



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Pan Chen**

Heard: March 11, 2011 in Vancouver, British Columbia  
Reasons for Decision: April 18, 2011

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

|   |                         |
|---|-------------------------|
| The Hon. Roger P. Kerans FCI Arb, C Arb | Chair                   |
| Darlene Thomas                          | Industry Representative |
| Susan Schulze                           | Industry Representative |

Appearances:

|                   |   |   |
|-------------------|---|---|
| Charles Toth      | ) | For the Mutual Fund Dealers Association of Canada |
|                   | ) |   |
|                   | ) |   |
| Nicholas Ellegood | ) | For the Respondent                                |
|                   | ) |   |
|                   | ) |   |

1. A Settlement Agreement was entered into between Pan Chen (the “Respondent”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) on March 11, 2011 pursuant to MFDA By-law No. 1, section 24.4.

2. In the Settlement Agreement, the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined as an Approved Person of the MFDA pursuant to section 20 and 24.1.1.

3. At the commencement of the hearing, the Hearing Panel granted a joint motion by counsel to move the proceedings “in camera”.

4. The Settlement Agreement includes the following agreed facts as numbered in the Settlement Agreement:

“6. The Respondent was registered as a mutual funds salesperson with Sun Life Financial Investments Services (Canada) Inc. (“Sun Life”) from November 8, 2001 to February 27, 2008 when she was terminated as a result of the events described below.

7. The Respondent has been registered as a mutual fund salesperson with Investia Financial Services Inc. (“Investia”) since August 18, 2008. The Respondent’s registration with Investia was approved by BC Securities Commission on the condition that she would be subject to strict supervision for 6 months or until the MFDA concludes the investigation of the Respondent with regard to the events described below whichever is longer.

8. Sun Life has been a Member of the MFDA since January 11, 2002.

### **Discretionary Trading**

9. As set out below, between a 2006 and 2008 the Respondent made discretionary trades in two client accounts contrary to MFDA rules 2.11 and 2.3.

#### **(a) *Clients WG and JB***

10. Between about November 2006 and January 2008, the Respondent made approximately 27 trades in the joint account of WG and JB purporting to rely on a limited trade authorization (“LTA”) signed by them and instructions the Respondent states she received from client JB.

11. The Respondent admits that she determined the essential elements of some of the trades, including selection of the fund, the amount to be invested in each fund and the

timing of the fund purchase, thereby engaging in authorized discretionary trading.

12. The Respondent states that client JB often travelled abroad and directed her to email him suggested trades and manage the account as she saw fit during this time. The Respondent states that she sent emails to client JB recommending trades and processed some of the trades prior to, or without, receiving a response from client JB in accordance with JB's instructions.

13. The precise number of trades made in the manner described in paragraphs 11 and 12 is not known as a result of Sun Life's inability to locate its electronic record of the Respondent's email account and other electronic records of client trade instructions. MFDA Staff states that, following the Respondent's termination, Sun Life transferred all client related data (including the Respondent's email account and records of client trade instructions) from the Respondent's computer to a CD storage device. MFDA Staff states that Sun Life was unable to locate the CD storage device in response to requests from MFDA Staff and there were no hard copies of any emails or other records of client trade instructions in the client files. As a consequence, the parties were unable to specify the instances in which the Respondent engaged in discretionary trading in the manner admitted above.

14. The LTA provided by the Respondent to clients WG and JB and signed back by them was in the form prescribed by MFDA Rule 2.3.2. It specifically provided, among other things...

...This limited authorization is intended to create a simple form of limited agency. It does not give [Sun Life Financial Investment Services (Canada) Inc.] or its representatives unlimited authority for the right to conduct discretionary trading on the clients behalf....

15. The Respondent admits that her registration as a mutual fund salesperson does not authorize her to exercise discretionary trading authority over client accounts or to engage in discretionary portfolio management activities.

**(b) Client MYC**

16. On January 17, 2007, the Respondent made a total of five trades involving mutual fund purchases in the amount of \$47,000.00 in the accounts of the client MYC.

17. The Respondent admits that she determined the essential elements of each trade, including the selection of the fund and the amount of be invested in each fund, thereby engaged in discretionary trading.

18. In addition, the Respondent failed to inform client MYC prior to processing five trades on January 11, 2007 and five trades on January 17, 2007, that MYC had purchased mutual funds that are subject to deferred sales charges ("DSC").

19. The LTA provided by the Respondent to the client MYC, and signed back by her, was in the same form described above.

## **Attempting to Enter into Settlement Agreement Without the Member's Consent**

20. On or about June 18, 2007, client MYC sent a complaint letter to Sun Life stating that the Respondent had failed to inform her that she had purchased mutual funds which are subject to DSC. Sun Life notified the Respondent of MYC's complaint shortly thereafter and commenced an internal review of the matter.

21. In July 2007, the Respondent, without the knowledge or approval of Sun Life, attempted to enter into a settlement with MYC to resolve her complaint regarding the Respondent's conduct. The settlement proposed by the Respondent involved a payment in the amount of \$1,400 to MYC.

