

Re Nassif

IN THE MATTER OF:

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

and

Milad Nassif

2014 IIROC 49

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

Hearing held on: September 12, 2014
Decision rendered on: October 16, 2014

Hearing Panel

Me Alain Arsenault, Chair, Mr. Michel Duchesne and Mr. Guy L. Jolicoeur

Appearances

Me Martin Hovington, Counsel for IIROC

Me Brahm Campbell, Counsel for the Respondent

DECISION ON SETTLEMENT

¶ 1 After investigation, the Enforcement Department of the Investment Industry Regulatory Organization of Canada (“IIROC”) determined that Mr. Milad Nassif may have committed a violation for which he may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC, namely:

- 1) “Between September 2010 and December 2011, the Respondent failed to use due diligence to ensure that the acceptance of orders in his account, and in those of his wife and son, was within the bounds of good business practice contrary to IIROC Rule 1300.1(o).”

¶ 2 On August 25, 2014, the parties consented and agreed to the settlement of these matters by way of the Settlement Agreement which is appended hereto and deemed to form an integral part hereof.

¶ 3 The factual background in this matter is summarized in paragraphs 10 to 56 of this Settlement Agreement, as follows:

"10. Between September 2010 and December 2011 (the material period), Mr. Nassif, who was then employed with CTI Capital Securities Inc. (CTI), effected numerous trades in his margin account, in the margin and RRSP accounts of his spouse, Mrs. A, and in the margin account of his son, Mr. B, whereas these accounts did not have sufficient funds or margins to cover the trades and whereas no effort was made to ensure adequate settlement of these trades, thus engaging in the practice commonly known as “free-riding”;

11. In so doing, the Respondent also contravened the rules applicable to margin accounts and RRSP accounts, in that he:

- a) Neglected or refused to maintain a sufficient margin in the margin accounts;
- b) Neglected or refused to submit to the margin calls issued by the CTI Compliance Department;
- c) Contravened the fiscal rules applicable to RRSP accounts by placing these accounts in debt positions;

12. Mr. Nassif was under the impression that all of these transactions were covered and accepted by his employer CTI;

[...]

13. At all material times, Mr. Nassif was employed with CTI as an investment advisor and was under close supervision;

14. At all material times, Mr. Nassif held authorizations to trade for the accounts of his spouse, Mrs. A, and his son, Mr. B;

15. Since October 16, 2013, Mr. Nassif is no longer employed with CTI or with any IIROC-regulated firm;

[...]

ACCOUNTS OF Mrs. A

17. Mrs. A had three (3) accounts at CTI [...]

18. As previously stated, Mr. Nassif held authorizations to trade for these three (3) accounts and carried out all the transactions;

19. On numerous occasions during the material period, Mr. Nassif executed trades in these accounts whereas the accounts did not have the necessary funds or cash to purchase securities and, on the transaction settlement date, he made no effort to deposit the required funds or cash to pay for the purchases, thus engaging in free-riding;

20. Moreover, during the material period, Mr. Nassif executed trades in the margin account of Mrs. A, transactions that did not respect the margin rate prescribed by regulation, thus repeatedly placing the account in a deficit margin position;

21. On numerous occasions during the material period, Mrs. A's margin account was the object of margin calls, without Mrs. A or Mr. Nassif depositing the sums required under the terms of these margin calls;

22. During the material period, there were approximately 66 margin calls on Mrs. A's margin account;

[...]

27. Moreover, during the material period, Mr. Nassif effected trades in Mrs. A's RRSP accounts whereas these accounts did not have the funds or the necessary liquidity to purchase securities, thus repeatedly placing the accounts in a debit position, contrary to the rules and the fiscal legislation applicable to this type of account;

28. Mr. Nassif effected purchases in Mrs. A's RRSP account no. 4FXXX9S, whereas the account liquidity was less than the sum of the purchases and the RRSP portfolio value was substantially less than the sum of the trades;

29. Mr. Nassif was doing day trading in this RRSP account, without freeing up sufficient

cash to cover the purchases, contenting himself with closing out said position before the markets closed;

[...]

32. The findings were the same in the spouse's RRSP account.

[...]

