

# Re Pawar

IN THE MATTER OF:

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

**and**

**Gurpreet Singh Pawar**

2012 IIROC 58

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Pacific District Council)

Hearing: October 23, 2012

Decision: October 23, 2012

**Hearing Panel:**

Leon Getz, Q.C. (Chair), Bob Sutherland and Richard Thomas

**Appearances:**

Barbara Lohmann for the Investment Industry Regulatory Organization of Canada

Gurpreet Singh Pawar did not appear and was not represented at the hearing

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## REASONS FOR DECISION

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*Introduction*

¶ 1 We were constituted as a panel to consider, pursuant to Rule 20.36 of the Dealer Member Rules of the Investment Industry Regulatory Organization of Canada (“IIROC”), whether to accept a settlement agreement dated October 12, 2012 (the “Settlement Agreement”) that has been negotiated between IIROC’s Enforcement Department and Gurpreet Singh Pawar. At the conclusion of the hearing held for this purpose in Vancouver, B.C. on October 23, 2012, and after considering the submissions of Ms. Lohmann, counsel for IIROC, the terms of the Settlement Agreement and the applicable principles, we accepted it.

¶ 2 These are our reasons for doing so.

***The Settlement Agreement***

¶ 3 The terms of Settlement Agreement are annexed to this Decision. They contain:

- (a) a summary of the underlying facts;
- (b) an acknowledgement by Mr. Pawar that between December 2009 and February 2010, he misappropriated approximately \$95,000 from four individuals and in so doing acted contrary to Dealer Member Rule 29.1 in that;
- (c) Mr. Pawar’s agreement to:
  - (i) a permanent ban from reapplying for registration in any capacity;
  - (ii) pay a fine of \$80,000; and
  - (iii) pay an amount of \$5,000 to IIROC on account of its costs in connection with this matter.

*The governing principles applicable to a decision to accept or reject a settlement*

¶ 4 *Re Milewski*<sup>1</sup> is the leading decision about the proper view to be taken by a hearing panel considering whether to accept a settlement agreement. It was said there:

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.<sup>2</sup>

¶ 5 In our view it would not be consistent with this principle for us to reject the Settlement Agreement in this case.

*The facts*

¶ 6 The facts are fully and succinctly recited in the Settlement Agreement. They are not complicated. At a time when Mr. Pawar had accumulated substantial personal debt, he used his status as a registered representative at Credential Securities Inc., and its facilities, but without any authority from his employer to do so, to solicit four friends to put up a total of \$95,000 for investment in an entirely bogus investment in so-called “principal protected notes”. He resorted to various subterfuges and deceptions to persuade his friends to make their payments in the form of cheques or bank drafts payable to him personally and deposited the funds into his personal bank account apparently hoping to invest them on his own account to make sufficient money to pay of his debts and repay the funds stolen.

¶ 7 As we understand it, Mr. Pawar has repaid the amounts taken.

*The nature of the misconduct*

¶ 8 It is beyond dispute that Mr. Pawar’s conduct is a violation of IIROC Dealer Member Rule 29.1 which, so far as material, provides that registered representatives, which Mr. Pawar was at the time of the conduct that he has admitted, (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii).

*Sanctions for misconduct*

¶ 9 Section 1.4 of IIROC’s Dealer Member Disciplinary Sanctions Guidelines appropriately describes “misappropriation” or “theft” as “one of the more serious regulatory offences” ordinarily warranting the imposition of a permanent ban on approval in any capacity. It also declares that in the absence of any other considerations, a fine of at least \$25,000 is appropriate.

¶ 10 There are no other or extenuating considerations in this case that would make a permanent ban inappropriate and we accordingly accept that.

¶ 11 So far as the fine is concerned, we were referred to a number of fairly recent cases involving theft by registrants. The essential features of those cases are set out in the following table:

<b>Case</b>	<b>Amount stolen</b>	<b>Fine imposed</b>
<i>Re Dennis, OSC, July 31, 2012</i>	\$1,400,00	\$1,450,000
<i>Re Lalonde, 2012 IIROC 6</i>	\$100,000	\$150,000
<i>Re Rao, 2011 IIROC 12</i>	\$195,000	\$270,000
<i>Re Ahn, 2011 IIROC 311</i>	\$778,000	\$850,000
<i>Re Jones, [2011] IIROC No. 17</i>	\$25,000	\$25,000

¶ 12 In *Re Jones*, the fine imposed was equal to the amount stolen. The panel appears to have been

<sup>1</sup> [1999] I.D.A.C. No. 17, August 5, 1999 at page 11. See also *Re Clark*, [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14, 1999.

