

## Re Martel

IN THE MATTER OF:

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

**and**

**Emmanuel Martel**

2020 IIROC 30

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

Hearing: August 18, 2020 in Montréal, Québec (electronic hearing)

Decision: August 18, 2020

Written decision: September 9, 2020

**Hearing Panel:**

Michel Brunet, Chair, Éline C. Phénix and Jacques Lemay

**Appearances:**

Francis Larin, Enforcement Counsel

Yves Robillard, Counsel for Respondent

Emmanuel Martel (absent)

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## DECISION ON SETTLEMENT AGREEMENT

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### The Settlement Agreement

¶ 1 A settlement agreement was entered into between IIROC Staff and Emmanuel Martel on June 23, 2020 (the Settlement Agreement).

¶ 2 An electronic hearing was conducted before the Hearing Panel to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, the Hearing Panel should accept the Settlement Agreement in respect of the Respondent's alleged misconduct.

¶ 3 The question that arose essentially pertained to the appropriateness of the penalties provided under the Settlement Agreement.

¶ 4 After a brief deliberation, the Hearing Panel informed the parties that it was accepting the Settlement Agreement, and that the reasons for its acceptance would follow later.

### The Contravention

- ¶ 5 In the Settlement Agreement, the Respondent admits having committed the following contravention:
- In September 2017, the Respondent recommended trades that were unsuitable for two of his clients, contrary to IIROC Dealer Member Rule 1300.1(q).

### **The Facts**

¶ 6 Part III of the Settlement Agreement, which is appended hereto, contains the relevant detailed facts. It relates that from September 2013 to May 2018, the Respondent recommended and mainly executed short-selling call option transactions on behalf of two clients who held a joint account with his employer. Readers interested in the details should turn to paragraphs 12 to 27 of the Settlement Agreement. Ultimately, one trade effected in accordance with the strategy proposed by the Respondent to his clients resulted in a net loss of US \$259,395.

¶ 7 Following a complaint filed by the clients of the Respondent, the latter's employer offered to compensate them, and a settlement agreement was signed to that effect. It is important to note that the Respondent admitted that when the trades that led to the losses were executed, he did not ensure, despite all his good faith, that the clients clearly understood all of the risks associated with the strategy he was proposing.

¶ 8 The Respondent's employer imposed the following internal measures against him by reason of the trades in question:

- i. Charitable donation in the amount of \$15,000;
- ii. Prohibition against options trading for any of his clients;
- iii. Quarterly review of all trades executed for his clients, by the regional manager, for a period of one year;
- iv. Rewrite of the Conduct and Practices Handbook Course.

¶ 9 The Respondent complied with all of these measures.

### **The Penalties Stipulated in the Settlement Agreement**

¶ 10 During the hearing, Counsel for IIROC brought to the Hearing Panel's attention that the Respondent did not benefit financially from the alleged trades, since the Respondent's clients' account was a fee-based account. Furthermore, the Respondent cooperated in the investigation into his conduct. Counsel for IIROC then summarized for the benefit of the Hearing Panel all of the decisions and precedents submitted in support of the conclusions sought in this matter. The Book of Rules and Authorities prepared by the latter contains numerous precedents which provide a useful guide to the Hearing Panel in its deliberations and decision.

¶ 11 Counsel for the Respondent, for his part, mentioned that his client had no disciplinary history, that the alleged misconduct constituted an "isolated incident" and that his client had admitted his failings very early in the proceedings initiated by IIROC. Furthermore, he added, his client had already been imposed penalties by his employer.

### **The Acceptance of the Settlement Agreement**

¶ 12 The Hearing Panel may accept or reject the Settlement Agreement. It is generally agreed that a hearing panel should accept a settlement agreement as long as the penalties that it provides fall within "a reasonable range of appropriateness" (see for ex. *Re Zhang* 2013 IIROC 35).

