Re Cheung

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Susan Suet Man Cheung

2023 CIRO 26

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: March 20, 2023 in the City of Toronto
Decision: March 20, 2023
Reasons for Decision: November 27, 2023

Hearing Panel:
The Honourable Peter Hambly, Chair
Edward Jackson, Industry Representative
Vas Pachapurkar, Industry Representative

Appearance:
Brendan Forbes, Enforcement Counsel for CIRO
Brad Moore, Counsel for the Respondent
Susan Suet Man Cheung, Respondent

REASONS FOR DECISION

Introduction

¶ 1 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 that was temporarily called the New Self-Regulatory Organization of Canada (referred to herein as the "Corporation") and is recognized under applicable securities legislation. The Corporation 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").

¶ 2 On February 1, 2023, the "Corporation issued a Notice of Settlement Hearing commencing a disciplinary proceeding against Susan Suet Man Cheung (the "Respondent").

¶ 3 Staff of the Corporation ("Staff") and the Respondent have entered into a settlement agreement dated February 1, 2023 (the "Settlement Agreement") in which the Respondent admits that, between May 2020 and May 2021, the Respondent, in her capacity as branch manager, instructed an Approved Person under her supervision to alter client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2) (previously MFDA Rules 2.1.1 and 2.1.4(2)).

¶ 4 If the Settlement Agreement is accepted, the Respondent has agreed to:

(a) pay a fine in the amount of $10,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);

(b) pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Mutual Fund Dealer Rule 7.4.2;

(c) a suspension from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of three months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules; and

(d) successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules.

(e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2)

Relevant Legislation

¶ 5 By-Law No. 1 being a General By-law of New Self-Regulatory Organization of Canada (hereinafter referred to as the "Corporation").

¶ 6 "IPF" means the Canadian Investor Protection Fund or the MFDA Investor Protection Corporation or any of their successors:

Section 14.4 Investor Protection Fund

The Corporation is authorized to enter into and perform its obligations under such agreements or other arrangements with an IPF as may be, in the discretion of the Board, consistent with the objects of the Corporation including, without limitation, an Industry Agreement. The President, his or her staff or any other person designated by the Board shall be authorized to execute and deliver any such agreements, or make any such arrangements, and to do all acts and things as may be necessary to permit the Corporation to exercise its rights or perform its obligations thereunder.

¶ 7 In respect of an Industry Agreement or other agreements and arrangements entered into by the Corporation from time to time, each Dealer Member:

(b) shall provide to the IPF such information as is contemplated to be provided by a Dealer Member in connection with the assessment of the financial condition of Dealer Members or risk of loss to the IPF;

Section 14.6 Continuing Jurisdiction and Discipline and Enforcement under the Rules

(1) Any Regulated Person, in accordance with the provision of any Rule, shall remain subject to the jurisdiction of the Corporation in respect of any action or matter that occurred while that person was subject to the By-laws and Rules, including for certainty any predecessor by-laws or rules of IIROC or the MFDA in effect at the time of such action or matter, for such period of time and under such additional conditions as may be provided in the Rules.

MFDA Rules

"Approved Person" means an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who

(i) is registered or permitted, where required by applicable securities legislation, by the securities commission having jurisdiction, or

(ii) submits to the jurisdiction of the Corporation.

1A. Application, Interpretation, Exemptions, and Definitions

Transitional Provisions

(1) The Corporation is the corporation continuing from the amalgamation effective January 1, 2023 of the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada and as a result, for greater certainty:

(i) any reference in these Rules to the Corporation includes the Mutual Fund Dealers Association of Canada prior to January 1, 2023;

(ii) 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 the Corporation 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;...

2.1.1

2.1.1 Standard of Conduct.

Each Member and each Approved Person of a Member shall: (a) deal fairly, honestly and in good faith with its clients; (b) observe high standards of ethics and conduct in the transaction of business; (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

2.1.4 Conflicts of Interest

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

24.1.1 Approved Persons

A Hearing Panel of the applicable Regional Council shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any 1 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;

if, in the opinion of the Hearing Panel, the person:

a. has failed to carry out any agreement with the Corporation;

b. has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

c. has failed to comply with the provisions of any By-law, Rule or Policy of the Corporation;

d. has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

e. is otherwise not qualified whether by integrity, solvency, training or experience.

24.4 Settlement Agreements

24.4.1 Power to Enter into Settlement Agreement

The Corporation or any other person designated by it or the Board of Directors may negotiate a settlement agreement with a Member, Approved Person or other person under the jurisdiction of the Corporation, in respect of any matters for which the Member or person could be penalized on the exercise of the discretion of a Hearing Panel pursuant to Section 24.1.