<sup>2</sup> Cf. also, *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII); *Re Morgan Stanley Canada*, [2011] IIROC No. 45, July 27, 2011.

influenced in accepting this fine by the fact that the respondent had fully reimbursed his victim.

¶ 13 That is also the position here. In the nature of the case, however, we cannot and do not know all of the particular considerations that might have influenced IIROC and Mr. Pawar to settle on a fine of \$80,000, which is something less than the amount he stole. But having regard to the principles that govern decisions of this kind, the facts, the Guideline recommendations and the decisions summarized in paragraph [11], we considered that the terms of the Settlement Agreement fell within a reasonable range of appropriateness and for that reason we accepted the settlement agreement.

As of October 23, 2012

Leon Getz, Panel Chair

Bob Sutherland, Panel Member

Richard W. Thomson, Panel Member

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Gurpreet Singh Pawar (the Respondent) consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Gurpreet Singh Pawar.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“the Hearing Panel”).

### II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
  - a) From December 2009 to February 2010, inclusive, Pawar acted contrary to Dealer Member Rule 29.1 in that he misappropriated approximately \$95,000 from four individuals.
8. Staff and the Respondent agrees to the following terms of settlement:
  - a) The Respondent shall be permanently barred from re-applying for registration in any capacity; and
  - b) The Respondent shall pay an \$80,000 fine.
9. The Respondent agrees to pay costs to IIROC in the amount of \$5,000.

### III. STATEMENT OF FACTS

- (i) *Acknowledgment*

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

**(ii) Factual Background**

***OVERVIEW***

11. At all material times, the Respondent was employed as a Registered Representative with Credential Securities Inc. (“Credential”) in the Credential Direct Division (Credential Direct”) to work in its call center for the purpose of taking trade orders from clients and answering account inquiries. While the Respondent was fully licensed as an RR, he was not authorized by Credential to solicit investments or give investment advice. Nor was he permitted to accept client orders by email.
12. The Respondent admitted to Staff that he had incurred large personal debt. In order to pay down that debt, he fraudulently solicited approximately \$95,000 from four close friends for the stated purpose of investing in a security that was fictitious. The Respondent instead deposited these monies into his personal bank account. His goal was to use that money to trade in securities and invest in real estate in order to make enough money to repay his friends and pay down his debt.
13. None of the friends were Credential clients. However, the Respondent used his Credential email account to solicit and communicate with them about the investment. He sent one of those friends page 1 of a prospectus for a legitimate security and led him to believe that it referred to the fictitious security. He subsequently emailed another of the friends a computer screen shot of a bond order and led him to believe that it was a trade confirmation.
14. Credential became aware of these matters when one of the friends called Credential to complain that he had not received his money back.
15. The Respondent has repaid the monies that he misappropriated from his four friends.

***THE RESPONDENT***

16. The Respondent commenced his employment in the securities industry in 2001. He worked for three Member firms before commencing employment with Credential in 2008. He remained employed with Credential until August 13, 2010 when he was dismissed for cause as a result of the matters described herein. He is not currently employed in a registered capacity in the securities industry.
17. The Respondent does not have a disciplinary history.
18. The Respondent cooperated with Staff’s investigation into this matter.

***CREDENTIAL POLICIES***

19. Credential made it clear to the Respondent upon hiring him that Credential Direct was an execution only service and that none of its’ employees were permitted to give advice or solicit the public for investment in securities.
20. Credential’s Compliance Manual stated that “under no circumstances are orders to be communicated or accepted via e-mail or other electronic means such as by fax.”

***PRINCIPAL PROTECTED NOTE***

21. On December 8, 2009, the Respondent emailed a friend, NP, from his Credential email account to solicit his investment in a principal protected note (“PPN”) as follows:

I got a prospectus from Merrill Lynch Canada for a TSX protective note at principal plus 5% payout July 1<sup>st</sup>/2010, this is based on the TSX stock exchange so if the market goes down then you still lock 5% but if the TSX goes up to 13000 then you get a [sic] extra 1% point and if it goes to 15000 you get an additional 1% so you can make up to 7% im [sic] sure you have heard of these deals but they are sold in bigger chunks [sic], that is why we were offered strip coupons

of min \$150,00, I've rounded up a few guys and we are pretty close to the target amount. This is the best rate ive [sic] seen in 10 years that I've been doing this so I'm going through my friends and family and loading up on this. It's a better rate then [sic] you'd receive on any GIC or fixed term investment. Let [sic] me know if you are in as its got to be done soon. call [sic] me if you [sic] got questions XXX-XXX-XXXX [phone number omitted] [emphasis in original text].

