



**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: Winston King-Loong Kuit**

Heard: March 14, 2017, in Vancouver, British Columbia  
Reasons for Decision: April 12, 2017

**REASONS FOR DECISION**

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Kathleen Jost	Industry Representative
Richard Sydenham	Industry Representative

Appearances:

Justin Dunphy	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Francis Lamer	)	Counsel for the Respondent
	)	
	)	

1. On February 2, 2017, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing (the “NOH”) setting out the allegations against Winston King-Loong Kuit (the “Respondent”) in this matter.

2. On February 17, 2017, the Respondent and the MFDA entered into a settlement agreement (the “Settlement Agreement”) in which the Respondent admitted to the following:

- a) between 2010 and August 2013, the Respondent recommended, sold, referred or facilitated the sale of approximately \$1.55 million in investments in SBC to 7 clients, 7 former clients, and 4 other individuals, outside the facilities of PIP and IPC, contrary to MFDA Rules 1.1 and 2.1.1; and
- b) in November, 2012, the Respondent completed an annual compliance questionnaire for his Member which contained responses that were false and misleading, thereby interfering with the Member’s ability to supervise his conduct, contrary to MFDA Rule 2.1.1.

3. In the Settlement Agreement, the Respondent agreed to the following penalty:

- a) to be permanently prohibited from conducted securities related business in any capacity while in the employ of or associated with any MFDA Member, commencing from the date of the Hearing Panel’s Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.

The Hearing Panel’s Order was made March 14, 2017.

4. The Settlement Agreement contains Agreed Facts, and it is appropriate to set those forth here.

## **AGREED FACTS**

### **Registration History**

5. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative<sup>1</sup>) since December 2002.

6. The Respondent was registered as a mutual fund salesperson with Partners in Planning Financial Services Ltd. (“PIP”), a former Member of the MFDA, in British Columbia from July 2006 to June 1, 2011, in Alberta from August 21, 2008 to June 1, 2011, in Ontario from February 16, 2011 to June 1, 2011, and in Saskatchewan from January 6, 2009 to June 1, 2011.

7. On June 1, 2011, PIP amalgamated with IPC Investment Corporation (“IPC”), a Member of the MFDA, and thereafter continued to operate as IPC. From June 1, 2011 to August 7, 2013, the Respondent was registered in British Columbia as a mutual fund salesperson with IPC. The Respondent also acted as a Branch Manager with IPC from June 1, 2011 to July 26, 2011.

8. From September 30, 2013 to August 13, 2014, the Respondent was registered in British Columbia with Global Maxfin Capital Inc. (“Global”), a securities dealer regulated by the Investment Industry Regulatory Organization of Canada.

9. The Respondent is not currently registered in the securities industry.

10. At all material times, the Respondent conducted business in the Burnaby, British Columbia area.

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<sup>1</sup> Since September 2009, the registration category formerly known as ‘mutual fund salesperson’ has been replaced by the category ‘dealing representative’.

## The SBC Investment

11. Between 2010 and August 2013, the Respondent recommended, sold, referred or facilitated the sale of approximately \$1.55 million in investments in SBC Financial Group Inc. (“SBC”) to 7 clients, 7 former clients and 4 other individuals (the “Investors”), outside the facilities of PIP and IPC. These transactions in SBC are summarized below:

#	Investor	Year	Member Client?	Amount Invested
1	IC	2010	Former client	\$151,500.00
2	PH	2011	Former client	\$27,376.00
3	TJ	2012	Former client	\$58,500.00
4	YK	2010	Client	\$100,000.00
5	JL	2010	Former client	\$67,500.00
6	RP	2011	Former client	\$450,000.00
7	LR	2011	Client	\$80,500.00
8	CS	2012	Client	\$15,000.00
9	JS	2011	Former client	\$33,000.00
10	DK	2011	Client	\$34,250.00
11	TT	2010	Client	\$114,050.00
12	PT	2011	Client	\$91,000.00
13	ET	2011	Client	\$39,000.00
14	AW	2011	Former client	\$21,615.00
15	AM	2010	Not a client	\$60,000.00
16	JM	2011	Not a client	\$150,000.00
17	CS	2012	Not a client	\$50,000.00
18	JW	2011	Not a client	\$10,500.00
<b>TOTAL:</b>				<b>\$1,553,791.00<sup>2</sup></b>

12. SBC is a company incorporated in British Columbia. No prospectus has ever been filed in respect of the distribution of securities of SBC.

