

# Re Beghin

IN THE MATTER OF:

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

**and**

**Adriano Beghin**

2014 IIROC 30

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

Heard January 27, 2014  
Decision: February 5, 2014

**Hearing Panel:**

Hon R. Jeffrey Flinn, Q.C. Chair, Leo Ciconne, and Ron Smith, Member

**Appearances:**

Diana Iannetta, IIROC Senior Enforcement Counsel

Laura Paglia, for the Respondent

Adriano Beghin

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## DECISION AS TO THE ACCEPTANCE OF A SETTLEMENT AGREEMENT

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¶ 1 The Respondent has been employed as a Registered Representative by TD Waterhouse since August 1994. As such In September 2008 and through 2010 the Respondent recommended to some of the complaining parties the purchase of Arctic Glacier 6.5% Extendable Convertible Unsecured Subordinated Debentures due July 31 2011, and to others the purchase of Sterling Shoes 6.5% Extendable Convertible Unsecured Extendable Subordinated Debentures due Oct. 30<sup>th</sup> 2012.

¶ 2 As to Arctic Glacier, in June 2011 the Respondent advised that it would issue trust units rather than cash at maturity and on July 26<sup>th</sup> issued another press release announcing the terms of the trust units. However the Respondent did not notify the complainants of the information until August 2, 2011 the date the trust units were to be delivered to the debenture holders. They were issued with a value of \$0.20 but by August 31, 2011 were trading at \$0.11 and the complainants suffered losses from \$14,881 to \$69,501 including the semiannual interest payments. The complainants did not expect there was a conversion risk nor that their capital would be at risk with this Arctic Glacier investment.

¶ 3 As to the Sterling Shoes matter, on September 2011 Sterling announced it would not make the interest payment due in October, and one month later on October 27<sup>th</sup> it announced that the TSX would delist the Debenture. Sterling moved for creditor protection in October. These complainants suffered losses of \$8275 to \$89,472. Again the complaint was that they did not expect their capital was at risk.

¶ 4 The majority of the complainants were over 60 years of age and had informed TDW that they had a risk tolerance of “100% medium risk “.

¶ 5 The statement of facts filed by IIROC as Exhibit #1 sets out in detail the facts referred to in the forgoing summary and includes the allegation that the Respondent failed to learn and remain informed of the

complainants unwillingness to suffer a capital loss in their investments and thereby failed in his duty by recommending the purchase of securities carrying certain risks which resulted in loss of capital to the complainants.

¶ 6 The Respondent did not profit from the transactions save for the usual commissions. He has no disciplinary history with IIROC and has cooperated with IIROC in this investigation. He has been under voluntary supervision at TDW since October 2011 and has successfully re-written the Conduct and Practices course examination.

¶ 7 TDW has paid compensation to the complainants and the Respondent will contribute \$279,411.15 to that compensation over a period of time. In addition he will pay to IIROC costs in the amount of \$2,000.00.

The terms of the settlement entered into by the staff of IIROC and the Respondent and negotiated pursuant to By-Law 20.35 is referred to the Hearing Panel pursuant to By-Law 20.36 and Rule 15 of the Rules of Practice and Procedure for acceptance or rejection.

#### The Contravention

¶ 8 The Respondent has admitted that between September and November 2010 the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to certain of his clients contrary to IIROC Dealer Member Rule 1300.1(a).

#### The Settlement Agreement

¶ 9 Staff of IIROC and the Respondent agree to the following terms;

- The Respondent will be subject to a reprimand,
- The Respondent will continue under the supervision terms imposed by TD Waterhouse Canada Inc. (TDW) until this settlement agreement is accepted by the Hearing Panel;
- The Respondent will pay a fine of \$10,000.00 to IIROC;
- The Respondent will pay costs to IIROC in the amount of \$2000.00.

¶ 10 As was stated in the Decision of the Hearing Panel in Re Caranci 2013 IIROC 49;

“The importance of a registered representative’s obligation to insure that recommendations made to clients are suitable for the client and in accordance with the client’s investment objectives and risk tolerance cannot be over stated.”

