



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

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Robert William Marshall**

Heard: January 14, 2015, in Toronto, Ontario  
Reasons for Decision: January 15, 2015

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
Rob Christianson	Industry Representative
Ken Mann	Industry Representative

Appearances:

Lyla Simon	)	Senior Enforcement Counsel, Mutual Fund
	)	Dealers Association of Canada
	)	
Roger Horst	)	Counsel for the Respondent
	)	
	)	

## **Introduction**

1. In its Notice of Hearing, the Mutual Fund Dealers Association of Canada (“MFDA”) set out the following allegations against Robert William Marshall (“the Respondent”):

**Allegation #1:** The Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by:

- (a) in August 2006 and March 2012, selling, recommending, referring, or facilitating the sale of a security to two clients outside the Member;
- (b) from 2006 to 2007, selling, recommending, referring, or facilitating the sale of approximately \$6 million of a security to clients and individuals, \$1.195 million of which was to 21 clients, outside the Member;
- (c) from April 2012 to July 2012, selling, recommending, referring, or facilitating the sale of approximately \$2 million of a security, \$825,000 of which was to 13 clients, outside the Member;

contrary to MFDA Rules 1.1.1(a) and 2.1.1.

**Allegation #2:** In the event, or to the extent, the activities described in Allegation #1 did not constitute securities related business, then the Respondent had and continued in another gainful occupation in respect of those same activities that was not disclosed to and approved by the Member, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

**Allegation #3:** The Respondent engaged in personal financial dealings with clients, thereby placing his own interests ahead of the clients’ interests and creating a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients; by:

- (a) from 2004 to 2009, failing to disclose to the clients who invested in the security referred to in Allegation #1(a) above, that he was an advisor to the board of directors of the issuer, for which he received payments of \$8,000 to \$10,000 annually;
- (b) from June 2012 to November 2012, failing to disclose to at least 9 clients who invested in a pooled investment that he was a director of the parent company of the issuer of a security in which the pooled investors invested;
- (c) from 2009 to May 2011, soliciting and facilitating three clients to contribute or lend a total of \$56,000 to a company in respect of which amounts he personally made monthly repayments to the three clients until 2013, and
- (d) in or about February 2010, lending \$7,500 to client DW which client DW repaid in April 2010;

contrary to MFDA Rules 2.1.4 and 2.1.1.

2. On January 14, 2015, we conducted a hearing into these allegations. The matter proceeded by way of an Agreed Statement of Facts. The parties jointly submitted that findings of professional misconduct should be made on Allegations #1 and #3 and that Allegation #2 (which was pleaded in the alternative to Allegation #1) should be dismissed. They also jointly submitted that the appropriate penalty, in all the circumstances, is the following:

- i. Permanent prohibition, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- ii. Fine of \$175,000 pursuant to s. 24.1.1(b) of the said By-law; and
- iii. Costs in the amount of \$5,000 pursuant to s. 24.2 of the said By-law.

3. After we reviewed the materials filed, and heard from counsel for both parties, we made findings of professional misconduct respecting Allegations #1 and #3 and dismissed Allegation #2. We were satisfied that the Agreed Statement of Facts established that these allegations had been proven. We also made an order as to penalty that adopted the joint submission. We were again satisfied that the proposed penalty was appropriate in all of the circumstances. We are required to provide written reasons. These follow.

## **The Agreed Facts**

### Registration History

4. From April 3, 2006 to November 30, 2012, the Respondent was registered in Ontario and Quebec as a dealing representative with IPC Investment Corporation (“IPC”), a Member of the MFDA. He resigned on November 30, 2012.

5. From August 2002 to March 2006, the Respondent was registered in Ontario as a dealing representative with Independent Planning Group Inc. (“IPG”), then a Member of the MFDA.

6. The Respondent was registered as a mutual fund salesperson with four other registrants prior to August 2002.

### Allegation #1: Securities Related Business Outside the Member

7. In or about 2004, the Respondent became aware of an investment fund (which was in fact an exempt market security) known as Quorum P.I.P.E. (Public Investment in Private Equities), which later changed its name to Quorum Secured Equity Trust (“QSET”). He was then registered with IPG.