¶ 13 In *Re Milewski*, [1999] I.D.A.C.D. No. 17, one of the numerous precedents submitted to the Hearing Panel, which precedent is in fact often cited in matters such as this, a District Council considered whether to

accept a settlement agreement between a registered representative and the Investment Dealers Association, IIROC's predecessor. The allegations were that a registered representative had sold clients investments that were unsuitable given the clients' stated investment objectives. The penalty proposed was a substantial fine plus disgorgement of commissions. The District Council accepted the settlement. It stated that the test to be applied to determine whether it should accept a settlement agreement was the following:

*Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. [Our emphasis]*

*This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept", rather than "approve", a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. (pp. 9-10).*

¶ 14 This Hearing Panel wishes to underscore the importance that it has attributed to the principle stated in *Re Milewski*, to the effect that a hearing panel may not reject a settlement unless it considers that a penalty clearly falls outside the reasonable range of appropriateness. The penalties agreed to in the Settlement Agreement under consideration, namely:

- a) A fine in the amount of \$12,500;
- b) An additional amount of \$2,500 in costs to IIROC,

seemed lenient to us initially, being at the very least situated at the lower end of a "range of appropriateness".

¶ 15 Our deliberations led us to conclude that we must nevertheless accept the Settlement Agreement, despite the reluctance that we experienced initially due to the gravity, in our eyes, of the Respondent's alleged practices. Recommending and executing short-selling call option transactions for sexagenarian clients seems to us reprehensible in the circumstances.

¶ 16 We still concluded that we must accept the settlement agreement given the recognized benefits of the settlement procedure. Our decision was also motivated by the following additional arguments, put forward by counsel for both parties:

- i) The brief period during which the material facts occurred;
- ii) The limited number of clients involved;
- iii) The good faith of the Respondent;
- iv) The compensation paid to the Respondent's clients; and
- v) All the penalties imposed on the Respondent by the employer.

¶ 17 As well, just as the hearing panel did in *Re Maurice* 2019 IIROC 20 dated July 16, 2019, and copiously

cited by the parties in this matter, we also considered, as counsel for both parties have suggested, the general principles outlined in the Sanction Guidelines and the case law, as well as the public interest. We also took into account the necessity of addressing both specific and general deterrence.

### **The Conclusion**

¶ 18 Considering the submissions by counsel for both parties, the precedents cited and the positive factors invoked regarding the conduct of the Respondent, the Hearing Panel concludes that the penalties proposed in the Settlement Agreement fall within a reasonable range of appropriateness and accepts the Settlement Agreement.

Dated this 9<sup>th</sup> day of September, 2020 at Montréal.

Michel Brunet

Elaine C. Phénix

Jacques Lemay

## **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 Emmanuel Martel (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, and with its predecessor the Investment Dealers Association of Canada (IDA), since 1999.
5. The Respondent has been employed with National Bank Financial Inc. (NBF) since March 2000.
6. The Respondent has no disciplinary history.

### **Details**

7. In April 2005, the clients AN and RD opened a joint account with the Respondent.
8. The main features of this account could be summarized as follows:

AN and RD Joint Account						
Date	Age	Knowledge	Objectives	Risk	Horizon	Wealth/Income (\$)
April 22, 2005	AN: 51 yrs RD: 56 yrs	Average	Balanced Liquidity: 0%-20% Income: 30%-65% Growth: 30%-65% Alternative inv.: 0%-15%	Medium	Over 10 years	Total Wealth: \$2,040,000  Annual income: \$75,000

9. In July 2010, the main features of the joint account opened by the clients AN and RD were revised as follows:

AN and RD Joint Account						
Date	Age	Knowledge	Objectives	Risk	Horizon	Wealth/Income (\$)
July 4, 2010	AN: 56 yrs RD: 61 yrs	Average	Conservative Liquidity: 0%-15% Income: 50%-60% Growth: 20%-45% Alternative inv.: 0%-10%	Low	Over 10 years	Total Wealth: \$1,140,000  Annual income: \$50,000

10. On or around September 3, 2013, the clients AN and RD proceeded to open, with the Respondent, a fee-based Level 4 options account, with the following related features:

AN and RD Joint Account						
Date	Age	Knowledge	Objectives	Risk	Horizon	Wealth/Income (\$)
September 3, 2013	AN: 59 yrs RD: 64 yrs	Fair	Growth + Level 4 Option Liquidity: 0%-25% Income: 25%-45% Growth: 40%-75% Alternative inv.: 0%-20%	High	Over 10 years	Total Wealth: \$1,150,000  Annual income: \$60,000

11. From September 2013 to May 2018, the Respondent recommended and mainly executed short-selling call option transactions on behalf of the clients AN and RD.
12. On or around September 8, 2017, the Respondent proposed to clients AN and RB an uncovered put strategy for the underlying stock of iPath S&P 500 VIX Short-Term Futures ETN (VXX).
13. The objective sought with this strategy was to capture premium without having to buy the underlying, by anticipating that the option would expire “out of the money”.
14. The Respondent had already successfully executed a similar, though much less risky strategy in the clients AN and RB’s account in August 2017.