24.4.2 Contents of Settlement Agreement

A settlement agreement shall be in writing and be signed by or on behalf of the Member or person and shall contain:

a. a statement of facts sufficient to identify the matter to which the settlement agreement relates;

b. a reference to any statutes or regulations thereto, By-law, Rules or Policies of the Corporation with which the Member or person has not complied and a statement as to future compliance therewith;

c. the consent and agreement of the Member or person to the terms of the settlement agreement;

d. the acceptance of the penalty to which the Member or person could be subject pursuant to Section 24.1;

e. the waiver of the rights of the Member or person to a hearing pursuant to the By-laws and all rights of review thereunder; and

f. such other matters not inconsistent with Section 24.4.2(a) to (e), inclusive, which may be agreed upon including, without limitation, the agreement by the Member or person to pay the whole or part of the costs of the investigation and any proceedings relating to the matters which are the subject of the settlement agreement.

24.4.3 Review and Determination by Hearing Panel

Such settlement agreement shall, on the recommendation of: the Corporation, be referred to a Hearing Panel of the applicable Regional Council which shall:

a. accept the settlement agreement; or

b. reject it.

Facts

¶ 8 Commencing in February 2004, the Respondent became registered in Ontario with TD Investment Services Inc. (the "Dealer Member"), a Dealer Member registered with the Corporation.

¶ 9 Beginning in January 2009, the Dealer Member designated the Respondent as a branch manager at a branch of the Dealer Member (the "Branch") in Toronto, Ontario.

¶ 10 The Respondent was also employed with the Toronto-Dominion Bank (the "Bank"), which is affiliated with the Dealer Member and which operated a bank branch at the same premises as the Branch.

Background

The Variable Compensation Program

¶ 11 At all material times, a portion of the Respondent's compensation consisted of variable compensation (the "Variable Compensation Program"). The Respondent's variable compensation was based on a composite of metrics, one of which was a customer feedback metric (the "Customer Feedback Metric") derived from satisfaction surveys completed by clients (the "Surveys").

¶ 12 The Surveys were sent to a random sample of clients by email using the client's email address stored on the Client Contact Information Systems (described below) used by the Dealer Member.

¶ 13 The Surveys were emailed to clients after, among other things, an Approved Person had processed transactions or account changes on behalf of the client.

¶ 14 The Dealer Member collected client feedback information through the Surveys in order to, among other things, assess in relation to branch staff: (1) the performance of Approved Persons; (2) variable compensation payable to Approved Persons; (3) eligibility of Approved Persons for rewards and recognition programs of the Dealer Member and the Bank; and (4) any client complaints or concerns with the services provided by Approved Persons to clients.

¶ 15 The Surveys posed questions to clients related to the services offered by branch staff, including Approved Persons, and asked the clients to score their responses. Survey results of a certain value reduced the Customer Feedback Metric for the Respondent's branch.

¶ 16 The Survey results from all clients who were serviced by Approved Persons who worked at the Respondent's branch were factored into calculating the Customer Feedback Metric for the Respondent's branch.

¶ 17 The Respondent was provided with documentation which described how the Customer Feedback Metric was calculated and how it affected her variable compensation.

Misconduct

¶ 18 At all material times, Approved Persons were subject to a Code of Conduct and Ethics which prohibited Approved Persons from engaging in unethical business practices.

¶ 19 At all material times, Approved Persons registered with the Dealer Member had access to systems used by the Dealer Member to collect client information (the "Client Contact Information Systems").

¶ 20 The Client Contact Information Systems contained a feature which allowed Approved Persons to select whether the client wished to be contacted by the Dealer Member for certain purposes. If the Approved Person selected "No" on behalf of the client, a client would not receive Surveys or promotional communications from the Dealer Member.

¶ 21 Between May 2020 and May 2021, the Respondent, in her capacity as branch manager, instructed an Approved Person under her supervision, PK, to set client contact preferences to "No," without the consent of the client and, as a result, clients did not receive a Survey.

¶ 22 The Dealer Member prohibited Approved Persons from changing client contact preferences contained in the Client Contact Information Systems without the consent of the client.

¶ 23 Changing client contact preferences did not restrict the client's ability to access their investment

accounts or bank accounts online.

¶ 24 The Respondent engaged in the misconduct set out above in order to prevent the clients from receiving a Survey which could have potentially negatively affected the Customer Feedback Metric for the Respondent's branch as well as her eligibility for rewards and recognition programs. The impact on the Respondent's compensation is not known.

¶ 25 As a consequence of the Respondent's misconduct, she:

a. prevented clients from receiving the Survey which may have affected the Customer Feedback Metric and consequently the variable compensation the Respondent and Approved Persons in her branch would receive as well as her eligibility for rewards and recognition programs maintained by the Dealer Member; and

b. prevented clients from receiving promotional communications about products and services offered by the Dealer Member.

Additional Factors

¶ 26 On July 12, 2021, the Dealer Member issued the Respondent a letter of reprimand in respect of the misconduct described in this Settlement Agreement.

¶ 27 As a result of the misconduct described above, the Dealer Member imposed a three day unpaid suspension on the Respondent, prohibited the Respondent from participating in the Dealer Member's rewards and recognition programs in 2021, and negatively impacted the Respondent's managerial assessment rating for the remaining calendar year, which negatively affected the Respondent's base salary for the following year.