13. The Respondent represented to the Investors that the monies they invested in SBC would be used to invest in real estate and stocks. The Respondent further represented to the Investors

<sup>2</sup> The Respondent recommended, sold, referred or facilitated the sale of a total of approximately \$2.4 million of SBC Investments. Only approximately \$1.55 million of these investments were processed when the Respondent was registered as a mutual fund salesperson.

that their investments in SBC would pay them returns of 12% to 15% per year for a locked-in term of three years.

14. The Respondent engaged in one or more of the following types of conduct with respect to each of the Investors:

- a) approached the Investors to invest in SBC;
- b) explained the details of the investments to the Investors, including the rates of return that the Investors could expect to receive;
- c) referred or introduced the Investors to a representative of SBC, Prabhjot Bakshi (“Bakshi”)<sup>3</sup>, for the purpose of allowing Bakshi to promote and facilitate the sale of investments in SBC;
- d) met with Investors, together with Bakshi, to facilitate the sale of investments in SBC;
- e) recommended the amount for the Investors to invest in SBC;
- f) answered questions from Investors regarding SBC;
- g) met with Investors to have them sign an SBC investment questionnaire, which SBC required as part of the sales process;
- h) received monies from Investors for the purpose of investing in SBC; and
- i) arranged for monies received from Investors to be invested in SBC.

15. The SBC investment was not an investment product known to PIP or IPC, or approved by PIP or IPC for sale by their Approved Persons.

16. None of the SBC investments were sold or referred through the facilities of PIP or IPC.

17. Neither PIP nor IPC were aware of the Respondent’s conduct regarding SBC.

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<sup>3</sup> Bakshi was registered as a mutual fund salesperson with PIP, and served as a branch manager, until he resigned in November 2008. Bakshi is the subject of a Notice of Hearing issued by the British Columbia Securities Commission regarding his involvement in the sale of securities of SBC.

18. The Respondent received commissions or other remuneration of approximately \$147,500 in respect of his conduct relating to the SBC investments. None of the commissions and other remuneration was received or processed through the facilities of PIP or IPC.

19. On January 23, 2015, SBC assigned itself to bankruptcy. At that time, SBC reportedly owed approximately \$2,712,077 to unsecured creditors including the Investors.

20. To date, none of the Investors have recovered any of the monies they invested in SBC.

### **Contravention #2: Misleading the Member**

21. In November 2012, the Respondent completed an annual compliance questionnaire and submitted it to IPC. As described below, the Respondent provided responses to questions in the annual compliance questionnaire which were false and misleading:

- a) Are you involved in any outside business activities, defined as: any type of activity other than your day-to-day responsibilities as a Mutual Fund Advisor/Licensed Assistant, in which income is earned or services rendered for gain or as a free service? (e.g. Income Tax, Life Insurance, Rental Properties, GICs outside dealer, etc.)

Respondent's Answer: Yes, Life Insurance- HUB International

- b) Do you have any agreements in place (written or unwritten) where you pay a fee or receive money for a referral and the fee is not processed through IPC Investment Corporation?

Respondent's Answer: No

- c) Do you receive any form of compensation from entities other than those within the IPC Networks of companies, excluding commission from life insurance companies and not previously disclosed on this questionnaire?

Respondent's Answer: No

22. By virtue of the conduct described above, the Respondent completed an annual compliance questionnaire for his Member which contained responses that were false and misleading, thereby interfering with the Member's ability to supervise his conduct, contrary to MFDA Rule 2.1.1.

**Action Taken by the British Columbia Securities Commission Action Against The Respondent**

23. The Respondent's conduct with respect to the SBC investments is also the subject of a proceeding by the British Columbia Securities Commission (the "BCSC"). As part of a resolution with both the MFDA and BCSC, the Respondent has entered into a settlement agreement with the BCSC in which he admits that his conduct with respect to SBC violated the British Columbia Securities Act, RSBC 1996, c. 418 (the "*Securities Act*"). In particular, the Respondent admits that he: (1) traded in securities without being registered, contrary to section 34(a) of the *Securities Act*; (2) acted as an adviser without being registered, contrary to section 34(b) of the *Securities Act*; and (3) distributed securities for which a prospectus had not been filed, contrary to section 61 of the *Securities Act*.