ACCOUNT OF MR. B

33. Mr. B held the CND/US margin account bearing no. 4FXXX4E/F at CTI;

34. Mr. Nassif had an authorization to trade for this account and, during the material period, executed all the transactions in this account;

35. On numerous occasions during the material period, Mr. Nassif effected trades in this account, whereas the account did not contain the funds or cash necessary to complete the share purchase, and on the settlement date for the share purchase, did not deposit the funds or cash required to pay for the purchase, thus engaging in free-riding;

36. What's more, during the material period, Mr. Nassif executed trades in this account that contravened the margin rate prescribed in the regulations, thus repeatedly placing the account in a deficit margin position;

37. On numerous occasions during the material period, Mr. B's margin account was the object of margin calls, without Mr. B or Mr. Nassif depositing the sums required under the terms of these margin calls;

38. More specifically, 34 margin calls were issued by the CTI Compliance Department on a total of 56 trades effected by Mr. Nassif.

ACCOUNT OF MILAD NASSIF

39. Mr. Nassif held the CND/US margin account bearing no. 4FXXX1F/E at CTI;

40. During the material period, the trading in this account was mainly concentrated in the month of November 2010;

41. During the material period and especially during the month of November 2010, Mr. Nassif effected trades in this account when it did not contain the funds or cash necessary to complete a stock purchase and, on the settlement date for the stock purchase, Mr. Nassif did not deposit the funds or cash required to pay for the purchase, thus engaging in free-riding;

42. What's more, during the material period, Mr. Nassif executed trades in this account that contravened the margin rate prescribed in the regulations, thus repeatedly placing the account in a deficit margin position;

43. On numerous occasions during the material period, Mr. Nassif's margin account was the object of margin calls, without Mr. Nassif depositing the sums required in accordance with the terms of these margin calls;

[...]

48. In November 2010, Mr. Nassif received eight (8) margin calls on his account, without these margin calls being rectified;

49. From September 2010 to December 2011, Mr. Nassif did not make any financial contribution to his margin account or provide any valid guarantees to secure his purchases.

OTHER CONSIDERATIONS

50. During the material period, the CTI Compliance Department issued an approximate total of 116 margin calls to Mr. Nassif for the accounts of Mrs. A, Mr. B and Mr. Nassif;

51. Between September 2010 and September 2011, Mr. Nassif executed over 900 trades;

52. During the material period, the only financial contributions made by Mr. Nassif to the aforementioned accounts were the deposit of a sum of \$16,000 to Mrs. A's margin account, and a sum of \$20,000 to the RRSP account of Mrs. A's spouse;

53. In the course of his interview as part of IIROC's investigation, Mr. Nassif admitted knowing the rules applicable to RRSP accounts, admitting that an RRSP account cannot be in a debit position;

[...]

55. Although Mr. Nassif indicated, in the course of his interview, that he always intended to pay for his purchases, in actual fact, he practically never deposited the funds or guarantees required to ensure the adequate settlement of his trades.

56. Nassif was at all times under the impression that he was not in violation of the applicable rules, and was even under the impression that CTI authorized the type of trades that he executed in the aforementioned accounts;

¶ 4 The Settlement Agreement concluded between the parties, by which the Respondent acknowledges his guilt in respect of the offence, provides for the following terms of settlement:

- a) Payment of a fine of \$25,000;
- b) Successful completion of the Conduct and Practices Handbook Course within one (1) year of the decision to be rendered in the matter of this Settlement Agreement;
- c) The obligation of 24 months of close supervision following Respondent's reapproval; and
- d) Costs in the amount of \$2,500.

¶ 5 On September 12, 2014, a settlement hearing was held, during which the Hearing Panel heard the pleadings of the legal counsel for both parties, who jointly recommended acceptance of the Settlement Agreement that was concluded between them on August 25, 2014, pursuant to *IIROC Dealer Member Rule 20.36* and Rule 14 of the *Rules of Practice and Procedure*.

¶ 6 At the hearing, the legal counsel for both parties outlined the aggravating and mitigating circumstances that, in their opinion, justify the terms of settlement agreed between the parties.