8. QSET was marketed by a privately held Toronto company known as the Quorum Group (“Quorum”) to prospective investors as a pooled fund which sought to raise \$17 million in capital and undertake equity investments in a select number of small under-valued publicly listed companies (the “QSET portfolio”). QSET units were available to accredited investors at a price of \$100 per unit. The minimum required subscription amount was 250 units (\$25,000). In return, QSET issued principal-deferred debentures to the investors and purported to pay them distributions of 6% per annum on their investment. The investors were promised a full return of their principal at the end of five years. QSET was a high risk, illiquid investment, and therefore was not suitable for all investors.

9. QSET was not on IPG's list of approved products for sale. The Respondent sought IPG's approval to offer QSET to his IPG clients. In or about November 2004, IPG approved QSET for sale by the Respondent subject to certain conditions.

10. From about November 2004 to March 2006, the Respondent sold approximately \$5.19 million of QSET units to 37 IPG clients, and received approximately 4% commission on his QSET sales.

11. In April 2006, the Respondent became registered with IPC. QSET was not on IPC's list of approved products for sale. The Respondent sought IPC's approval to continue to offer QSET to his IPC clients. IPC advised the Respondent that his clients who already held QSET and were transferring to IPC could continue to hold QSET in their IPC accounts; however, the Respondent was specifically prohibited from selling, facilitating sales of, or referring clients to QSET.

12. In or about August 2007, the Respondent again requested approval from IPC to offer QSET to his clients. IPC again declined to approve the Respondent's request, and reminded him that:

- (a) QSET was not a product approved for sale by IPC;
- (b) MFDA Rule 1.1.1 prohibited IPC advisors from conducting securities related business outside the Member; and
- (c) if the Respondent were to make any solicitations or recommendations to individuals regarding QSET, this would constitute securities related business and, therefore, could only be conducted through IPC.

13. Despite being so advised, the Respondent facilitated the sale of QSET on two occasions for which he did not receive remuneration. Neither of these transactions was processed for the account or through the facilities of IPC. At no time did the Respondent advise IPC of his sales of QSET, or receive approval from IPC to sell QSET.

14. In years subsequent to investors purchasing the QSET units, the investors received some limited quarterly payments, as well as a return of some of their capital via a special distribution

in December 2007. However, they did not receive their expected full return of capital after five years.

15. In 2008, the QSET payments to investors were reduced and became sporadic. In 2010, QSET investors were offered the option to sign a power of attorney which gave QSET management the authority to sell the units, and which also converted the investors' QSET units into an interest in the underlying companies held in the QSET portfolio.

16. By 2012, all QSET payments to investors ceased. The QSET investors' remaining principal has not been returned and there is no reasonable prospect of the investors recovering any amounts.

17. In 2006, the Respondent became aware of an exempt market security known as Quorum Investment Pool Limited Partnership ("QIP").

18. QIP was also marketed by Quorum to prospective investors as a limited partnership pooled fund which sought to raise \$50 million in capital and undertake equity investments in a select number of small under-valued publicly listed companies (the "QIP portfolio"). QIP units were available to accredited investors. In return, QIP issued principal-deferred debentures to the investors and purported to pay them monthly distributions of 1% of their investment (i.e. 12% per annum). The investors were promised a full return of their principal at the end of five years. QIP was a high risk, illiquid investment.

19. From 2006 to 2007, the Respondent sold or facilitated the sale of approximately \$6 million of QIP units, \$1.195 million of which was to 21 clients, outside the Member, and for which he earned approximately 1.0% consulting fees, that is, \$60,000. The Respondent, through his company, R.W. Marshall Financial Services Inc., invoiced the clients who purchased QIP directly, such that his fees in relation to their investments in QIP did not flow through the books and records of the Member. Additionally, the Respondent had anticipated further deferred remuneration directly from Quorum for his sales of QIP; however, this did not come to pass.

20. In the years subsequent to investing in QIP, the investors received some limited payments, as well as a return of some of their capital via a special distribution in December 2007, but did not receive their expected full return of capital after five years.

21. None of the investments in QIP were processed for the account or through the facilities of IPC. QIP was not on IPC's list of approved products for sale, and at no time did the Respondent advise IPC of his sales of QIP, or seek or receive approval from IPC to sell QIP.

22. In 2014, QSET and QIP investors, some of whom had been clients of the Respondent, commenced civil litigation in respect of their QSET and QIP investment losses as against the Respondent, IPC, and others.