¶ 28 The Dealer Member has contacted affected clients in order to confirm the client's contact preferences contained in the Client Contact Information Systems.

¶ 29 There is no evidence of financial losses to clients arising from the misconduct described in this Settlement Agreement.

¶ 30 The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.

Case Law

***Gaunt (Re*), [2013] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201232, Reasons for Decision dated September 20, 2013**

¶ 31 The Respondent was a mutual fund salesperson. One, CD, made investments with the Respondent. The respondent borrowed $26,000 from her to pay a retainer to his lawyer in a family dispute. CD made the loan to the Respondent because he controlled her investments. The respondent did not repay the loan. A hearing panel held that the Respondent was in a position of conflict of interest. It gave a classic definition of conflict of interest as follows:

> 47. A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.
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> 48. Rule 2.1.1 imposes an obligation on the Respondent as an Approved Person, to deal fairly, honestly and in good faith with his client. He failed in each category of this Rule in his dealing with CD. He took unfair advantage of their earlier friendship in his pursuit of obtaining loans. He used the threat of his having control of her portfolio and he would take the loan he was seeking out of her investments. As his need grew, he persisted in seeking money from CD and, in her complaint letter she stated:
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> "Initially I said No, but he persisted and became belligerent, aggressive and bullying. As I grew more uncomfortable he became more aggressive and demanding. I gave in to him out of fear as I knew he still had control over my portfolio."

49. Obviously, the Respondent's behaviour was neither dealing fairly, nor honestly, nor in good faith.

50. As well, his conduct fell far short of observing high standards of ethics and conduct in his dealings with CD.

51. The Panel is satisfied that the Respondent has breached MFDA Rule 2.1.1(a), (b) and (c) and these breaches also amount to a conflict of interest which should have been reported by the Respondent to his employer pursuant to Rule 2.1.4. His insistence on secrecy and no paper record proved he had no intention of reporting anything of his borrowings from his client CD to his employer, thereby acting in breach of Rule 2.1.4.

52. Counsel for MFDA provided the Panel with a book of cases dealing with the Rules alleged here, defining some of the terms used in them and discussing the very nature of the relationship between a financial counsellor and his client.

53. The Panel acknowledges that these cases are very helpful, but does not consider it necessary to extend this decision with quotations from those cases relating to the matters under consideration here as will become obvious.

54. Essentially, the very nature of the relationship between a financial counsellor and his client demands that the clients best interests are the basis of any and all transactions performed on behalf of the client. Obviously, this precludes activities and transactions directed in any way for the benefit of the financial advisor's self-interest.

55. The terms in Rule 2.1.1 hardly need definitions from other cases for they are well understood by ordinary persons and the Respondent's conduct with CD was so egregious that he clearly was not dealing fairly, nor honestly, nor in good faith giving the ordinary meaning of those terms. As well, he was not observing high standards of ethics and conduct and his business conduct was certainly unbecoming and detrimental to the public interest.

56. The evidence is clear that he played upon his earlier friendship with CD to initiate the first loan from her portfolio and she gave in to his requests, though she was not happy with the idea. However, from then on in the months of March, April and May, 2007, his conduct to her included demanding money, intimidation, threats that he had control of her investments and could take what he wanted, his belligerent aggressiveness and bullying, all of which, made her fearful.

57. From his comments in the Ford interview where he stated how surprised and shocked he was that CD filed her complaint, it became apparent that his plan was to make money for her thereby returning to her portfolio the amount he was borrowing, i.e. repay the loans with monies made through CD's investments.

58. Allegation #1 has been proven.

Allegation # 2: Between March 2007 and January 28, 2008, the Respondent failed to comply with the policies and procedures of the Member regarding conflicts of interest with clients when he accepted a series of loans totaling approximately $26,000 from client CD to pay personal expenses, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

59. Rule 1.1.2 requires an Approved Person to comply with the MFDA By-laws and Rules when conducing or participating in any securities related business. This Rule obviously bound the Respondent to these Rules and By-laws.

60. Under Rule 2.5.1 referred to in Allegation 2, a Member must establish, implement and maintain procedures to ensure the handling of its business in accordance with the MFDA By-laws, Rules and Policies. Each Member with whom the Respondent was employed during the times involved in these events was obliged to follow these Rules.

61. As MFDA Counsel stated:

"The obligation of Approved Persons to comply with the policies and procedures of the Member with whom they are registered is a cornerstone of the self-regulatory system."

62. It is well established that Approved Persons are obliged to follow their Member's business practices when dealing with clients. See **Re Cartaway Resource Group** [2000] B.C.S.C.D. No. 92 and **In the Matter of Arnold Tonnies** [2005] MFDA File No. 200503.