¶ 7 The aggravating circumstances raised by counsel for the parties are as follows:

- Between September 2010 and September 2011, Mr. Nassif executed over 450 day-trades, most of which contravened the rules and constituted free-riding;
- When he executed these trades, Mr. Nassif was already under close supervision;
- Mr. Nassif was poorly informed about the rules applicable to the types of trades and accounts covered in the Settlement Agreement;
- By engaging in free-riding, Mr. Nassif endangered the CTI firm's capital.

¶ 8 The mitigating circumstances raised by counsel for the parties are as follows:

- None of CTI's clients suffered any financial loss from the free-riding trades effected by Mr. Nassif;

- During the period in question, Mr. Nassif was under the impression that his employer tolerated free-riding trades;
- Mr. Nassif cooperated fully in the investigation conducted by IIROC's Enforcement Department, and pleaded guilty to the allegations against him;
- Mr. Nassif did not derive any financial benefit from the free-riding trades that he executed;
- Mr. Nassif ceased all free-riding as soon as he was informed that these trades violated the applicable rules.

¶ 9 In this instance, the Hearing Panel must analyze the content of the Settlement Agreement concluded between the parties to determine whether the penalties that it provides are reasonable and meet the objectives stated in the *Dealer Members' Disciplinary Sanction Guidelines*:

“1. Main concerns when determining an appropriate penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions As Deterrence

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

“Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention

rather than punishment.”

[...]

3. Key Considerations When Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including , but not restricted to the following:

[...]

3.2 Blameworthiness

In appropriate cases, distinctions should be drawn between conduct that was unintentional or negligent, and conduct that involves manipulative, fraudulent or deceptive conduct. Distinctions should also be drawn between isolated incidents and repeated, pervasive, or systemic contraventions of the Dealer Member Rules.

[...]

3.3 Degree of Participation

As a general rule, there ought to be a distinction between the sanctions imposed on direct perpetrators and those with a lesser level of complicity. [...] Any form of diminished or impaired responsibility should also be taken into account to mitigate blameworthiness.

[...]

3.6 Acceptance of Responsibilities, Acknowledgment of Misconduct and Remorse

An admission of wrongdoing by a respondent is usually considered to be a mitigating factor because it implies remorse and an acknowledgement of responsibility. [...]

3.7 Credit for Cooperation

Since Dealer Member regulation is dependent in large part upon the adherence to internal controls and compliance regimes, full cooperation with the Corporation’s investigations by registrants is expected. However, respondents or potential respondents should be given credit for cooperation if they act in a reasonable manner during the course of investigation and disciplinary process by self-reporting and self-correcting the misconduct in question.

[...]

3.8 Voluntary Rehabilitative Efforts

Remediation efforts prior to (or even subsequent to) detection or intervention by the Corporation should be taken into consideration as mitigating the seriousness of misconduct.

[...]

3.10 Planning and Organization

Evidence of planning and pre-meditation are aggravating factors. Hearing Panels should consider the degree of organization and planning, associated with the misconduct, along with the number, size and character of the transactions. Evidence of calculated and deliberate acts may foreclose a claim of rash action or temporary lapse of judgment. Other factors that may come into play include:

[...]

(ii) Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from the Corporation, another regulator, or a supervisor (in the case of an individual respondent) that the conduct violated Dealer Member rules or applicable federal or provincial statute relating to the trading or advising in respect of securities or commodities or of any regulation or policy made pursuant thereto.

3.11 Multiple Incidents of Misconduct Over and Extended Period of Time

Generally, blameworthiness is compounded as the number of incidents expands.
[...]

4 Use of Sanctions

As set out above, sanctions should be remedial in nature and “fit” the misconduct. Sanctions should effectively address the conduct in question in such a way as to discourage and prevent future misconduct by the respondent, and at the same time, promote general adherence to industry rules and standards.

[...]”.

¶ 10 In *Re BMO Nesbitt Burns*¹, the hearing panel noted that, to determine the reasonable nature of a penalty proposed in a settlement agreement, inspiration may be drawn from other decisions rendered in similar matters, and from the guidelines decreed by a regulatory organization:

“9. In determining whether a settlement is a reasonable one, a hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what may be an appropriate penalty in a given case. However, they are useful in that they show what penalties members of the industry think are generally appropriate. [...]

