GN incurred approximately USD \$16,000 in margin interest charges. These charges were intended to be offset by counterbalancing investments earning cash dividends and interest in SN and GN’s other accounts.
35. Rochon was also aware that SN/GN were making regular monthly withdrawals for daily living expenses. Rochon says that he advised SN and GN many times that they needed to reduce their SWP amounts, but they declined to do so.
36. As the clients were retired, or semi-retired seniors of advanced age with limited liquid assets, and were relying on their investments for daily living expenses, the risk of loss and resulting financial harm was high.
37. Between December, 2012 and May, 2017, the combined market value of SN and GN’s accounts (including net withdrawals of \$22,000) decreased from \$137,452 to \$80,379, which represents a total net loss of \$35,073, or 30.38%. During the same time period, the S&P TSX Composite Index increased by 26.13% (excluding dividends).
38. The holdings in SN and GN’s accounts were concentrated and speculative, and in combination with the use of leverage, were inconsistent with their stated investment objectives and risk tolerance, as well as their true financial circumstances. These recommendations were not suitable in light of their age, financial situation, investment knowledge and experience.

Clients – RW/HW

(i) Failure to Know Your Client

39. RW and HW are a retired, senior couple in Manitoba. RW was born in 1949, and HW was born in 1947. RW was a teacher for many years before retiring in 2009. HW was a teacher for a number of years before staying at home with their children. She then returned to work as an administrative assistant for approximately 20 years, before retiring in 2007. Following retirement, both RW and HW continued with periodic substitute teaching.
40. RW and HW were novice investors with limited investment knowledge and exposure to the financial markets. Their investment experience was limited to mutual funds, through another mutual fund advisor.
41. This advisor had recommended that RW/HW use a line of credit for a portion of their mutual fund investments. They did so for a number of years, investing in mutual funds with borrowed funds.
42. In approximately 2011, the mutual fund advisor told them he was changing his business to focus more on insurance. He recommended Rochon as a new advisor for them. They were with Rochon briefly with another Dealer Member, and then moved with him to IAS in October, 2011.

43. RW and HW believed that Rochon would continue to recommend similar investments to those of their previous advisor. They had limited investment knowledge, and relied on Rochon for his investment expertise and recommendations. Rochon was also aware that RW/HW were using borrowed funds to finance some of the investments.
44. In January, 2012, RW opened a margin account and an RSP account. HW opened an RSP account, Spousal RSP, and a LIRA. The accounts were funded through a transfer in of securities (mutual funds) with a market value of approximately \$114,000.
45. At this time, RW was 62 years old and HW was 64.
46. The new client application forms (NCAF) for the RW and HW accounts all contained investment objectives of “growth”, and each were listed as having “good” investment knowledge. RW and HW were both listed as substitute teachers, with annual incomes of \$55,600, and \$40,000 respectively. Their combined net worth was stated to be \$500,000 (\$150,000 liquid assets).
47. The NCAFs defined “growth” investment objectives and risk tolerance as follows:
 - Cash & Cash Equivalents: 0-40%
 - Fixed Income: 0-50%
 - Equities: 30-100%
 - Aggressive Investments and Strategies: 0-30%
 - Risk is high
48. In May, 2013, account updates were completed. Investment objectives were still listed as “growth”. Investment knowledge was changed to “average” for HW but remained as “good” for GN. Occupations remain listed as “substitute teachers”. A time horizon was identified as less than 3 years for the non-registered accounts, and 3 to 7 years for the registered accounts. It further indicated that the purpose of the accounts was to finance part of retirement. The margin and RSP account for RW referred to speculation.
49. In July, 2015, the accounts were all changed from commission based accounts to 2% annual (charged monthly) fee-based accounts.
50. In June, 2015, the accounts were updated, with the investment profile changed from “Growth” to “Maximum Growth” in all accounts. The rest of the information on the forms remained identical, with the exception of the purpose of the account, which removed the reference to speculation.
51. The NCAF’s defined “maximum growth” investment objectives and risk tolerance as follows:
 - Cash & Cash Equivalents: 0-30%
 - Fixed Income: 0-30%
 - Equities: 60-100%
 - Aggressive Investments and Strategies: 0-100%
 - Risk is high
52. There was very little activity in the accounts once they became fee-based. RW/HW transferred their accounts in August, 2017.
53. Although the investment objectives and risk tolerance parameters for RW and HW were broadly listed as “growth” and later changed to “maximum growth”, RW and HW, who were retired, say that they were seeking a steady, conservative, long term growth investment strategy.