63. The standard of conduct required to be followed by all Members and Approved Persons is set forth in Rule 2.1.1. This Rule sets forth the most fundamental obligations of all registrants in the securities industry. The Respondent, therefore, was obliged to observe "high standards of ethics and conduct in the transaction of business."

64. While "borrowing" by an Approved Person from a client is not forbidden, and perhaps it should be in any revision of the Rules, it would be the very rare occasion where it would not offend the present Rules. It cannot be done secretly, as was done here, nor by any intimidation of a client.

65. It is the Panel's view that any borrowing by an Approved Person from a client immediately creates a conflict of interest or potential conflict of interest which must be immediately disclosed to the Member under MFDA Rule 2.1.4.

66. In the present matter, the Panel unanimously finds that the Respondent's conduct, already set forth, does not come close to meeting the "high standards of ethics and conduct" of Rule 2.1.1(b) with the initial borrowing itself and further, with his totally unprofessional and outrageous behaviour in his continuing borrowing activities with CD.

67. Allegation #2 is, therefore, proven.

Allegation # 3: Between October 8, 2009 and November 1, 2010, the Respondent failed to report to the Member two consecutive criminal charges against him, one of which he pled guilty to and the other of which was subsequently withdrawn, contrary to section 4.1(d) of MFDA Policy No. 6.

68. This Allegation arises out of the fact that in October 2009 and again in May of 2010 criminal charges were laid against the Respondent. He did not report these charges to Quadrus Investment Services Ltd. where he was employed. To complete the factual situation the Respondent subsequently entered a plea of guilty to the October charge and the May charge was withdrawn.

69. MFDA Policy No. 6 establishes the minimum requirements concerning events that the Approved Person is required to report and the events that Members are also required to report.

70. Rule 4.1 of that Policy requires an Approved Person to report within 2 business days any of a list of activities and events including:

> (d) the Approved Person is charged with, convicted or, pleads guilty or no contest to, any criminal offence, in any jurisdiction;

71. The same Policy requires a Member to report to MFDA within 5 business days that an Approved Person has been charged with, convicted of, or pleads guilty to a criminal offence (MFDA Policy No. 6.1(c)(i)).

72. Rule 1.2.5(b) of the MFDA Rules provides the following under the heading Reporting Requirements:

> **Approved Person Reporting**
>
> Every Approved Person must report to the Member such information, in a manner and within such period of time, as may be prescribed by the Corporation from time to time relating to complaints, criminal, civil and other legal proceedings, regulatory proceedings, arbitrations, contraventions and potential contraventions of legal and regulatory requirements, disciplinary action by regulatory bodies, settlements with and compensation paid to clients, registration or licensing by any regulatory body, bankruptcies, insolvencies, garnishments and related events.

73. Clearly, under the MFDA Rules and Policy No. 6, the Respondent was required to report to Quadrus Investment within the time periods set out in those Rules and Policy No. 6. He was expected to know these requirements though in his interview with Mike Ford (Ex. 4 Tab 13) he indicated, while admitting he did not report any of these events, charges, plea of guilty or conviction, he was unaware that he was required to do so.

74. It must be indicated here that these charges did not involve anything relating to the financial industry. However, the requirement is not directed solely to matters relating to the financial industry, rather it covers any and all charges, convictions or guilty pleas an Approved Person may be facing. The fact of criminal charges of whatsoever offence against an Approved Person is extremely significant to his ability to work with clients and prospects, to his own reputation and to the reputation and interests of his employer as well as to the industry at large and the public.

75. The Panel does not accept that the Respondent was unaware of the reporting requirement. He is required to know the Rules and with his long experience in the financial, he must have realized the importance, in his particular industry, of these particular rules. He could not help but know that criminal charges could have a devastating effect on the public in his area of work and a similar effect on his co-workers and his employer.

76. As Counsel for MFDA stated in her brief:

    "Members are expected to establish, implement and maintain policies and procedures to ensure the supervision and operation of its business is in accordance with MFDA By-laws, Rules and Policies and applicable securities legislation. By failing to report material events to the Member in a timely fashion the Approved Person prevents the Member from protecting their own interests, the interests of other Approved Persons who are acting in accordance with the rules and regulations, the interests of clients and the public interest. These risks are particularly heightened in cases where Approved Persons fail to report events such as criminal charges, convictions because they expose the Member (and possibly other Approved Persons) to very real commercial risks and liabilities as well as potential safety risks to its employees or agents, clients and the public."

77. The Panel agrees and adopts the statement as its own. The requirement to report criminal charges is extremely serious and failure to do so leads to very serious circumstances. In this case, the failure was one of the two reasons given by his employer for the termination of his employment after being 17 years in the financial industry. It also is a serious matter in the Panel's considerations as to penalty.

78. As in Allegations #1 and# 2, Allegation #3 facts are all admitted by the Respondent. It is unnecessary to belabour the facts already admitted other than to say that each of the Allegations are very serious matters deserving of significant penalties.