10. Decisions in other cases can also help to indicate what might be a reasonable range of penalties. [...]”

¶ 11 In this instance, taking into account the facts of the matter, the Hearing Panel has retained the decisions in *Re Beckett*², *Re Doquang*³ and *Re Brown*⁴ from the case law deposited by counsel for IIROC;

¶ 12 In *Re Beckett*, the registered representative had admitted to the following violations:

“As a result of the Association’s investigation it was alleged that Mr. Beckett:

1. Effected trades for a customer in a discretionary account for which prior written authorization had not been given by the customer and which account had not been specifically approved and accepted in writing as a discretionary account by the

¹ [2012] IIROC 21.

² [1993] I.D.A.C.D. No. 6.

³ [1995] I.D.A.C.D. No. 6.

⁴ [2004] I.D.A.C.D. No. 7.

- designated person of the Member firm, as requires by Regulation 1300.4, and thereby committed a violation to By-law 20.10(a)(2); and;
2. Failed to use due diligence to ensure that trades effected for a client were within the bounds of good business practice, as required by Regulation 1300.1(b), and thereby committed a violation contrary to By-law 20.10(a)(2).

Between March, 1986 and January, 1988, Mr. Beckett executed a number of trades for the RRSP account of a client upon his own discretion. Although the client agreed to the use of discretion, the client had not given written discretionary authority, and the account was not approved and accepted as a discretionary account by the Member firm. Also, Mr. Beckett executed a number of trades which put the RRSP into a debit position, contrary to the provisions of the Income Tax Act.”

¶ 13 In this matter, the Hearing Panel accepted a settlement agreement that provided the following sanctions:

- “i) A fine in the amount of \$5,000.00;
- ii) The imposition of a condition upon his continued approval as a registered representative of a Member of the Association that he re-write and pass the examination based on the Manual of Registered Representatives administered by the Canadian Securities Institute;
- iii) Payment toward the Association’s costs of investigation in the amount of 700,00 \$.”

¶ 14 In *Re Doquang*, the registered representative was accused of committing the following violations:

“As a result of the Association’s investigation it was alleged that, between January, 1991 and July, 1992, Mr. Doquang:

- 5 On three separate occasions, completed and signed new account application forms for a client which were, to his knowledge, false and misleading, and thereby engaged in a business conduct or practice unbecoming a registered representative, or not in the public interest, contrary to By-law 29.1; and
- 6 Failed to use due diligence to ensure that orders accepted for the account of a client were within the bounds of good business practice, and thereby committed a violation contrary to Regulation 1300.1(b).”

¶ 15 More particularly, the notice of hearing notably reported the following facts as being at the origin of the counts mentioned above:

[TRANSLATION]

“Between January 10, 1991 and July 30, 1992, the Defendant made approximately one thousand two hundred and ninety-three (1,293) trades (each of them being an initial trade and a closing trade) on various categories of futures contracts for the account of Mr. Hip. These trades translated into a cumulative loss of approximately US\$195,000.

[...]

On or around July 29, 1992, the Member forbade any further trades on Mr. Hip’s futures contracts account, as the latter had not responded to a margin call. In spite of this prohibition, the Defendant made one initial trade and one closing trade on July 30, 1992 at the insistence of Mr. Hip. As of July 31, 1992, Mr. Hip’s account showed an unsecured debit balance of US\$22,021.25.”

¶ 16 In this matter, the hearing panel, after taking into account the registered representative’s business and financial circumstances, had imposed the following penalties:

- A fine of \$10,000;
- Investigation costs in the amount of \$1,500;
- The obligation for the registered representative to rewrite and pass the Canadian Securities Institute's Conduct and Practices Handbook exam, as a condition for his continued approval.