15. The Respondent considered that, on September 8, 2017, there were factors that favoured the strategy's success.
16. After discussion with the clients AN and RB, the Respondent therefore, on September 8, 2017, sold two uncovered puts of 150 put options on the underlying, at different "out-of-the-money" strike prices and over a short term.
17. These puts generated US \$12,730.70 in premiums for the clients AN and RD.
18. On September 15, 2017, contrary to expectations, the clients AN and RD were assigned the options in question and were therefore obligated to buy the underlying.
19. As at September 18, 2017, the unrealized net loss caused by the sales had reached US \$107,269.36.
20. On September 27, 2017, the Respondent met with the clients AN and RB and, based on the explanations that he provided them at that time, AN and RB chose to retain the underlying in anticipation of a possible appreciation in its market value.
21. On October 5, 2017, since the value of the underlying was depreciating, the clients AN and RB, after consulting the Respondent, decided to liquidate.
22. The net loss resulting from the sale of the underlying then rose to US \$259,395.07.
23. The trades in question are described in the following table:

Date	Transaction	Volume	Security	Price	Total
2017/09/11	Call	150	Put 100 VIX, 17 SP@46	0.34	5,139.88
2017/09/11	Call	150	Put 100 VIX, 17 SP@46,5	0.51	7,590.82
2017/09/18	Assignment	-150	Put 100 VIX, 17 SP@46	0.00	0.00
2017/09/18	Assignment	-150	Put 100 VIX, 17 SP@46,5	0.00	0.00
2017/09/19	Put	15,000	Barclays Ipath S&P500 VIX	46.00	-690,000.00
2017/09/19	Put	15,000	Barclays Ipath S&P500 VIX	46.50	-697,500.00
2017/10/10	Call	30,000	Barclays Ipath S&P500 VIX	37.18	1,115,374.23
					Loss: US \$259,395.07

24. Following a complaint filed by the clients AN and RD, NBF offered the latter compensation, and a settlement agreement was signed to that effect, on or around December 21, 2018.
25. The Respondent has, for his part, admitted that when the trades were executed in September 2017, he did not make sure, despite all his good faith, that the clients AN and RD clearly understood all of the risks associated with this strategy.
26. On or around June 17, 2019, NBF imposed internal measures against the Respondent by reason of the above-mentioned trades in the account of AN and RD, including:
  - i. Charitable donation in the amount of \$15,000;
  - ii. Prohibition against options trading for any of his clients;
  - iii. Quarterly review of all trades executed for his clients, by the regional manager, for a period of one year;

iv. Rewrite of the Conduct and Practices Handbook Course.

27. As of this date, the Respondent has complied with each of these measures.

#### **PART IV – CONTRAVENTIONS**

28. By engaging in the above-described conduct, the Respondent admits to having committed the following contravention of IIROC’s Rules:

In September 2017, the Respondent recommended trades that were unsuitable for two of his clients, contrary to IIROC Dealer Member Rule 1300.1(q).

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

29. The Respondent accepts the following penalties and costs:

- a) A fine in the amount of \$12,500;
- b) Costs to IIROC in the amount of \$2,500.

30. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to pay the amounts referred to above, namely \$15,000, within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

31. 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.

32. 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**

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

34. 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.

35. 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.

36. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights, under IIROC rules and any applicable legislation, to any further hearing, appeal and review.

37. 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 based on the same or related allegations.

38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

39. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post the full text 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.
40. 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.
41. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

#### **PART VIII – EXECUTION OF THE SETTLEMENT AGREEMENT**

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

**DATED** this 16<sup>th</sup> day of June, 2020.

(s) Emmanuel Martel

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Emmanuel Martel

Respondent

**DATED** this 23<sup>rd</sup> day of June 2020.

(s) Francis Larin

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**Francis Larin**

Senior Enforcement Counsel,

on behalf of IIROC Enforcement Staff

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