79. Having accepted that the breaches alleged in Allegations #1, #2, and #3 are proven, and all the facts entered in support of these allegations are admitted by the Respondent, as set forth in the Notice of Hearing, and in the documentary evidence entered at the Hearing, it is now necessary to deal with the matter of Penalty.

80. Section 24.1.1 of the MFDA By-laws give the Panel power to provide very serious penalties to an Approved Person if in the opinion of the Hearing Panel the person:

    24.1.1

    (i) has failed to comply with the provisions of a By-law, Rule or Policy of the Corporation (MFDA),and

    (ii) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest.

81. The Respondent's behaviour in his financial dealings with his client CD was so far outside what was expected and required of him as a financial advisor that a substantial penalty must be imposed. This would apply even if the borrowing episode stood alone as the requirement of "the best interests of the client" just did not exist in his relationship with CD at this time.

82. However, the failure to report criminal charges as required constitutes another very serious situation with consequences possible to many persons and businesses far removed from the Respondent warranting a substantial penalty.

83. It has been said many times that the goal of securities regulations is the protection of the investor, but another goal is to establish a business environment for the financial industry which has the complete confidence of the public with whom it engages.

84. MFDA counsel offered some general considerations for the Panel in this matter, two of which were from the Tonnies case, supra, at pages 21 and 22:

    (1) "Sanctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent future harm to the capital markets; and

    (2) General deterrence is an appropriate consideration in making orders that are both protective and preventative. A penalty must re-affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry."

85. This Panel agrees with these concepts as applicable in this matter. We are dealing with an Approved Person with 17 years' experience in the financial industry before his termination, who was or should have been aware of his regulatory obligations and his Member's policies and procedures. He entered into a borrowing relationship in which he orchestrated complete secrecy, no paper trail, and no repayment terms which he continued by demanding and intimidation and creating fear in CD, his client, whose best interests were supposed to be his guide. As indicated earlier, he did not show any intention to repay the loans rather he would get CD's portfolio up to the pre-loan amount by making further investments with her portfolio. His behaviour was so egregiously bad, for which he showed no remorse in any documentation, that the penalty must be significantly large to deter others in the capital markets from engaging in similar activities.

86. Rather than assess penalties on each Allegation, the Panel accepts MFDA counsel's suggestions for a penalty that would include all breaches alleged in Allegations #1, #2 and# 3.

Order

87. It is hereby ordered that the Respondent be penalized as follows:

    (a) a permanent prohibition from conducting any securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to S. 24.1.1(e) of MFDA By-law No. 1;

    (b) a fine in the amount of $40,000.00 pursuant to S. 24.1.1(b) of MFDA By-law No. 1; and

    (c) costs in the amount of $5,000.00.

***Kandiah (Re)*, [2023] Hearing Panel of the Ontario District Hearing Committee, File No. 202302, Reasons for Decision Not Yet Issued, Notice of Settlement Hearing dated February 1, 2023**

¶ 32 On February 1, 2023 a hearing panel approved a Settlement Agreement concerning allegations that from September 2020 to April 2021, the Respondent altered client contact information on the Dealer Member’s system without the knowledge or authorization of the client, which had the effect of interfering with the Member’s supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).ii. Written reasons have not been released.

***Santos (Re)*, [2023] Hearing Panel of the Manitoba District Hearing Committee, MFDA File No. 202251, Reasons for Decision issued October 13, 2023, Notice of Settlement Hearing dated December 5, 2022**

¶ 33 On December 5, 2022 a hearing panel accepted a Settlement Agreement concerning allegations that, between November 2018 and June 2019, the Respondent altered client contact information on the Member's system without the knowledge or authorization of the client, which had the effect of avoiding the Member's supervisory and training controls and impacted its ability to communicate with clients, contrary to MFDA Rules 2.1.1, and 2.1.4. Written reasons were released October 13, 2023.

***Rana (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201871, Reasons for Decision dated March 19, 2019**

¶ 34 In the Settlement Agreement, the Respondent admits he:

(a) processed transactions in two client accounts as redemptions and purchases rather than as switches, to ensure that the transactions counted towards the Member's sales targets for the Respondent, thereby engaging in conduct which gave rise to a conflict of interest that the Respondent failed to disclose to the Member, or address by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4 and 1.1.2 and 2.5.1;

(b) obtained, photocopied and used a partially completed signed account form in order to process a transaction on behalf of client MIK, contrary to the Member's policies and procedures and MFDA Rules 2.1.1 and 1.1.2 and 2.5.1; and

(c) altered and used an account form to process a transaction without having client FH initial the alteration, contrary to the Member's policies and procedures and MFDA Rules 2.1.1 and 1.1.2 and 2.5.1.

