



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: Peiqing (Anna) He

Heard: January 22, 2013 in Toronto, Ontario

Reasons for Decision: March 14, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Kenneth Mann	Industry Representative
Robert C. White	Industry Representative

Appearances:

H. C. Clement Wai)	Enforcement Counsel, Mutual Fund Dealers
)	Association of Canada (“MFDA”)
Jay Naster)	Counsel for the Respondent who did not appear
)	
)	

1. A hearing was scheduled before this Panel to consider a settlement agreement entered into between Staff of the MFDA and the Respondent on January 17, 2013.
2. Normally an *in camera* hearing is held to receive the details of the settlement agreement and the submissions of counsel. After that hearing the Panel would retire to consider and decide if the Panel would accept the settlement agreement. If the settlement agreement were accepted the Panel would return to the hearing room to confirm the Panel's acceptance.
3. In this case the Respondent with the consent of Enforcement Counsel was not required to attend but her counsel appeared and confirmed that the Respondent had agreed to the settlement agreement and was content with the penalty to be imposed. As the Panel had received and reviewed the settlement agreement prior to the hearing this step was no longer necessary.
4. The Panel was satisfied that the settlement agreement should be accepted and the Panel stated that reasons for acceptance would be subsequently released. The order requested by Enforcement Counsel was signed at the end of the hearing. Subsequent to the hearing counsel for the MFDA and the Respondent agreed to a new order subject to the decision of the Panel. On February 8, 2013 the Panel conducted a telephone conference to receive the submissions of counsel and a suggested new order. After due consideration the Panel accepted the new order which will be signed.

CONTRAVENTIONS

5. From August 2008 to February 2009, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, referring or facilitating the sale of an investment product to four individuals outside the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

FACTS

6. The Respondent was registered in Ontario as a mutual funds salesperson with Info Financial Consulting Group Inc. ("Info Financial") from July 4, 2008 to April 27, 2009. The Respondent is currently not registered in the securities industry in any capacity.

7. Joe Deng was branch manager of Info Financial until his resignation on July 31, 2008. Joe Deng was also the sole owner, director and controlling mind of MP Global Financial Limited (“MP Global”), which company was said to be in the financial services business but was unregistered pursuant to the Ontario *Securities Act*. MP Global raised money through sale of its own debentures which were not an investment product approved by Info Financial for sale by its Approved Persons. From August 2008 to February 2009 while a registered mutual fund salesperson with Info Financial the Respondent admits she referred the sale of MP Global debentures to four individuals in the total amount of \$160,000. The Respondent received fees or commission from MP Global in the amount of \$2,000.

RESPONDENT’S SUBMISSIONS

8. The Respondent made the following submissions:

- a) The Respondent shared the received commissions with three other persons.
- b) The Respondent was hired as an accountant by Deng for MP Global and then obtained registration as a mutual fund salesperson with Info Financial but never did any securities related business for Info Financial.
- c) Deng told her she could earn referral fees by selling MP Global debentures.
- d) The four persons referred to MP Global were family or friends. They met with Deng to obtain details of the investments. In addition the Respondent told these four persons that she had also invested in MP Global. All other information for the four persons was provided by Deng.
- e) As Keith Kee-Peng Tan who became her branch manager at Info Financial on or about July 31, 2008 had done the same thing she thought that her activity was appropriate.

CONSIDERATIONS AND FACTORS

9. The Panel has reviewed with care the numerous factors to be taken into account as to whether the penalty is in the public interest, reasonable and proportionate, reflecting specific and general deterrence which would prevent similar future conduct, and foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process itself.

10. The Panel has also considered factors that are particular to this case:

- a) The nature of the misconduct which included engaging in securities related business that is not carried on for the account and through the facilities of the Member impedes the Member's ability to fulfill its compliance and supervisory obligations. Off book trading or selling away can result in significant losses to investors as the Member has not reviewed nor approved the product for sale to its clients. We note that in this case the individuals who purchased the MP Global debentures were not clients of Info Financial.
- b) The Respondent has no previous disciplinary history.
- c) The Respondent has recognized the serious misconduct by accepting her responsibility for this misconduct which avoided a lengthy hearing and illustrates her remorse and cooperation.
- d) The harm suffered by investors as a result of the Respondent's activities.
- e) The benefits received by the Respondent as a result of the improper activities.

IMPORTANCE OF A NEGOTIATED SETTLEMENT

11. The Panel understands that a negotiated settlement should not be disturbed. The reasons as found in *Milewski (Re)*, [1999] I.D.A.C.D. No. 17, p. 9, makes the following comment which we find appropriate to this particular case:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process

in its consideration of specific settlements.

12. In the result, we order that the following terms of settlement shall be imposed:
- a) the Respondent shall be permanently prohibited from conducting securities related business while in the employ of or associated with any Member of the MFDA (in place of a 5-year suspension and a \$5,000 fine in the Settlement Agreement); and
 - b) the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of the MFDA By-law No. 1.

DATED this 14th day of March, 2013.

“John B. Webber”

The Hon. John B. Webber, Q.C.,
Chair

“Kenneth Mann”

Kenneth Mann,
Industry Representative

“Robert C. White”

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Industry Representative