24. The Respondent has agreed to:

- a) disgorge the remuneration he received from SBC and pay \$147,500 to the BCSC pursuant to section 161(1)(g) of the Securities Act, which will be made available to cover some of the losses suffered by investors in SBC; and
- b) pay \$20,000 to the BCSC in respect of the settlement.

25. In addition, the Respondent has agreed that, for a period of 15 years:

- a) under section 161(1)(b)(ii) of the Securities Act, the Respondent will cease trading in, or is prohibited from purchasing, any securities, except that he may

trade securities through one account in his own name through a registrant if he first provides a copy of the Order to the registrant;

- b) under section 161(1)(c) of the Securities Act, any exemptions set out in the Securities Act or the regulations do not apply to the Respondent;
- c) under section 161(1)(d)(ii) of the Securities Act, the Respondent is prohibited from becoming or acting as a director or officer of any issuer or registrant, except that he may remain a director and officer of 1094893 BC Ltd., as long as 1094893 BC Ltd. does not engage in any activities in the securities market;
- d) under section 161(1)(d)(iii) of the Securities Act, the Respondent is prohibited from becoming or acting as a registrant or promoter in connection with any activities in the securities market;
- e) under section 161(1)(d)(iv) of the Securities Act, the Respondent is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
- f) under section 161(1)(d)(v) of the Securities Act, the Respondent is prohibited from engaging in investor relations activities.

26. The MFDA has agreed to forego the payment of a fine and costs in its proceeding having regard to the Respondent's agreement with the BCSC to disgorge the \$147,500 in remuneration he received from the SBC investments, which will allow these monies to be made available to compensate investors in SBC for the losses they incurred.

#### **Additional Factors**

27. The Respondent co-operated with investigation conducted by Staff of the MFDA.

28. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing on the allegations.

29. The Respondent has no previous disciplinary history with the MFDA.

## ANALYSIS

30. The facts agreed upon demonstrate, and the Respondent admits the following contraventions of the Rules, Policies and Bylaws of the MFDA:

- a) between 2010 and August 2013, the Respondent recommended, sold, referred or facilitated the sale of approximately \$1.55 million in investments of SBC to 7 clients, 7 former clients and 4 other individuals, outside the facilities of PIP and IPC, contrary to MFDA Rules 1.1.1 and 2.1.1; and
- b) in November 2012, the Respondent completed an annual compliance questionnaire for his Member which contained responses that were false and misleading, thereby interfering with the Member's ability to supervise his conduct, contrary to MFDA Rule 2.1.1.

31. The Settlement Agreement provides (and the Respondent agrees) that the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, commencing from the date of the Hearing Panel's Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1.

32. It is clear on the authorities that the role of the hearing panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in Re: *Sterling Mutuals Inc.*, quoting the reasoning of the IDA panel in Re: *Milewski*:

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 that 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<sup>4</sup>.

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<sup>4</sup> RE: *Sterling Mutuals Inc.*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at p. 9.

33. We adopt the analysis set out by the British Columbia Securities Commission in the *Seifert* case as follows, citing *R. v. 974649 Ontario Inc.*, 2001 SCC 81, (2001) 3 SCR 575:

“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 doing so, 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.”

34. It is well established by the authorities that the primary goal of securities regulation is the protection of the investor. Further, the hearing panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the respondent. *Re: Jacobson* MFDA File No. 200712, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated July 13, 2007, at p. 9.

35. In this case the Respondent recommended, sold, referred or facilitated the sale of approximately \$1.55 million in investments in SBC to 7 clients, 7 former clients and 4 other individuals outside the facilities of the Member firms, contrary to MFDA Rules 1.1.1 and 2.1.1. MFDA staff submitted the misconduct in this matter was very serious, and we agree. Other hearing panels have stressed the importance of MFDA Rule 1.1.1 to ensure that approved persons do not “go off book” so that Members can properly supervise the approved person. We adopt the reasons of the Hearing Panel in *Re: Caicco*, MFDA File No. 201503, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 4, 2015, at para. 23, citing *Re Laverdiere* (File No. 200936):

“MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An approved person must not trade in securities other than through the firm employing him/her and the firm must have knowledge and consent to those

business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activities is subject to appropriate review and supervision.”