22. MYC did not accept the settlement proposed by the Respondent and no payment was made by the Respondent.

23. The Respondent admits that she attempted to enter into a settlement agreement directly with client MYC, without the prior consent of Sun Life, contrary to MFDA Policy No. 3 and MFDA Rule 2.1.1."

### **Additional Factors**

24. In November 2007, Sun Life converted the DSC mutual funds purchased by MYC into non-DSC mutual fund at no cost to MYC. Sun Life recouped the costs of processing these actions from its insurer and the Respondent repaid Sun Life the cost of the insurance deductible associated with this claim.

25. In November 2008, Sun Life offered to convert the DSC mutual funds purchased by WG and JB into non-DSC mutual funds at no cost to them...In May 2010, clients WG and JB accepted Sun Life's offer and their DSC mutual funds were converted into non-DSC mutual funds at no cost to them.

26. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

27. The Respondent states that as a result of the events described above, the [British Columbia Securities Commission] would not approve her re-registration as a mutual funds salesperson for the six month period following her termination by Sun Life in February 2008. The BCSC later approved the Respondent's registration with Investia in August 2008 on the condition that she would be subject to strict supervision for six months or until the MFDA concludes its investigation of the Respondent with regards to the events described herein, whichever is later. [As a result, the] Respondent has been subject to strict supervision since August 2008."

5. In addition, the Respondent admits the following contraventions of the By-laws, Rules and Policies of the MFDA:

- a) Between 2006 and 2008 the Respondent made discretionary trades in client accounts, contrary to MFDA Rules 2.1.1 and 2.3 and the terms of her registration as a mutual funds salesperson;
  - b) In July 2007, the Respondent attempted to enter into a settlement agreement with the client without the consent of the Member, contrary to MFDA Policy No. 3 and MFDA Rule 2.1.1.
6. The Respondent agreed to the following terms of settlement:
- a) The Respondent shall pay a fine in the amount of \$18,000 pursuant to s. 24.1.1 (b) of MFDA By-law No. 1 payable upon approval of the settlement;
  - b) The Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1 payable upon approval of the settlement;
  - c) The Respondent shall complete an investment funds course acceptable to MFDA Staff within 12 months from the date of this Order, pursuant to section 24.1.1 of MFDA By-law No.1;
  - d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder including Rule 2.1.1 and 2.3 and MFDA Policy No. 3; and
  - e) The Respondent will attend in person on the date set for the settlement hearing.

### **SUBMISSIONS OF COUNSEL**

#### **MFDA**

7. Mr. Toth, counsel for the MFDA, and Mr. Ellegood, counsel for the Respondent, recommended acceptance of the Settlement Agreement by the Panel. Mr. Toth made the

following submissions:

- a) Staff is satisfied that the penalties proposed for the Respondent in this proceeding are commensurate with the conduct described in the Settlement Agreement;
- b) Taking into account the factors set out below, it is in the public interest for the Hearing Panel to accept the proposed Settlement Agreement;
- c) The proposed Settlement Agreement and penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry, ensuring high standards by its Members and Approved Persons;
- d) In past cases, MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:
  - (i) Whether acceptance of the settlement agreement would be in the public interest and whether the penalties imposed will protect investors;
  - (ii) Whether the settlement agreement is reasonable and proportionate having regard of the conduct of the Respondent as set out in the settlement agreement;
  - (iii) Whether the settlement agreement addresses the issues of both specific and general deterrence;
  - (iv) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
  - (v) Whether the settlement agreement will foster confidence in the integrity of Canadian capital markets;

(vi) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and

(vii) Whether the settlement agreement will foster confidence in the integrity of the regulatory process itself.

8. A Hearing Panel should also consider what impact the proposed penalties will have on the Respondent.

9. A Hearing Panel would not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within the reasonable range of appropriateness given the conduct of the Respondent.

10. The primary goal of securities regulation is the protection of the investor.

## **RESPONDENT**

11. Mr. Ellegood in brief submissions recommended that the Settlement Agreement should be accepted. He pointed out that the proposed penalties are proportionate and appropriate to meet the objectives of the MFDA. There is no theft of money in this case. Any suspension that might be ordered has in fact been served and the Respondent has cooperated fully to avoid a long and costly investigation

## **DECISION**

12. We accept the submissions of counsel and confirm our decision given at the conclusion of the hearing that the Settlement Agreement is accepted. We signed an Order that the Settlement Agreement is accepted by all the Panel members. In our view, the fine and the *de facto* suspension fall within the reasonable range established in the decisions

**DATED** this 18<sup>th</sup> day of April, 2011.

“Roger Kerans”

The Hon. Roger P. Kerans FCI Arb, C Arb,  
Chair

“Darlene Thomas”

Darlene Thomas,  
Industry Representative

“Susan Schulze”

Susan Schulze,  
Industry Representative