¶ 11 In light of the complaints made by those suffering loss, the Respondent failed in his duty to his clients, which failure is admitted by the Respondent in the Settlement Agreement, Exhibit #1. It is clear from the cases cited and from the decisions of the Courts that the Hearing Panel ought not to consider whether they would have made the same agreement but rather that the settlement is reasonable in all the circumstances and meets the disciplinary requirements of the investment industry.

¶ 12 The settlement is consistent with IIROC'S Dealer Member Disciplinary Sanctions Guidelines and do strike a balance between fairness to the Respondent and deterrence to others and is in the public interest and the interests of the investment industry.

¶ 13 Considering all the facts as set out in Exhibit "1" and agreed to by the Respondent the observations in mitigation of penalty and giving weight to observations made by Hearing Panels in somewhat like cases and after hearing what was advanced by Counsel we considered the agreement reasonable and accept the Settlement Agreement.

Dated February 5, 2014

Jeffrey Flinn

Leo Ciccone

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Adriano Beghin (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 Mr. Beghin.
3. 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

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contravention of IIROC Rules, Regulations or Policies:
  - i. Between September 2008 and November 2010, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to certain of his clients, contrary to IIROC Dealer Member Rule 1300.1(a).
6. Staff and the Respondent agree to the following terms of settlement:
  - a) The Respondent will be subject to a reprimand;
  - b) The Respondent will continue under the current supervision terms imposed by TD Waterhouse Canada Inc. (“TDW”) until the date this Settlement Agreement is accepted by the Hearing Panel; and
  - c) The Respondent will pay a fine in the amount of \$10,000 to IIROC.
7. The Respondent agrees to pay costs to IIROC in the sum of \$2,000.

### III. STATEMENT OF FACTS

#### (i) Acknowledgment

8. 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) Overview

9. Beghin recommended the purchase and holding of two convertible debentures to certain clients who were unwilling to suffer a capital loss from their investments.
10. One of the debentures converted to equity prior to maturity. The issuer of the other debenture went into creditor protection and was subsequently delisted from the TSX.
11. As a result of these events, certain clients who purchased these debentures suffered a capital loss on their investments. More importantly, these clients state that they did not have an understanding or expectation that such events could occur and put their capital at risk. These clients (the “Complainants”) filed formal complaints with TDW. The majority of the Complainants were over 60 years old at the time of their purchases of the debentures.

#### (iii) Factual Background

12. The Respondent has been employed as a Registered Representative with TDW since August 1994.
13. For the past ten years, his book of business has been primarily focused on fixed income products.

### Arctic Glacier

14. In September 2008 and throughout 2010, Beghin recommended to the Complainants the purchase and continued holding of Arctic Glacier 6.5% Extendible Convertible Unsecured Subordinated Debenture due July 31, 2011 (“Arctic Glacier” or the “Debenture”).
15. The majority of the Complainants were over 60 years of age at the time of their purchases.
16. Although each of the Complainants had a risk tolerance of 100% medium risk recorded on their New Account Application forms (“NAAFs”), the Complainants state that they were each unwilling to withstand declines in their investment or suffer capital losses.
17. Each client purchased Arctic Glacier on the secondary market.
18. A short form prospectus dated May 2006 was available which set out a number of risks associated with the Debenture, including,

