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Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Notice of Hearing

File No. 202430

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
Ken Kin Kit Lui and Devina Master**

NOTICE OF HEARING

NOTICE is hereby given that a disciplinary proceeding has been commenced by the Canadian Investment Regulatory Organization (“CIRO”) against Ken Kin Kit Lui (“Lui”) and Devina Master (“Master”) (collectively, the “Respondents”). The first appearance will take place electronically by videoconference before a hearing panel of the Ontario District Hearing Committee of CIRO (the “Hearing Panel”) on February 4, 2025, at 10:00 am (Eastern Time) or as soon thereafter as the hearing can be held. The Hearing on the Merits will take place at a time and venue to be announced. Members of the public who would like to attend the first appearance by videoconference as an observer should contact hearings@ciro.ca to obtain particulars.

DATED this 13th day of December, 2024.

“Michelle Pong”

Michelle Pong
Director, Hearings

Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Telephone: 416-943-5846
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NOTICE is further given that CIRO alleges the following violations¹:

Allegation #1: From June 10, 2015 to June 9, 2020, Lui engaged in outside activities that were not disclosed to or approved by the Dealer Member, contrary to MFDA Rule 1.2.1(c).

Allegation #2: From June 27, 2018 to March 27, 2020, Lui engaged in personal financial dealings with clients giving rise to a conflict or potential conflict of interest that Lui failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

Allegation #3: From March 12, 2020 to February 15, 2023, Master engaged in personal financial dealings with clients giving rise to a conflict or potential conflict of interest that Master failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

Allegation #4: Commencing March 10, 2023, Lui and Master failed to cooperate with an investigation by CIRO Staff into their conduct, contrary to Mutual Fund Dealer Rule 6.2.1.

¹ On March 17, 2016, amendments to MFDA Rule 1.2.1(c) came into effect and the Rule was amended and renumbered as MFDA Rule 1.3.2. As the conduct addressed in this proceeding occurred before and after the amendments to MFDA Rule 1.2.1(c), the version of MFDA Rule 1.2.1(c) that was in effect between December 3, 2010 and March 17, 2016, and the version of MFDA Rule 1.3.2 that was in effect after March 17, 2016 apply to this proceeding.

On June 30, 2021, MFDA Rule 2.1.4 was amended and renumbered to become MFDA Rule 2.1.4(2) in respect of the conduct of Approved Persons. As the conduct addressed in this proceeding occurred before and after this amendment, the version of MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021, and the version of MFDA Rule 2.1.4(2) that was in effect between June 30, 2021 and December 31, 2022 are applicable to this proceeding in respect of Allegation #2. On January 1, 2023, MFDA Rule 2.1.4(2) was incorporated into Mutual Fund Dealer Rule 2.1.4(2). The version of Mutual Fund Dealer Rule in effect between January 1, 2023 and February 15, 2023 is also applicable to the conduct addressed in Allegation #3.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by CIRO at the hearing:

Overview

1. In 2015, Lui became a partner in a general partnership called Clearwest Capital (“Clearwest”), without the Dealer Member’s knowledge or approval. Clearwest purportedly carried on a real estate investment business. Between June 27, 2018 and March 12, 2020, clients SK and CM and individual EM invested in or provided loans to Clearwest totaling approximately \$957,000, which Lui failed to disclose to the Dealer Member.
2. Lui and Master were spouses. Master assisted client CM to redeem and transfer the proceeds of a Guaranteed Investment Certificate (“GIC”) to Lui as a loan. Lui subsequently repaid client CM the monies he borrowed. Master also facilitated the repayment of some of the monies that client SK and individual EM invested in or provided as loans to Clearwest or Lui. Approximately \$470,947 that client SK invested in Clearwest has not been repaid or accounted for.
3. The Respondents failed to cooperate with an investigation by CIRO Staff (“Staff”), and as a result the full nature and extent of their conduct described herein is not known.