¶ 17 Finally, in *Re Brown*, the registered representative had admitted to the following contraventions:

“Pursuant to the Settlement Agreement, Ms. Brown admitted that she:

- Conducted 8 trades in the joint cash account of Mr. and Mrs. A with discretion as to at least one of the following elements : the quantity of the security traded, its price, or the time of the trade, without the account being designated as a discretionary account or managed account contrary to IDA Regulations 1300.4 and 1300.5;
- Conducted three trades in the joint cash account of Mr. and Mrs. A and sold those shares prior to settlement date without first obtaining payment for the said shares, a practice commonly known as free-riding and in so doing engaged in business conduct which was unbecoming or detrimental to the public interest, contrary to By-law 29.1; and
- Did not observe high standards of ethics and conduct in the transaction of her business when she misrepresented to Mr. and Mrs. A that she was a certified Financial Planner when she was not so designated, contrary to By-law 29.1.”

¶ 18 In this matter, the hearing panel had accepted a settlement agreement which provided the following penalties:

- “- A fine of the amount of \$25,000;
- Disgorgement of commissions in the amount of \$137.28;
- Close supervision for one month; and
- Re-write and pass the examination based on the Conduct and Practices Handbook within 6 months.

Ms. Brown is also required to pay \$7,500.00 towards the Association's costs of the investigation of this matter.”

¶ 19 Concerning the three matters mentioned above, this Hearing Panel wishes to point out that the fines imposed on the representatives who were at fault covered the aggregate of the contraventions that were committed, so that it is not possible to know exactly what portion is attributable to each.

¶ 20 The *IIROC Dealer Member Disciplinary Sanction Guidelines* suggests the following sanctions in respect of the alleged contravention by Mr. Nassif:

GUIDELINES

3.4 Order not within Bounds of Good Business Practice – Dealer Member Rule 1300.1(o)

Historically, this contravention has involved situations where the registrant executes trades in a client's account where there are insufficient funds in the account to settle the trade (i.e. Free-riding). [...] For many of the situations that are captured by this regulation, the main concern will be the client's best interests. That is, orders not within the bounds of good business practice will involve, to some degree, a breach of the registrant's duty to act in the client's best interest.

Considerations in Addition to General Principles:

1. Basis for which order not within bounds of good business practice.
2. Number of orders executed.
3. Magnitude of losses, if any, directly attributable to the orders executed.
4. Client's acceptance of orders.
5. Level of sophistication of client.

Recommended Sanctions:

- Fine: Minimum fine of \$10,000.
- Disgorgement of profit.
- Re-write of CPH.
- Period of close and/or strict supervision.
- Period of suspension (in most egregious cases where significant losses to client and elements of deception present).

¶ 21 In this instance, the \$25,000 fine agreed between the parties in their settlement agreement may seem severe, notably if one takes into account the applicable case law and the *IIROC Dealer Members Disciplinary Sanction Guidelines*.

¶ 22 Nevertheless, the Hearing Panel notes that, pursuant to *IIROC Dealer Member Rule 20.36*, its powers relative to a settlement agreement are limited to accepting or rejecting the agreement. It may in no case modify the content.

¶ 23 Similarly, the Hearing Panel may not set aside the settlement agreement concluded between the parties simply because it would not have imposed the same penalties following a disciplinary hearing.

¶ 24 In *Re BMO Nesbitt Burns*, supra, the hearing panel recalled this principle in paragraph 8 of its decision:

“8. It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38 :

13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,

... 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.

14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC* [2004] O.J. 4260 :

There is a presumption of fairness when a proposed class settlement negotiated at arms length... is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall « outside a range of appropriateness » and it should therefore be, and was, accepted by the panel.”

¶ 25 The Québec Court of Appeal also ruled in this direction in *Poulin c. La Reine*⁵, in paragraph 10 of the judgment:

[TRANSLATION]

“[10] Although the judge is not bound by the joint recommendation of the parties, he may not set it aside unless it is unreasonable, contrary to the public interest or would tend to bring the administration of justice into disrepute. Furthermore, he must inform counsel of his reluctance regarding their suggestion and give them an opportunity to respond.”

¶ 26 In this instance, having evaluated the Respondent’s admission of misconduct in light of all of the aggravating and mitigating factors, and having taken into account both the applicable case law and the objectives stated in the *IIROC Dealer Members Disciplinary Sanction Guidelines*, the Hearing Panel is of the opinion that the penalties agreed between the parties in their Settlement Agreement fall at the high end of the range of sanctions considered reasonable for the type of offense that is alleged, which is in fact a relatively broad category.