23. During the course of his dealings with QSET and QIP, the Respondent came to know of a company known as Mash True Fan. Mash True Fan was owned by Mash Media, which was, in turn, one of the small publicly listed companies held in the QSET and QIP portfolios. Mash Media was a private firm located in Mississauga, Ontario and held itself out as carrying on business in social media advertising.

24. On June 8, 2012, the Respondent incorporated 1875672 Ontario Limited ("1875672") for the express purpose of facilitating non-accredited investors investing in Mash True Fan as a pooled investment. The Respondent was the sole owner of 1875672, and was registered on the corporate registry as its sole Director.

25. After 1875672 was established, the Respondent entered into a shareholders agreement effective November 1, 2012 ("Shareholders Agreement"), with at least 9 clients and 19 individuals (the "Pooled Investors"), some or all of whom did not qualify under the accredited investor exemption under the *Ontario Securities Act*, in order to facilitate their investment of approximately \$530,000 in Mash True Fan. The Respondent was also a shareholder.

26. Under the Shareholders Agreement, the Pooled Investors advanced monies to 1875672 via the Respondent, and 1875672 issued shares and promissory notes to the Pooled Investors.

Mash True Fan purported to pay the Pooled Investors monthly payments of approximately 0.5% - 1.0% of their investment (i.e. 6% - 12% per annum). The Pooled Investors were promised a full return of their principal at the end of two years. Mash True Fan was a high risk, illiquid investment.

27. 1875672 also entered into various agreements and promissory notes with Mash True Fan or its related entities, such that Mash True Fan purported to pay 1875672 interest in the amount of 20% per annum on the monies invested by 1875672 in Mash True Fan.

28. From June 2012 to November 2012, nine IPC clients invested a total of \$135,000 in Mash True Fan.

29. Mash True Fan was not an investment product approved for sale by IPC and at no time did the Respondent advise IPC of or seek or receive approval from IPC regarding the creation or existence of 1875672 and the Shareholders Agreement and the fact that they were created for the express purpose of allowing investors to pool together to invest in Mash True Fan under the accredited investor exemption when some or all of the investors did not qualify as accredited investors.

30. In the months subsequent to investing, the Pooled Investors received some monthly payments, with their full return of capital expected in November 2014. For some or all of the Pooled Investors, the monthly payments stopped in May 2014.

31. During the course of his dealings with the QIP and QSET portfolios, the Respondent came to learn of a company known as Three 2N, which was created as a result of a merger of two of the small publicly listed companies held in the QIP and QSET portfolios, namely Alt Software and Ambercore. Three 2N was a private firm located in Ontario and held itself out as carrying on business in the software development industry.

32. In 2012, after QIP encountered financial troubles, the Respondent raised capital for Three 2N. From April 2012 to July 2012, the Respondent sold approximately \$2 million of Three 2N debentures, \$825,000 of which he sold to 12 IPC clients.

33. Three 2N paid the investors' cash interest "in advance" (i.e. immediately upon investing) at a rate of 6% per annum on their total investment, and purported to pay further interest of 6% per annum payable quarterly commencing in the second year of the investment. The investors were promised a full return of their principal at the end of two years. Three 2N was a high risk, illiquid investment.

34. For his role in selling the Three 2N debentures, the Respondent earned approximately 3% commission, such that he earned \$62,250 on sales of \$2 million of Three 2N debentures.

35. From April 2012 to July 2012, 13 of the Respondent's IPC clients invested a total of \$825,000 in Three 2N.

36. In the months subsequent to investing, the Three 2N investors received some monthly payments, and their full return of capital was expected in July 2014. For some or all of the Three 2N investors, the monthly payments stopped in May 2014.

37. Three 2N was not an investment product approved by IPC for sale by its Approved Persons, and at no time did the Respondent advise IPC of or seek or receive approval from IPC regarding his promotion and sales of the Three 2N debentures.

### Allegation #3: Conflict of Interest and Related Issues

38. From 2004 to 2009, while he was registered first with IPG and then with IPC, the Respondent held the position of "Advisor" to QSET's board of directors. For his role as Advisor, he was compensated approximately \$8,000 to \$10,000 per year.