Registration History

Lui

4. From September 23, 2014 to March 27, 2020, Lui was registered in Ontario as a dealing representative with CIBC Securities Inc. (the “Dealer Member”), a Dealer Member of CIRO (formerly a Member of the MFDA).
5. On March 27, 2020, Lui resigned from the Dealer Member and is not currently registered in the securities industry in any capacity.

6. At all material times, Lui conducted business in the Toronto, Ontario area.

Master

7. From May 6, 2016 to February 15, 2023, Master was registered in Ontario as a dealing representative with the Dealer Member.

8. On February 15, 2023, the Dealer Member terminated Master in connection with the matters that are the subject of this proceeding, and Master is not currently registered in the securities industry in any capacity.

9. At all material times, Master conducted business in the Toronto, Ontario area.

Allegations #1, #2 and #3 – Lui Engaged in an Unapproved Outside Activity and the Respondents Failed to Disclose Conflicts of Interest with Clients

The Dealer Member's Policies and Procedures

10. At all material times, the Dealer Member's policies and procedures required that Approved Persons:

- a. disclose to the Dealer Member and receive its approval prior to engaging in an outside activity; and
- b. take reasonable measures to detect conflicts or potential conflicts of interest with clients, disclose such conflicts to the Dealer Member, and together with the Dealer Member, ensure that such conflicts are addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

11. At all material times, the Respondents were also subject to a Code of Conduct, which required that Approved Persons avoid conflicts of interest, or the appearance of conflicts of interest, and prohibited Approved Persons from engaging in outside activities without Dealer Member approval. The Code of Conduct also prohibited Approved Persons from borrowing from or lending money to any client.

Clearwest

12. On June 10, 2015, without disclosing to or obtaining approval from the Dealer Member, the Respondent and another individual established Clearwest as a general partnership that purportedly was in the business of purchasing and selling properties.

13. As discussed in further detail below, between June 27, 2018 and March 12, 2020, clients SK and CM and individual EM, invested in or provided loans to Clearwest or Lui totaling approximately \$957,000, which Lui failed to disclose to the Dealer Member.

14. Due to the Respondents' failure to cooperate with Staff's investigation as described further below, the full nature and extent of business activities that Lui or Master conducted through Clearwest is not known to Staff.

Client SK

15. On or about April 2, 2018, Lui assisted client SK with opening two accounts at the Dealer Member.

16. On or about June 27, 2018, client SK withdrew \$750,000 from her personal bank account and purchased a bank draft in that amount made payable to Clearwest.

17. Between December 2019 and April 2020, Lui issued seven bank drafts totaling approximately \$50,553 from his personal bank account made payable to client SK, who deposited the monies.

18. On May 22, 2020, Master became a joint account holder on Lui's personal bank account.

19. Between June 2020 and September 2022, the Respondents made an additional 27 payments to client SK totaling \$228,500 via memo transfers from the joint bank account belonging to the Respondents.

20. Accepting from and paying monies to client SK gave rise to conflicts or potential conflicts of interest that the Respondents failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interest of the client.

21. Of the \$750,000 that client SK paid to Clearwest, approximately \$470,947 remains outstanding and unaccounted for.

Client CM

22. On or about July 11, 2018, Lui assisted client CM with opening an account at the Dealer Member.

23. On or about March 12, 2020, Lui directed client CM to meet with Master to obtain assistance to redeem a GIC belonging to client CM. On this same date, Master assisted client CM to redeem and transfer the proceeds of a GIC in the amount of \$57,000 to Lui's personal bank account.

24. On May 19, 2020, Lui issued two cheques totaling approximately \$57,427 from his personal bank account² to client CM as follows:

a. Cheque No. 327 in the amount of \$57,000; and

b. Cheque No. 328 in the amount of \$427.50.

25. The memo lines on the cheques state the following:

a. Cheque No. 327 - "Returning Loan"; and

b. Cheque No. 328 - "Loan interest 3%/3 months".

² At this time, Master had not yet become a joint account holder on Lui's personal bank account.

26. As a result of the payment of the two cheques, the monies that Lui accepted from client CM were repaid.

27. Accepting from and paying monies to client CM gave rise to conflicts or potential conflicts of interest that the Respondents failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interest of the client.