¶ 27 Given that any disciplinary sanction must serve the imperative of prevention and deterrence, the penalties agreed between the parties do not appear unreasonable, especially if one takes into account the fact that the practice of free-riding does present a potential risk to the integrity of the capital markets, and that “monetary fines serve to express general condemnation of specific misconduct⁶”.

¶ 28 In *Re Deeb*⁷, the hearing panel expressed itself as follows on the risk presented by free-riding:

“196. The Panel wishes to conclude its analysis of Count 3 with a message that the decision that the free-riding in this particular case was not prohibited as alleged, is not to be read *sa as* to condone the practice of free-riding. In the absence of a specific rule prohibiting all free-riding, whether it falls within Rule 29.1 will be a matter of the nature and extent of the practice. However as a general matter, the Panel feels that free-riding ought to be avoided because of its potential risk to the capital of the brokers involved and to the integrity of the capital markets.”

¶ 29 From this perspective, this Hearing Panel is of the opinion that the Settlement Agreement concluded between the parties is consistent with the public interest, and therefore accepts it in order to give it full force and effect.

¶ 30 Nevertheless, it must point out that following a settlement agreement between IIROC and Mr. Nassif’s employer, the firm CTI, the latter agreed to pay the same fine of \$25,000, having admitted its failure to ensure the compliance of the trades effected by Mr. Nassif, even though the latter was under close supervision.

¶ 31 In the opinion of this Hearing Panel, CTI should have borne a greater responsibility than Mr. Nassif in respect of the many free-riding trades with which the latter is charged.

¶ 32 Indeed, the close supervision that the Respondent was subject to was notably intended to protect the integrity of the capital markets and should not have been taken lightly by the employer.

⁵ 2010 QCCA 1854.

⁶ Section 4.1 – Fines, on page 8 of the Dealer Member Disciplinary Sanction Guidelines.

⁷ [2013] IIROC 8.

FOR THESE REASONS, THE HEARING PANEL:

ACCEPTS AND GIVES EFFECT to the Settlement Agreement signed by the parties on August 22 and 25, 2014.

Montréal, October 16, 2014.

Me Alain Arsenault, Chair

Mr. Michel Duchesne, Panel Member

Mr. Guy L. Jolicoeur, Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Milad Nassif, consent and agree to the settlement of these matters 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 Milad Nassif.
3. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
4. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

5. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
6. The Respondent admits to the following contraventions of IIROC Rules and Guidance and IDA By-Laws, Regulations or Policies:
 1. Between September 2010 and December 2011, the Respondent failed to use due diligence to ensure that the acceptance of orders in his account, and in those of his wife and son, was within the bounds of good business practice contrary to IIROC Rule 1300.1(o).
7. Staff and the Respondent have accepted the following terms of settlement:
 - a) A fine in the amount of \$25,000;
 - b) successful completion of the Conduct and Practices Handbook Course within one (1) year of the decision to be rendered in the matter of this settlement agreement;
 - c) 24 months of close supervision following Respondent's reapproval;
8. The Respondent agrees to pay IIROC costs in the amount of \$2,500.

III. STATEMENT OF FACTS

- (i) Acknowledgment
9. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

SUMMARY

10. Between September 2010 and December 2011 (the material period), Mr. Nassif, who was then employed with CTI Capital Securities Inc. (CTI), effected numerous trades in his margin account, in the margin

and RRSP accounts of his spouse, Mrs. A, and in the margin account of his son, Mr. B, whereas these accounts did not have sufficient funds or margins to cover the trades and whereas no effort was made to ensure adequate settlement of these trades, thus engaging in the practice commonly known as “free-riding”;

11. In so doing, the Respondent also contravened the rules applicable to margin accounts and RRSP accounts, in that he:
 - a. neglected or refused to maintain a sufficient margin in the margin accounts;
 - b. neglected or refused to submit to the margin calls issued by the CTI Compliance Department;
 - c. contravened the fiscal rules applicable to RRSP accounts by placing these accounts in debt positions.
12. Mr. Nassif was under the impression that all of these transactions were covered and accepted by his employer CTI;

THE REPRESENTATIVE MILAD NASSIF

13. At all material times, Mr. Nassif was employed with CTI as an investment advisor and was under close supervision;
14. At all material times, Mr. Nassif held authorizations to trade for the accounts of his spouse, Mrs. A, and his son, Mr. B;
15. Since October 16, 2013, Mr. Nassif is no longer employed with CTI or with any IIROC-regulated firm;
16. Mr. Nassif and his former employer CTI are currently in civil litigation regarding a labour relations matter.

