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: Stephanie See-Wing Ho

Heard: February 5, 2018 in Toronto, Ontario
Decision: February 5, 2018
Reasons for Decision: March 5, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Linda J. Anderson	Industry Representative
Wanda Traczewski	Industry Representative

Appearances:

Shelly Feld	)	Counsel for the Mutual Fund Dealers Association of Canada
Robert Brush	)	Counsel for the Respondent
Stephanie See-Wing Ho	)	Respondent, in person

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on Monday, February 5, 2018. The full Settlement Agreement, dated September 20, 2017, entered into between Staff of the MFDA and Stephanie See-Wing Ho ("Ms. Ho" or the "Respondent") is available on the MFDA website. Ms. Ho was represented by counsel and appeared in person.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the February 5, 2018 hearing, with reasons to follow. These are our reasons for the decision.

3. From January 18, 2012 to November 30, 2015, the Respondent was registered in Ontario as a dealing representative with Investia Financial Services Inc. ("Investia" or the "Member"), a mutual fund dealer and Member of the MFDA.

4. After the Respondent's involvement with the events described below was discovered by Investia, she resigned from Investia effective November 30, 2015 and has not been registered in the securities industry in any capacity since her resignation. At all material times, the Respondent conducted business in Markham, Ontario.

5. This proceeding concerns the conduct of the Respondent when she was an Approved Person of Investia and specifically, the contravention of regulatory requirements that resulted when the Respondent engaged in an outside business activity by, among other things, serving as a director of the RESCO Mortgage Investment Corporation ("RESCO"), but failed to disclose her role with RESCO to the Member or seek approval from the Member to engage in that role.

Facts

6. The facts are set out in detail in the Settlement Agreement and can be found on the MFDA website and therefore need not be set out in full here.

7. In brief, in November 2013, the Respondent accepted an appointment as a director of RESCO and between then and May 2015 was a member of the board of directors and fulfilled her unpaid duties as a director, including attendance at board meetings. She also received 25% of the issued and outstanding common voting shares of RESCO and later purchased $20,000 worth of preferred shares of RESCO. The preferred shares were the means by which investors could invest in RESCO and offered investors a monthly dividend at a target net rate of return of 8% per year.

8. The Respondent's father was the founder, president and principal shareholder of RESCO. The Respondent was closely involved in the activities of RESCO. She attended board meetings; opened a corporate bank account for the company, for which she had signing authority and for which she earned a nominal monthly commission income; attended a training session organized by RESCO; knew that there were posters promoting RESCO in the offices used by RESCO and the Member; and on one occasion tried unsuccessfully to interest an Investia client in a RESCO product, although indicating that it was not an Investia product. However, none of the clients of the Respondent invested in RESCO and there is no evidence that any Approved Person of the Member sold investments in RESCO to any client of the Member.

9. RESCO operated out of the same office as the Investia Branch in Markham, as did another company owned and operated by the Respondent's father, Torce Financing Group ("Torce"). The Respondent had been the business development manager for Torce since 2011 and when the Respondent became an Investia representative she received approval from the Member to continue in her role at Torce, subject to the condition that she provide individuals that she dealt with in that role with disclosure that dual-occupation had been approved by the Member. There were several other requests for approval for other outside activities.

10. Prior to April 2015, the Respondent did not submit an Outside Business Approval Form to the Member or to her branch manager to request or obtain authorization to serve as a director of RESCO.

11. The Respondent's involvement with RESCO was reported to the MFDA and the MFDA commenced an investigation. Investia did as well. In the course of Investia's investigation, the Respondent submitted a request for approval of her involvement with RESCO and said that she intended to resign as a director of RESCO. Her request for approval was denied by the Member. RESCO then relocated its office, she resigned her position on the board of RESCO and transferred her common voting shares to another individual for no consideration. The Respondent resigned from the Member effective November 30, 2015.

Settlement Agreement

12. The Respondent accepted responsibility for her conduct. Paragraph 42 of the Settlement Agreement states:

> "Between November 2013 and June 2015, the Respondent engaged in outside business activities by among other things, serving as a director of a mortgage investment corporation [RESCO] and by opening a bank account for [RESCO] without obtaining prior approval from the Member to engage in such conduct, contrary to former MFDA Rule 1.2.1(c) and the policies and procedures of the Member."