¶ 35 In this respect, the Panel was mindful that:

(a) At the time of the occurrence of the contraventions described above, the Respondent was 25 years of age and was in his first year in the industry;

(b) The Respondent's past conduct, did not include any prior sanctions;

(c) The Member, of its own volition, had issued a reprimand letter to the Respondent and imposed a one day suspension (without pay), and further placed the Respondent on "enhanced" supervision from June 7, 2016 to August 10, 2016. The Member also provided further coaching and training to the Respondent by his branch manager;

(d) The contraventions were not discovered as a result of a client complaint, but were discovered during a routine branch audit. The Respondent was then interviewed and immediately admitted the misconduct that was the subject of the Settlement Agreement;

(e) Although the misconducts of the nature admitted to by this Respondent, are generally regarded as serious, a review of the case law disclosed that these particular infractions were of a more minor nature and did not lead to any significant loss by the clients;

(f) The member contacted client MIK and client FH, who both confirmed that the transactions described above where authorized.

(g) The Respondent stated that he intends to seek registration with an IIRCO registered dealer.

Result

¶ 36 For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

(a) the Respondent shall pay a fine in the amount of $12,500 in certified funds, pursuant to s.

24.1.1(b) of MFDA By-law No. 1;

(b) the Respondent shall pay costs in the amount of $5,000 in certified funds, pursuant to s. 24.2 of MFDA By-law No. 1;

***Sterling Mutuals Inc. (Re)*, [2008] Hearing Panel of the Central Regional Council, MFDA File No. 200820, Reasons for Decision dated September 3, 2008**

> It is trite to say that the Rules, Regulations and Policies of the MFDA are designed to preserve the integrity of its members and to protect the public with whom they deal. It is, therefore, of the utmost importance that they be followed, and that deficiencies identified as a result of MFDA audits not only be implemented, but that this be done in a timely fashion. As the facts set out above demonstrate, this is not what happened here, and hence the actions brought by MFDA Enforcement counsel.
>
> We subscribe to the views expressed by past hearing panels that, in general, settlement agreements should be accepted, bearing in mind the following criteria:
>
> 1. That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
> 2. That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
> 3. That the agreement addresses the issues of both specific and general deterrence;
> 4. That the agreement is likely to prevent the type of conduct set out in the facts;
> 5. That the agreement will foster confidence in the integrity of the Canadian capital markets;
> 6. That the agreement will foster confidence in the integrity of the MFDA; and
> 7. That the agreement will foster confidence in the regulatory process itself. (See, for instance, in *re Leer*, [2007] MFDA Pacific Regional Council, File 200710, in *re Zollo*, [2007] MFDA Ontario Regional Council, File 200610, and in *re Investors Group Financial Services*, [2005] MFDA Ontario Regional Council, File 200401.)
>
> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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." (In *re Milewski*, [1999] I.D.A.C.D. No. 17.)

***Hale* (Re), [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202046, Reasons for Decision dated March 9, 2021**

> **CONTRAVENTIONS**
>
> 6 In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA By-Laws, Rules or Policies:
>
> (a) Between November 2016 and October 2017, the Respondent processed 18 transactions in respect of 18 clients as redemptions and purchases, rather than as switches, to ensure that the transactions counted toward sales targets established by the Member for the Respondent, thereby engaging in conduct which gave rise to a conflict of interest which the Respondent failed to disclose to the Member, or address by the exercise of responsible business judgement influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rule 1.1.2, 2.1.1, 2.1.4, and 2.5.1; and

(b) Between November 2016 and May 2017, the Respondent obtained, possessed, and used to process transactions, 10 pre-signed account forms in respect of 10 clients, contrary to MFDA Rule 2.1.1. Page 3 of 18

TERMS OF SETTLEMENT

7 Staff and the Respondent agreed on the following terms of settlement:

(a) the Respondent shall pay a fine of $22,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw No. 1;

(b) the Respondent shall pay costs in the amount of $2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA Bylaw No. 1;

(c) the payment by the Respondent of the Fine and Costs shall be made and received by MFDA Staff in certified funds as follows:

i. $2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;

ii. $1,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;

iii. $3,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;

iv. $3,500 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement;

v. $3,500 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement;

vi. $3,500 (Fine) on or before the last business day of the fourth month following the date of the Settlement Agreement;

vii. $3,500 (Fine) on or before the last business day of the fifth month following the date of the Settlement Agreement;

viii. $3,500 (Fine) on or before the last business day of the sixth month following the date of the Settlement Agreement;

(d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1, 2.1.4, 2.5.1; and

(e) the Respondent will attend in person or via videoconference, on the date set for the Settlement Hearing.

...

10. When considering a Settlement Agreement, a Hearing Panel has only two options: to accept or reject the Settlement Agreement.