Individual EM

28. At all material times, individual EM was a client of a bank affiliated with the Dealer Member.

29. On July 20, 2018, individual EM purchased a bank draft in the amount of \$150,000 and provided it to Lui for investment in Clearwest.

30. On March 27, 2020, Lui resigned from the Dealer Member.

31. As described above in paragraph 18, on May 22, 2020, Master was added as a joint account holder on Lui's personal account.

32. On or about June 1, 2020, Master directed that the sum of \$150,000 be transferred from the Respondents' joint bank account to Individual EM's bank account.

33. As a result of this payment, the monies that client EM provided as investment in Clearwest were repaid.

False or Misleading Attestations

34. On December 28, 2019, Lui completed an attestation where he confirmed that he had sought or obtained approval for all outside activities.

35. Lui's attestation was false or misleading since he had been engaging in an unapproved outside activity through Clearwest since at least June 10, 2015 as described above.

36. On November 20, 2020, December 21, 2021 and December 23, 2022, Master completed attestations where she confirmed that she had acted in accordance with the Code of Conduct at all times and that she was not aware of any unreported contraventions of the Code of Conduct. Master's attestations were false or misleading since, as described above, she had engaged in personal financial dealings with client SK by making payments from her joint bank account with Lui to client SK, and assisted client CM to redeem and transfer the proceeds of a GIC to Lui's personal bank account.

37. By virtue of the foregoing, Lui engaged in an unapproved outside activity, contrary to MFDA Rule 1.2.1(c).

38. By virtue of the foregoing, the Respondents engaged in personal financial dealings with clients CM and SK giving rise to a conflict or potential conflict of interest that they failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

Allegation #4 – Failure to Cooperate

39. On or about March 6, 2023, Staff commenced an investigation into the Respondents' conduct after receiving a report from the Dealer Member. The Dealer Member had been notified by the Corporate Security Department of the bank affiliated with it that the Respondents were under investigation for the matters described above.

40. Between March 10, 2023 and February 29, 2024, on multiple occasions, Staff mailed or personally served letters on the Respondents that requested that they each provide a statement and documents and attend an interview with Staff about the matters under investigation.

41. The Respondents did not respond to Staff's letters and failed or refused to provide a statement or documents or attend an interview with Staff as requested.

42. As a result of the Respondents' failure to provide Staff with the information and documents they requested, and to attend at an interview with Staff, Staff has been unable to understand the full nature and extent of their activities including: (i) the details of the investments made by client SK, client CK and individual EM in Clearwest; (ii) the whereabouts of all outstanding monies that client SK provided for investment in Clearwest; and (iii) whether the Respondent engaged in personal financial dealings with any other clients.

43. By virtue of the foregoing, the Respondents failed to cooperate with an investigation into their conduct by Staff, contrary to Rule 6.2.1 of the Mutual Fund Dealer Rules.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that pursuant to Mutual Fund Dealer Rule 1A that any person subject to the jurisdiction of the Mutual Fund Dealers Association of Canada prior to January 1, 2023 remains subject to the jurisdiction of CIRO in respect of any action or matter that occurred while that person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada at the time of such action or matter.

NOTICE is further given that the Mutual Fund Dealer Rules provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with CIRO;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Dealer Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of the Mutual Fund Dealer Rules of CIRO;

- has engaged in any business conduct or practice which such Hearing Panel in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the CIRO Hearing Office within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Attention: Maria L. Abate
Email: mabate@ciro.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Hearing Office by personal delivery, mail or courier to:

Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Attention: Hearings Office; or

- (b) transmitting 1 electronic copy of the **Reply** to the Hearing Office, by e-mail at hearings@ciro.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by CIRO in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by CIRO in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by CIRO in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- (a) to **serve** and **file** a **Reply**; or
- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by CIRO in the Notice of Hearing as having been proven and may impose any of the penalties described in the Mutual Fund Dealer Rules.

End.

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s.14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.