ACCOUNTS OF MRS. A

17. Mrs. A had three (3) accounts at CTI:

| Account Holder | Account No. | Account Type |
|----------------|-------------|------------------------|
| Mrs. A | 4FXXX9E/F | CDN AND US MARGIN |
| Mrs. A | 4FXXX9S | RRSP |
| Mrs. A | 4FXXX9R | RRSP benefiting SPOUSE |

18. As previously stated, Mr. Nassif held authorizations to trade for these three (3) accounts and carried out all the transactions;
19. On numerous occasions during the material period, Mr. Nassif executed trades in these accounts whereas the accounts did not have the necessary funds or cash to purchase securities and, on the transaction settlement date, he made no effort to deposit the required funds or cash to pay for the purchases, thus engaging in free-riding;
20. Moreover, during the material period, Mr. Nassif executed trades in the margin account of Mrs. A, transactions that did not respect the margin rate prescribed by regulation, thus repeatedly placing the account in a deficit margin position;
21. On numerous occasions during the material period, Mrs. A’s margin account was the object of margin calls, without Mrs. A or Mr. Nassif depositing the sums required under the terms of these margin calls;
22. During the material period, there were approximately 66 margin calls on Mrs. A’s margin account;
23. As an example, on September 2, 2010, while Mrs. A’s margin account was the object of a margin call that had yet to be rectified, Mr. Nassif purchased 10,000 shares in Advanced Micro Device for a net amount of \$58,429;

24. On the settlement date, namely September 7, 2010, Mr. Nassif made no effort to ensure adequate settlement of this purchase;
25. For the month of September 2010, there were 32 purchases of securities in Mrs. A's margin account, for a total value of \$2,107,739.10 and sales of \$2,086,475.45, whereas the estimated market value of the securities in the account was \$55,377.61 with an estimated equity of \$7,639.52 as at September 30, 2010;
26. The near totality of the trades effected in Mrs. A's margin account that month were a function of free-riding, with Mr. Nassif making no effort to ensure the adequate settlement of these purchases, contenting himself with rapidly selling off the securities thus purchased;
27. Moreover, during the material period, Mr. Nassif effected trades in Mrs. A's RRSP accounts whereas these accounts did not have the funds or the necessary liquidity to purchase securities, thus repeatedly placing the accounts in a debit position, contrary to the rules and the fiscal legislation applicable to this type of account;
28. Mr. Nassif effected purchases in Mrs. A's RRSP account no. 4FXXX9S, whereas the account liquidity was less than the sum of the purchases and the RRSP portfolio value was substantially less than the sum of the trades;
29. Mr. Nassif was doing day trading in this RRSP account, without freeing up sufficient cash to cover the purchases, contenting himself with closing out said position before the markets closed;
30. As an example, on September 15, 2011, Mr. Nassif purchased 4000 shares of Research in Motion through this RRSP account, a net value of \$116,909, whereas the account liquidity at the time of the purchase was \$972;
31. The portfolio's value as at August 31, 2011 was \$46,159, with a cash credit balance of \$1,343.93, for current holdings of \$47,503.87;
32. The findings were the same in the spouse's RRSP account.

ACCOUNT OF MR. B

33. Mr. B held the CND/US margin account bearing no. 4FXXX4E/F at CTI;
34. Mr. Nassif had an authorization to trade for this account and, during the material period, executed all of the transactions in this account;
35. On numerous occasions during the material period, Mr. Nassif effected trades in this account, whereas the account did not contain the funds or cash necessary to complete the share purchase, and on the settlement date for the share purchase, did not deposit the funds or cash required to pay for the purchase, thus engaging in free-riding;
36. What's more, during the material period, Mr. Nassif executed trades in this account that contravened the margin rate prescribed in the regulations, thus repeatedly placing the account in a deficit margin position;
37. On numerous occasions during the material period, Mr. B's margin account was the object of margin calls, without Mr. B or Mr. Nassif depositing the sums required under the terms of these margin calls;
38. More specifically, 34 margin calls were issued by the CTI Compliance Department on a total of 56 trades effected by Mr. Nassif.