MFDA By-law No. 1, s. 24.4.3

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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." [1999] I.D.A.C.D. No. 17 at page 12 *Sterling Mutuals Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at page 9

12. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected, is because Hearing Panels do not know

what led to the settlement, or what was given up by the parties during the course of their Page 7 of 18 negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor for the Panel to consider. Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras.22 and 23

13. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

"Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para.31

14. Although the *Seifert* decision, supra, dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

15. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted, bearing in mind the following criteria:

(a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;

(b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;

(c) That the agreement addresses the issues of both specific and general deterrence;

(d) That the agreement is likely to prevent the type of conduct set out in the facts;

(e) That the agreement will foster confidence in the integrity of the Canadian capital markets;

(f) That the agreement will foster confidence in the integrity of the MFDA; and

(g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at para. 36

Discussion

¶ 37 In any organization employees must follow company policy. The Respondent secretly negated reporting of customer satisfaction with her performance to her employer by instructing PK who worked under her direction to set client contact preferences to no regarding their wish to be contacted with surveys. Hence the clients never received surveys seeking their assessment of her performance. By so doing she preferred her interest over that of her employer. She violated the standard of conduct required by MFDA of honesty and fair dealing required of her by Rule 2.1.1. She also violated the conflict of interest standard imposed by Rule 2.1.4 so well defined in *Gaunt.* We note that PK is the respondent in *Kandia* where a hearing panel found that PK had violated Rules 2.1.1 and 2.1.4 by altering client contact information. A hearing panel made the same finding in *Santos.*

¶ 38 The penalty proposed is significant but it is consistent with the case law and the conduct is egregious.

This decision will be published and be available to members in the industry. It will be an embarrassment to the Respondent. However, she is young. She retains her employment. She will have an opportunity to learn from her mistakes.

Conclusion

¶ 39 We approve the settlement.

Dated at Toronto, Ontario this 27 day of November, 2023.

"Peter Hambly"

The Honourable Peter Hambly, Chair

"Edward Jackson"

Edward Jackson, Industry Member

"Vas Pachapurkar"

Vas Pachapurkar, Industry Member

Settlement Agreement

File No. 202303

IN THE MATTER OF:

The Mutual Fund Dealer Rules[i]

and

Susan Suet Man Cheung

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA (the "Corporation") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Ontario District Committee (the "Hearing Panel") of the Corporation should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the Corporation ("Staff") and Susan Suet Man Cheung (the "Respondent").

¶ 2 Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

¶ 3 Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

¶ 4 The Respondent admits to the following violations of the Mutual Fund Dealer Rules:

(a) Between May 2020 and May 2021, the Respondent, in her capacity as branch manager, instructed an Approved Person under her supervision to alter client contact information on the

Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).[1]

III. TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of $10,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(b) of the Mutual Fund Dealer Rules;

(b) the Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules;

(c) the Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of three months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;

(d) the Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;

(e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2); and

(f) the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

¶ 6 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV. AGREED FACTS

Registration History

¶ 7 Commencing in February 2004, the Respondent became registered in Ontario with TD Investment Services Inc. (the "Dealer Member"), a Dealer Member registered with the Corporation.

¶ 8 Beginning in January 2009, the Dealer Member designated the Respondent as a branch manager at a branch of the Dealer Member (the "Branch") in Toronto, Ontario.

¶ 9 The Respondent was also employed with the Toronto-Dominion Bank (the "Bank"), which is affiliated with the Dealer Member and which operated a bank branch at the same premises as the Branch.

Background

The Variable Compensation Program

¶ 10 At all material times, a portion of the Respondent's compensation consisted of variable compensation (the "Variable Compensation Program"). The Respondent's variable compensation was based on a composite of metrics, one of which was a customer feedback metric (the "Customer Feedback Metric") derived from satisfaction surveys completed by clients (the "*Surveys*").

¶ 11 The Surveys were sent to a random sample of clients by email using the client's email address stored on

[1] Pursuant to Mutual Fund Dealer Rule 1A(1) of the Corporation and s.14.6 of the Corporation By-Law No.1, contraventions of the MFDA By-laws, Rules and Policies that were applicable to the Respondent prior to January 1, 2023 may be enforced by the Corporation. The contraventions reference Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2) which correspond to former MFDA Rules 2.1.1 and 2.1.4. Unless otherwise indicated, the wording of the current Mutual Fund Dealer Rules is the same as the wording of the regulatory requirements that were contravened. On June 30, 2021, amendments to former MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding pre-dated the amendment to that Rule, the contravention of Former MFDA Rule 2.1.4 that is addressed in this proceeding is of the version of former MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

the Client Contact Information Systems (described below) used by the Dealer Member.

¶ 12 The Surveys were emailed to clients after, among other things, an Approved Person had processed transactions or account changes on behalf of the client.

¶ 13 The Dealer Member collected client feedback information through the Surveys in order to, among other things, assess in relation to branch staff: (1) the performance of Approved Persons; (2) variable compensation payable to Approved Persons; (3) eligibility of Approved Persons for rewards and recognition programs of the Dealer Member and the Bank; and (4) any client complaints or concerns with the services provided by Approved Persons to clients.

¶ 14 The Surveys posed questions to clients related to the services offered by branch staff, including Approved Persons, and asked the clients to score their responses. Survey results of a certain value reduced the Customer Feedback Metric for the Respondent's branch.