39. In or about March 2007, approximately 11 months after becoming registered with IPC, the Respondent disclosed his role of Advisor to IPC and received approval for same. The Respondent states that some clients and some individuals who invested in QSET and QIP were advised that the Respondent was an Advisor to the board of QSET; however, at no time did the Respondent himself disclose in writing to clients and individuals who invested in QSET and QIP that he was an Advisor or that he was compensated for performing that role.

40. On June 28, 2012, the Respondent became registered as a director on the board of directors of Mash True Fan. The Respondent states that he did not receive any compensation or other benefit for this role.

41. As earlier described, from June 2012 to November 2012, the Respondent facilitated non-accredited clients and individuals investing in Mash True Fan via a pooled investment. The Respondent failed to advise the Pooled Investors that he was a director of Mash True Fan.

42. The Respondent did not seek or obtain approval from IPC to be a director of Mash True Fan.

43. From 2009 to May 2011, the Respondent solicited and facilitated three IPC clients contributing or lending a total of \$56,000 to the operations of Lab Magazine, a company that carried on business as a film production company.

44. The Respondent personally made monthly repayments to the clients until 2013, when the clients were repaid in full.

45. In or about February 2010, the Respondent loaned \$7,500 to client DW, who repaid the Respondent in April 2010.

### The Respondent's Circumstances

46. The Respondent is 69 years old, and he has worked for many years in the financial services industry.

47. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

48. The Respondent is not currently registered in the securities industry in any capacity. He remains licensed to sell insurance.

49. The Respondent cooperated fully with Staff during its investigation. Staff advises that he was forthright in acknowledging his misconduct in his MFDA interviews. By signing an Agreed Statement of Facts and acknowledging misconduct, he has reduced the resources that needed to be expended on this matter and obviated the necessity for a contested hearing on the merits.

50. The Respondent demonstrated obvious remorse when he addressed us at the hearing.

### **Analysis**

51. A hearing panel should not interfere lightly in a negotiated settlement. In particular, it should not reject a joint submission unless it views the proposed disposition as clearly falling outside the range of reasonableness. In our view, the joint submission advances the public interest, and reflects a reasonable disposition in all of the circumstances.

52. The most significant component of the penalty imposed here is a permanent prohibition. This penalty is clearly warranted by the serious nature of the misconduct. The misconduct extended for at least eight years. It involved securities related business without notice to and the approval of the Member. Of course, such misconduct denies a client the protections otherwise afforded through the Member, including its ability to supervise Approved Persons and the suitability of their investment advice. The misconduct also involved personal financial dealings

that placed the Respondent in various conflicts of interest. Such misconduct undermines an Approved Person's duty to act in the best interests of his clients.

53. The investors experienced significant losses as a result of the Respondent's misconduct. In many instances, the products that the Respondent sold to the Member's clients and others were high risk, illiquid investments which were not suitable for all investors. In relation to the Mash True Fan pool, the Respondent specifically facilitated non-accredited investors' involvement in a high risk product for which they would not otherwise have been qualified.

54. It constitutes an aggravating feature of this matter that the Respondent was specifically prohibited by IPC from making recommendations regarding QSET, but did so anyway. He did not even attempt to seek the approval of the Member regarding his sales of QIP. This evidenced deliberateness on his part.

55. We are mindful of the Respondent's personal circumstances as set out in paragraphs 46 to 50 of our reasons and have taken them into consideration. We recognize the Respondent's remorse and high level of cooperation with the MFDA. Nonetheless, a permanent prohibition is necessary to generally deter others from engaging in similar serious misconduct, and foster public confidence in the securities industry. Such a disposition is also compatible with existing jurisprudence.

56. We come to the same conclusion in relation to the recommended fine and costs. The quantum of the fine and costs is, again, compatible with existing jurisprudence and the full range of considerations that inform our discretion.

57. In summary, the recommended disposition is in the public interest. It is proportionate. It addresses the relevant considerations, most importantly general deterrence, and fosters public confidence in the securities industry. It also takes into consideration the personal circumstances of the Respondent.

58. We are grateful to both counsel for their cooperation and for their skillful approach to the issues.

**DATED** this 15<sup>th</sup> day of January, 2015.

“Mark J. Sandler”

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Mark J. Sandler  
Chair

“Rob Christianson”

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Rob Christianson  
Industry Representative

“Ken Mann”

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Ken Mann  
Industry Representative

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