22. There were further email exchanges that day and the following day between the Respondent and NP about the PPN in which the Respondent advised NP to make his cheque payable to Gurpreet Pawar, that payout would be in July 2010 and everyone would be repaid by certified cheque.

23. The Respondent also solicited 4 other individuals, KP, SP, GL and JM to invest in the PPN. Of the 5 people solicited, 4 of them provided money to the Respondent (in the form of personal cheques or bank drafts payable to the Respondent) to invest in the PPN as follows;

KP	\$50,000
NP	\$15,000
GL	\$10,000
JM	\$20,000
Total	\$95,000

24. On December 4, 2009, the Respondent emailed SP from his Credential email account. That email contained a one page attachment entitled Merrill Lynch Canada Finance Company, The TSX High-Point Principal Protected Notes, Series 1 due June 30, 2010. The body of that email stated: "Hey [SP] here is the first page of it, its 86 pages of legal stuff so this is the basis of it. let [sic] me know if you got any questions."

25. The monies received by the Respondent as noted in paragraph 23 were deposited to the Respondent's personal bank account.

26. The PPN, as described by the Respondent in his email to NP, did not relate to anything issued by Merrill Lynch nor did Credential offer such a product. He admitted to Staff that there never was such a PPN investment, he made up the terms thereof and that he never had any intention of investing the money he solicited in same. He had large personal debt and his intention was to use the solicited monies to pay bills, invest a portion in an effort to make quick cash to help pay down the debt and to return the funds with interest.

27. The Respondent stated that he sent the first page of the Merrill Lynch security prospectus to SP in order to make his investment opportunity appear to be legitimate.

28. On March 19, 2010, the Respondent emailed KP from his Credential email account with the subject line "confirm of trade" and stated "here is a copy of the trade that went through." He attached an order entry screen shot of a Merrill Lynch & Co. corporate bond due January 30, 2012. The Respondent admitted to Staff that he was trying to pass off the screen shot as confirmation that he had actually purchased the PPN.

29. On March 24, 2010, the Respondent sent an email to KP from his Credential email account to explain that the PPN was not in KP's name as he had to combine all the investments since there was a \$150,000 minimum.

30. KP replied on March 27, 2010 and asked for confirmation of the combined \$150,000 investment, whoever's name it was under. The Respondent did not provide such confirmation.

31. On July 9, 2010, the Respondent emailed KP from his Credential email account to advise that he received the cheque (to repay the PPN investment) but the bank put a ten day hold on the deposit. The Respondent advised that he would send KP the money when the money cleared.

32. On July 26, 2010, the Respondent emailed KP from his Credential email account to advise that he had a new investment opportunity to offer. He outlined the terms of that offer and said he could “roll over” the \$52,500 from the PPN into the new deal. This would help the Respondent reach the \$150,000 target. The Respondent offered to split the commission with KP. KP replied on July 28, 2010 that “I don’t want to reinvest any more not even one dollar.”
33. On July 29, 2010, KP phoned Credential. The Respondent was away from the office at the time, so KP asked to speak with the “boss” as he was concerned that, despite not having an account with Credential, the Respondent had not paid him back with respect to an investment that the Respondent had solicited from him. This call prompted Credential to conduct an internal investigation.
34. Credential staff met with the Respondent who initially advised that the money from KP was just a loan. However, when staff advised that they were already aware of the details, the Respondent confirmed that he had offered a PPN to KP.
35. Credential dismissed the Respondent for cause on August 13, 2010.
36. KP advised Staff that the Respondent has repaid his \$50,000 plus \$2,500 in interest. Pawar has also repaid the other 3 investors and neither Staff nor Credential had received complaints from them.

#### **IV. TERMS OF SETTLEMENT**

37. 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.
38. The Settlement Agreement is subject to acceptance by the Hearing Panel.
39. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
40. 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.
41. 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.
42. 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.
43. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
44. 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.
45. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
46. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of Vancouver in the Province of British Columbia, this 10th day of October, 2012.

**“Witness signature”**

**Witness**

**“Gurpreet Pawar”**

**Respondent**

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 12th day of October, 2012.

**“Shannon Mathieson”**

**Witness**

**“Barbara Lohmann”**

**Barbara lohmann**

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

**ACCEPTED** at the City of Vancouver in the Province of British Columbia, this 23rd day of October, 2012, by the following Hearing Panel:

Per: “Leon Getz” \_\_\_\_\_  
Panel Chair

Per: “Bob Sutherland”  
Panel Member

Per: “Richard Thomas”  
Panel Member

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