54. Rochon's recommendation to increase the level of risk in the accounts as the clients grew older was inconsistent with the clients' actual intended investment objectives and risk tolerance. Some of the invested funds were borrowed and this further increased the level of risk in the accounts.
55. For the period of January, 2012 to July, 2017, Rochon failed to learn and remain informed of essential facts relative to RW/HW, as the stated investment objectives in their accounts were too aggressive for these clients, who were retired seniors, with limited investment knowledge, and were seeking a steady, conservative, long term growth strategy.

(ii) Suitability

56. RW and HW relied on Rochon for his investment advice and recommendations. They believed Rochon would continue with a conservative investment strategy similar to that of their previous mutual fund advisor.
57. Through Rochon's own research, investment ideas and trading activity, he pursued an aggressive investment strategy in their accounts which involved an elevated degree of risk.
58. As of June, 2012, the combined market value of all the RW/HW accounts was \$114,265. This included funds borrowed from a line of credit in the amount of approximately \$50,000. Rochon was aware that the accounts included borrowed funds.
59. Rochon recommended that RW/HW invest in a combination of mutual funds, and large capitalization US issuers. Rochon employed what he described to Staff as a "deep value contrarian" investment strategy based on momentum and technical analysis. He also made use of a commercial service known as "Vector Vest" to identify investment opportunities.
60. Rochon would recommend concentrated positions in securities whose price had declined, and hold them in anticipation of a price recovery. His strategy was to roll any profits from these positions into lower risk mutual funds. The concentrated positions, and the use of borrowed funds, increased the level of risk.
61. Many of the securities were purchased in a US margin account, in order to avoid currency conversion charges. However, as a result, RW/HW incurred approximately USD \$7,800 in margin interest charges.
62. As the clients were retired seniors with limited liquid assets, the risk of loss and resulting financial harm was high.
63. Between June, 2012 and July, 2017, the combined market value of their accounts (net of a \$5,000 withdrawal) decreased from \$114,265 to \$65,694, which represents a total net loss of \$43,460, or 38%. During the same time period, the S&P TSX Composite Index increased by 33.29% (excluding dividends).
64. The holdings in RW/HW's accounts were concentrated and speculative, contrary to RW and HW's true financial circumstances, and were not suitable in light of their age, financial situation, investment knowledge and experience.

PART IV – CONTRAVENTIONS

65. By engaging in the conduct described above, Rochon committed the following contraventions of IIROC's Rules:

Contravention 1

Between November, 2011 and May, 2017, he failed to use due diligence to learn and remain informed of essential facts relative to the investment objectives and risk tolerance parameters of clients SN, GN, RW and HW contrary to Dealer Member Rule 1300.1(a); and

Contravention 2

Between January, 2012 and July, 2017, he failed to use due diligence to ensure that investment recommendations were suitable for clients SN, GN, RW and HW contrary to Dealer Member Rule 1300.1(q).

PART V – TERMS OF SETTLEMENT

66. Rochon agrees to the following sanctions and costs:
 - a. a fine in the amount of \$25,000;
 - b. an 18 month suspension from registration in any capacity with IIROC; and
 - c. costs in the amount of \$5,000.
67. If this Settlement Agreement is accepted by the Hearing Panel, Rochon agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and Rochon.

PART VI – STAFF COMMITMENT

68. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against Rochon 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.
69. If the Hearing Panel accepts this Settlement Agreement and Rochon fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against Rochon. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

70. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
71. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing 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.
72. Staff and Rochon 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 Rochon does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
73. If the Hearing Panel accepts the Settlement Agreement, Rochon agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
74. If the Hearing Panel rejects the Settlement Agreement, Staff and Rochon may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
75. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
76. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will then post a full of 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.
77. The Settlement Agreement is effective and binding upon Rochon and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

- 78. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 79. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 10th day of January, 2020.

“Witness”

Witness

“Witness”

Witness

“Joseph Marcel Denis Rochon”

Joseph Marcel Denis Rochon

“David McLellan”

David McLellan

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

The Settlement Agreement is hereby accepted this 20th day of January, 2020 by the following Hearing Panel:

Per: “Sean Shore”

Panel Chair

Per: “Alan McLaughlin”

Panel Member

Per: “Bernie Plett”

Panel Member

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