36. We adopt the submission of MFDA staff with respect to the decision of RE: *Andrews* where the Hearing Panel confirmed that the sale or referral of unapproved products was very serious due to the fact that clients were exposed to significant risk of loss given the nature of the investments and the absence of Member due diligence and regulatory oversight of the investments. As the investments were not processed through the Member in that decision, the Member was unable to properly supervise the approved person and ensure the clients were properly qualified as accredited and eligible investors<sup>5</sup>.

37. We accept MFDA staff’s submission that the misconduct in this case that was a violation of Rule 1.1.1 is also a violation of Rule 2.1.1.

38. In this case, the Respondent, in November 2012, completed an annual compliance questionnaire for his Member which contained responses that were false and misleading thereby interfering with the Member’s ability to supervise his conduct, contrary to MFDA Rule 2.1.1. The annual compliance questionnaire is an important document containing important information, and to falsify the responses therein is serious misconduct.

39. We adopt MFDA staff’s submission that hearing panels have made clear that misleading a Member is serious misconduct that is worthy of significant sanction, RE: *Davis*, MFDA File No. 201615, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated November 15, 2016; RE: *Shaw*, MFDA File No. 201359, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 3, 2014 at para. 41.

40. As per the Settlement Agreement, it is not disputed in this case that the 18 investors in this matter suffered a loss of \$1,553,791 while the Respondent was registered with the MFDA.

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<sup>5</sup> RE: *Andrews*, MFDA File No. 201324, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 6, 2014 at para. 43.

41. We accept the submission of MFDA staff that a permanent prohibition ensures that the Respondent will not be able to harm clients of MFDA Members in the future. The Respondent's disgorgement of \$147,500, and fine of \$20,000 paid to the B.C. Securities Commission will also ensure the effect of both specific and general deterrence.

42. We acknowledge that the Respondent has not previously been disciplined by the MFDA, and that the Respondent has co-operated with the MFDA's investigation and admitted to the misconduct as set out in the Settlement Agreement.

43. MFDA counsel reviewed the penalty guidelines, and while the penalty guidelines are not mandatory or binding, they are intended to provide a basis upon which a hearing panel's discretion can be exercised consistently in like circumstances.

44. MFDA staff cited two cases in which similar penalties have been imposed in similar circumstances: Re: *Oosterveld*, MFDA File No. 201514, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated October 11, 2016: in which the Respondent referred 56 clients and 3 other individuals to a company selling an exempt market product and received at least \$33,000 in referral fees for doing so, thereby entering into a referral arrangement which the Member was not a party and which otherwise did not comply with section 13.7 to 13.10 of National Instrument 31-103. The clients suffered a significant loss of their investment in the product to which they were referred by the Respondent and the Hearing Panel imposed a permanent prohibition, fine of \$50,000 and costs of \$10,000.

45. In Re: *Bulloch*, MFDA File No. 201417, Hearing Panel of the Central Regional Council, Reasons and Decision dated January 15, 2015, the Respondent made referrals in respect of the sale of approximately \$7.3 million of investment products to at least 5 clients and 6 other individuals for which he received fees of approximately \$15,000, and the clients at issue experienced a complete loss of their investment in the product to which they were referred by the Respondent. The Hearing Panel accepted the following penalty, pursuant to a settlement agreement: permanent prohibition; fine of \$25,000; costs of \$5,000.

46. Having carefully considered the Settlement Agreement and the submissions of counsel for the parties, we find that the penalties proposed in the Settlement Agreement are reasonable and proportionate, and would deter the Respondent, and other approved persons, from engaging in similar misconduct. Further, acceptance of the Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

47. Thus at the conclusion of the Hearing, this panel accepted the Settlement Agreement, and signed an Order accordingly.

48. For the above reasons, we approve the Settlement Agreement.

These Reasons may be signed in counterpart.

**DATED** this 12<sup>th</sup> day of April, 2017.

“Stephen D. Gill”

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Stephen D. Gill  
Chair

“Kathleen Jost”

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Kathleen Jost  
Industry Representative

“Richard Sydenham”

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Richard Sydenham  
Industry Representative