13. Rule 1.2.1(c), which at the time was headed "Dual Occupations," stated: "An Approved Person may have, and continue in, another gainful occupation, provided that…[T]he Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation.' This section was subsequently modified under the heading "Outside Activities" to require in Rule 1.3 written approval by the Member for certain "outside activities."

14. The Terms of Settlement are set out in paragraph 43 of the Settlement Agreement and provide:

> "The Respondent agrees to the following terms of settlement:
>
> a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of three months commencing from the date of a Hearing Panel's

Order accepting this Settlement Agreement, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay a fine in the amount of $10,000 on the date that the Hearing Panel issues an Order accepting this Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs to the MFDA in the amount of $5,000 on the date that the Hearing Panel issues an Order accepting this Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;

d) the Respondent shall in the future comply with MFDA Rule 1.3 [the new version of the Rule] and the policies of any Member with whom she is registered if she becomes an Approved Person again in the future."

Acceptance of Settlement Agreement

15. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

16. The conduct in this case was serious. The Respondent clearly knew that her involvement with RESCO required the approval of the Member.

17. The requirement for knowledge and approval by the Member of an Approved Person's outside business activities is to permit the Member to properly supervise its Approved Person's activities, activities which may cause harm to investors and therefore to the capital markets and may also result in the Member's legal liability. Knowledge and approval also helps control improper conflicts of interest. See *Re Vitch* 2011 LNCMFDA 63 at paragraph 53.

18. The Settlement Agreement notes that the Respondent is in her early 30s and was relatively new to the mutual fund business during the material time. She has not previously been the subject of an MFDA disciplinary proceeding and cooperated with MFDA Staff's and the Member's investigations.

19. The three-month prohibition from conducting securities related business with any Member of the MFDA is a significant penalty. Counsel for the MFDA also noted that it is "relevant to the penalty terms that the Respondent resigned from Investia effective November 30,

2015 (more than 2 years ago) and has not been registered in the securities industry since her resignation from Investia."

20. The monetary penalty is in line with the many cases cited to us by counsel. It is also consistent with the MFDA Penalty Guidelines, which suggest that a $10,000 fine is the minimum penalty in such cases. The penalty is at the low end of the scale, but, along with the three-month prohibition, offers a good measure of specific and general deterrence.

21. It should also be noted that none of the clients whose accounts with the Member were serviced by the Respondent invested in RESCO and that there is no evidence that any Approved Person of the Member sold investments in RESCO to any client of the Member. There is also no evidence that any client suffered harm as a consequence of the Respondent's conduct

22. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for her misconduct, recognizes its seriousness, and has exhibited remorse. And by entering into the Agreement, the Respondent saved the MFDA the time, resources and expense associated with conducting a full hearing of the allegations.

23. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "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."

24. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the

settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel.

25. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "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." This is particularly so, we should add, when experienced counsel have been the negotiators.

26. It is not necessary for us to discuss the Supreme Court of Canada case of *R. v. Anthony-Cook*, [2016] 2 SCR. 204, cited by counsel for the Respondent, although rejected as the appropriate test by counsel for the MFDA. The Anthony-Cook decision certainly supports upholding agreements, but it was designed, along with the Supreme Court's *Jordan* decision, [2016] 1 SCR 631, to help deal with serious problems of delay in the Canadian criminal courts. The test proposed by the Supreme Court that plea agreements in the criminal courts should be accepted by trial judges unless the parties to the agreement were 'unhinged' is not, in our opinion, a good substitute for the carefully worked out process now used by regulatory tribunals in the securities field to determine whether to accept a Settlement Agreement, particularly where the process calls for two members of the securities industry to take part in the hearings. If a new scheme is desired, it should come as a rule from the MFDA Board. In the meantime, as stated by an IIROC Panel in *Re Jacob* 2017 IIROC 17 at paragraph 30: "It seems wise to stick with the *Milewski* test, which has stood the test of time."

27. The penalty agreed to in this case clearly falls within "a reasonable range of appropriateness."

28. For the above reasons we accepted the Settlement Agreement.

DATED this 5th day of March, 2018.

"Martin L. Friedland"

Martin L. Friedland, CC, QC
Chair

"Linda J. Anderson"

Linda J. Anderson
Industry Representative

"Wanda Traczewski"

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