¶ 15 The Survey results from all clients who were serviced by Approved Persons who worked at the Respondent's branch were factored into calculating the Customer Feedback Metric for the Respondent's branch.

¶ 16 The Respondent was provided with documentation which described how the Customer Feedback Metric was calculated and how it affected her variable compensation.

Misconduct

¶ 17 At all material times, Approved Persons were subject to a Code of Conduct and Ethics which prohibited Approved Persons from engaging in unethical business practices.

¶ 18 At all material times, Approved Persons registered with the Dealer Member had access to systems used by the Dealer Member to collect client information (the "Client Contact Information Systems").

¶ 19 The Client Contact Information Systems contained a feature which allowed Approved Persons to select whether the client wished to be contacted by the Dealer Member for certain purposes. If the Approved Person selected "No" on behalf of the client, a client would not receive Surveys or promotional communications from the Dealer Member.

¶ 20 Between May 2020 and May 2021, the Respondent, in her capacity as branch manager, instructed an Approved Person under her supervision, PK, to set client contact preferences to "No," without the consent of the client and, as a result, clients did not receive a Survey.

¶ 21 The Dealer Member prohibited Approved Persons from changing client contact preferences contained in the Client Contact Information Systems without the consent of the client.

¶ 22 Changing client contact preferences did not restrict the client's ability to access their investment accounts or bank accounts online.

¶ 23 The Respondent engaged in the misconduct set out above in order to prevent the clients from receiving a Survey which could have potentially negatively affected the Customer Feedback Metric for the Respondent's branch as well as her eligibility for rewards and recognition programs. The impact on the Respondent's compensation is not known.

¶ 24 As a consequence of the Respondent's misconduct, she:

(a) prevented clients from receiving the Survey which may have affected the Customer Feedback Metric and consequently the variable compensation the Respondent and Approved Persons in her branch would receive as well as her eligibility for rewards and recognition programs maintained by the Dealer Member; and

(b) prevented clients from receiving promotional communications about products and services offered by the Dealer Member.

Additional Factors

¶ 25 On July 12, 2021, the Dealer Member issued the Respondent a letter of reprimand in respect of the

misconduct described in this Settlement Agreement.

¶ 26 As a result of the misconduct described above, the Dealer Member imposed a three day unpaid suspension on the Respondent, prohibited the Respondent from participating in the Dealer Member's rewards and recognition programs in 2021, and negatively impacted the Respondent's managerial assessment rating for the remaining calendar year, which negatively affected the Respondent's base salary for the following year.

¶ 27 The Dealer Member has contacted affected clients in order to confirm the client's contact preferences contained in the Client Contact Information Systems.

¶ 28 There is no evidence of financial losses to clients arising from the misconduct described in this Settlement Agreement.

¶ 29 The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.

¶ 30 By entering into this Settlement Agreement, the Respondent has saved the Corporation the time, resources and expenses associated with conducting a full hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

¶ 31 This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the MFDA Rules of Procedure.[2]

¶ 32 The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to Mutual Fund Dealer Rule 7.3.5 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

¶ 33 The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

¶ 34 Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

a. the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the MFDA Rules of Procedure;

b. the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal, including before the Board of Directors of the Corporation or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;

c. except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

[2] Pursuant to Mutual Fund Dealer Rule 7.2.3, the MFDA Rules of Procedure are the prescribed Rules of Procedure for the conduct of Hearings that are conducted pursuant to the Mutual Fund Dealer Rules.

d. the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with Mutual Fund Dealer Rule 7.4.5; and

e. neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

¶ 35 If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

¶ 36 If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

¶ 37 The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 38 The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 1st day of February, 2023.

"Susan Suet Man Cheung"

Susan Suet Man Cheung

"BM"

Witness - Signature

BM

Witness - Print name

"Charles Toth"

Staff of CIRO

Per: Charles Toth

Canadian Investment Regulatory Organization, Vice-President, Enforcement (Mutual Fund Dealers)

Schedule "A"

Order

File No. 202303

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Susan Suet Man Cheung

ORDER

WHEREAS on [date], the New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA, (the "Corporation") provided notice to the public of a Settlement Hearing in respect of Susan Suet Man Cheung (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the Corporation ("Staff"), dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant Mutual Fund Dealer Rules 7.3 and 7.4.1;

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that, between May 2020 and May 2021, the Respondent, in her capacity as branch manager, instructed an Approved Person under her supervision to alter client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

¶ 1 The Respondent shall pay a fine in the amount of $10,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(b) of the Mutual Fund Dealer Rules.

¶ 2 The Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules.

¶ 3 The Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of three months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules.

¶ 4 The Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules.

¶ 5 If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by the Corporation's Privacy Policy, then the Corporation's Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this [day] day of [month], 2023.

Name,

Chair

Name,

Industry Representative

Name,

Industry Representative

[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. The New Self-Regulatory Organization of Canada (referred to herein as the "Corporation") 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 the relevant section of the Interim Rules have been referenced.