*A return on an investment in the Fund is not comparable to the return on an investment in a fixed-income security. The recovery of an initial investment in the Fund is at risk, and the anticipated return on such investment is based on many performance assumptions.*
19. In June 2011, Arctic Glacier issued a press release announcing that it had given notice to Debenture holders that it was issuing trust units in lieu of cash on the maturity date.
20. On July 26, 2011, Arctic Glacier issued a press release announcing the terms for issuance of the trust units to Debenture holders. The release announced that the trust units would be delivered to Debenture holders on August 2, 2011.
21. Beghin did not contact the Complainants about the conversion to trust units for Arctic Glacier until August 2011. This was weeks after the initial press release and after the trust units had been issued. All but one of the Complainants were unaware of the conversion until Beghin contacted them.
22. The Complainants state that they did not appreciate or expect that there was a risk of conversion associated with the Debenture. The Complainants also state that they did not appreciate or expect that they could suffer a capital loss in this investment.
23. When the trust units were booked into their accounts on August 3, 2011, the units were valued at \$0.20. However, by August 31, 2011, the units were trading at \$0.11.
24. The Complainants suffered losses ranging from \$14,881 to \$69,501 on their investment in Arctic Glacier, which includes the semi-annual interest payments which were made throughout the time the Debenture was held.
25. The Respondent failed to learn and remain informed of the Complainants’ unwillingness to suffer a capital loss in their investments. As a result, he recommended the purchase and holding of the Debenture which carried a risk of conversion which ultimately resulted in capital losses by the Complainants.

### Sterling Shoes

26. In 2010, the Respondent recommended to some of the Complainants the purchase of Sterling Shoes 6.5% Extendible Convertible Unsecured Subordinated Debentures due October 31, 2012 (“Sterling Shoes”).
27. Each client purchased Sterling Shoes on the secondary market.
28. A short form prospectus dated September 2007 was available which set out a number of risks associated with the Sterling Shoes Debenture, including;

*A return on an investment in the Fund is not comparable to the return on an investment in a fixed-income security. The recovery of an initial investment in the Fund is at risk, and the*

*anticipated return on such investment is based on many performance assumptions.*

29. On September 27, 2011, Sterling Shoes issued a press release announcing that it would not make the interest payment on its Debenture that was due to be paid in October 2011.
30. On October 27, 2011, Sterling Shoes issued a press release announcing that it had been advised by the TSX that its convertible debentures would be delisted on November 25, 2011. Sterling Shoes had filed for creditor protection in October 2011.
31. When Beghin contacted the Complainants in August 2011 to discuss Arctic Glacier, he also discussed Sterling Shoes and advised the Complainants that the price had dropped from their original purchase.
32. The Complainants state that they did not appreciate or expect that there was a risk of capital loss in this investment.
33. The Complainants suffered losses ranging from \$8,275 to \$89,472 on their investment in Sterling Shoes, which includes the semi-annual interest payments which were made up to September 2011.
34. The Respondent failed to learn and remain informed of the Complainants' unwillingness to suffer a capital loss in their investments. As a result, he recommended the purchase and holding of Sterling Shoes which carried certain risks which ultimately resulted in capital losses by the Complainants.

#### The Respondent

35. The Respondent charged the Complainants similar commissions to a cash equivalent (i.e., GICs) and therefore did not enjoy nor was he motivated by additional profit to himself.
36. The Respondent has no disciplinary history with IIROC in the 18 years he has been a registrant.
37. The Respondent cooperated with IIROC in its investigation.
38. The Respondent has been under voluntary supervision at TDW since October 2011.
39. The Complainants have received compensation for their losses from TDW. The Respondent will contribute a total of \$279,411.05 to that compensation over a period of time.
40. The Respondent has successfully re-written the Conduct and Practices Handbook course exam.

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

41. 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.
42. The Settlement Agreement is subject to acceptance by the Hearing Panel.
43. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
44. 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.
45. 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.
46. 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.
47. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
48. 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.

49. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
50. 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 Toronto in the Province of ON, this 13 day of January, 2014.

“Witness”

**WITNESS**

“A. Beghin”

**RESPONDENT**

**AGREED TO** by Staff at the City of Toronto in the Province of ON, this 17 day of January, 2014.

“witness”

**WITNESS**

“Diana Iannetta”

**DIANA IANNETTA**

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

**ACCEPTED** at the City of Toronto in the Province of ON, this 27 day of January, 2014, by the following Hearing Panel:

Per: “Jeffrey Flinn”

Panel Chair

Per: “Leo Ciccone”

Panel Member

Per: “Ron Smith”

Panel Member

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