ACCOUNT OF MILAD NASSIF

39. Mr. Nassif held the CND/US margin account bearing no. 4FXXX1F/E at CTI;
40. During the material period, the trading in this account was mainly concentrated in the month of November 2010;

41. During the material period and especially during the month of November 2010, Mr. Nassif effected trades in this account when it did not contain the funds or cash necessary to complete a stock purchase and, on the settlement date for the stock purchase, Mr. Nassif did not deposit the funds or cash required to pay for the purchase, thus engaging in free-riding;
42. What's more, during the material period, Mr. Nassif executed trades in this account that contravened the margin rate prescribed in the regulations, thus repeatedly placing the account in a deficit margin position;
43. On numerous occasions during the material period, Mr. Nassif's margin account was the object of margin calls, without Mr. Nassif depositing the sums required in accordance with the terms of these margin calls;
44. As an example, on November 2, 2010, while Mr. Nassif's margin account was under a margin call for a sum of \$5,808.00, Mr. Nassif proceeded with the following purchases:
 - a. Advanced Micro Device: US \$37,200;
 - b. Caterpillar: US \$160,067.20;
 - c. Freeport McMoreland Copper & Gold: US \$97,277.50;
 - d. Radian Group: US \$62,491.67.
45. Mr. Nassif should have rectified the margin call in his account before making any other purchases;
46. Mr. Nassif's margin account had a deficit margin of \$7,867.30 as at November 30, 2010; yet during that month, he made purchases worth a total of \$2,300,000 while the equity in the portfolio was \$3,682.28 on October 31, 2010 and \$2,450.27 on November 30, 2010;
47. Mr. Nassif did not make any deposits or any contributions to this account in November 2010;
48. In November 2010, Mr. Nassif received eight (8) margin calls on his account, without these margin calls being rectified;
49. From September 2010 to December 2011, Mr. Nassif did not make any financial contribution to his margin account or provide any valid guarantees to secure his purchases.

OTHER CONSIDERATIONS

50. During the material period, the CTI Compliance Department issued an approximate total of 116 margin calls to Mr. Nassif for the accounts of Mrs. A, Mr. B and Mr. Nassif;
51. Between September 2010 and September 2011, Mr. Nassif executed over 900 trades;
52. During the material period, the only financial contributions made by Mr. Nassif to the aforementioned accounts were the deposit of a sum of \$16,000 to Mrs. A's margin account, and a sum of \$20,000 to the RRSP account of Mrs. A's spouse;
53. In the course of his interview as part of IIROC's investigation, Mr. Nassif admitted knowing the rules applicable to RRSP accounts, admitting that an RRSP account cannot be in a debit position;
54. He also admitted having made no other financial contributions to the aforementioned accounts other than those stated above;
55. Although Mr. Nassif indicated, in the course of his interview, that he always intended to pay for his purchases, in actual fact, he practically never deposited the funds or guarantees required to ensure the adequate settlement of his trades.
56. Nassif was at all times under the impression that he was not in violation of the applicable rules, and was even under the impression that CTI authorized the type of trades that he executed in the aforementioned accounts;

IV. TERMS OF SETTLEMENT

57. 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.
58. The Settlement Agreement is subject to acceptance by the Hearing Panel.
59. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.
60. 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.
61. 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.
62. 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.
63. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
64. 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.
65. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement.
66. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent, at Montréal, Québec, this August 22, 2014.

«Brahm Campbell» _____

WITNESS

«Milad Nassif» _____

MILAD NASSIF

RESPONDENT

AGREED TO by Staff, at Montréal, Québec, this August 25, 2014.

« Linda Vachet »

WITNESS

« Martin Hovington » _____

ME MARTIN HOVINGTON

Enforcement Counsel,

for Staff of IIROC

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