



**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: Percy Kwun Chung Poon**

Heard: August 21, 2018 in Toronto, Ontario

Decision: August 21, 2018

Reasons for Decision: October 19, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC

Susan L. Dicks

Guenther W.K. Kleberg

Chair

Industry Representative

Industry Representative

Appearances:

Michelle Pong

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Enforcement Counsel for the Mutual Fund

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Dealers Association of Canada

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Percy Kwun Chung Poon

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Respondent, in person

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## 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 Friday, September 28, 2018. The full Settlement Agreement, dated September 21, 2018, entered into between Staff of the MFDA and Percy Kwun Chung Poon (“Mr. Poon” or the “Respondent”) is available on the MFDA website. Mr. Poon was not represented by counsel and appeared in person.
2. The Panel accepted the proposed Settlement Agreement at the conclusion of the September 28<sup>th</sup> hearing, with reasons to follow. These are our reasons for the decision.
3. Between February 8, 2006 and March 2017, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investia Financial Services Inc. (“Investia”), a Member of the MFDA. Between August 2004 and February 1, 2006, the Respondent was registered in Ontario as a mutual fund salesperson with WFG Securities of Canada Inc. (now known as WFG Securities Inc.), a Member of the MFDA. At all material times, the Respondent conducted business in Richmond Hill, Ontario.
4. The Respondent resigned from Investia on March 30, 2017 and is not currently registered in the securities industry in any capacity.

## Contraventions

5. A Notice of Hearing was issued by the MFDA on January 8, 2018 with a single Allegation:  
  
“**Allegation #1:** On or about February 11, 2016, the Respondent misled the Member during an investigation with respect to the Respondent’s knowledge about investments being sold outside the accounts and facilities of the Member, contrary to MFDA Rule 2.1.1”
6. The Respondent admits in paragraph 18 of the Settlement Agreement that “on or about February 11, 2016, the Respondent misled the Member during an investigation with respect to the

Respondent's knowledge about investments being sold outside the accounts and facilities of the Member, contrary to MFDA Rule 2.1.1.

### **The Misconduct**

7. The details of the misconduct are set out in paragraphs 10 to 17 of the Settlement Agreement and will not be described in detail here.

8. In brief, the Respondent's branch manager, HL, an Approved Person, had provided the Respondent with promotional material from a real estate and development company, Titan Equity Group Ltd. ("Titan"), which offered a syndicated mortgage investment (the "Investment"). The Respondent personally invested at least \$50,000 in this product through HL. He received \$2,500 from HL's company, Kirin Capital Corporation ("Kirin"), as a portion of the referral fee – referred to as a "rebate" – received by HL.

9. The Investment was not an approved product permitted to be offered to investors by Investia's Approved Persons and the Investment was not carried on for the account of Investia or through its facilities.

10. Investia's policies and procedures required that its Approved Persons only offer products Investia had approved for sale and that all products be sold through Investia. Further, Approved Persons were only to participate in referral arrangements that Investia had approved and all fees or commissions were to flow through the books and records of Investia.

11. HL's activities were subsequently investigated by Investia and the Respondent was required to complete an online Questionnaire. He denied knowing about Titan or Kirin. These responses were false and misleading.

## **Terms of Settlement**

12. The Respondent agreed to the following Terms of Settlement (see paragraph 19 of the Settlement Agreement):

- a) the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of six months from the date of the order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$1,000, payable on or before the date of the Settlement hearing, pursuant to section 24.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500, payable on or before the date of the Settlement Hearing, pursuant to section 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulation made thereunder, including MFDA Rule 2.1.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **Acceptance of Settlement Agreement**

13. 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.

14. The conduct in the present case is serious. Not only did the Respondent operate outside the Member, but in the early stages of the investigation he misled the Member when questioned about the transactions.

15. This is, however, the first time the Respondent has been involved in disciplinary hearings. No client purchased the Investment from the Respondent and therefore no client has suffered any loss from the conduct in the present case. Moreover, by entering into a Settlement Agreement the

Respondent has accepted responsibility for his misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

16. After initially misleading the MFDA, the Respondent has cooperated with the MFDA.

17. Prohibition of employment with an MFDA member for six months is a significant penalty. It offers a substantial measure of specific and general deterrence.

18. The monetary penalty might be considered relatively low, but the underlying conduct in this case was a single instance of a transaction which involved the Respondent's own funds.

19. The combination of a six month penalty and a relatively small fine results in an overall penalty that is not out of line with the cases cited to us by counsel for the MFDA.

20. 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.”

21. 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.

22. 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.”

23. The penalty and the costs agreed to in this case clearly fall *within* “a reasonable range of appropriateness.”

24. For the above reasons the panel accepted the Settlement Agreement.

**DATED** this 19<sup>th</sup> day of October, 2018.

“Martin L. Friedland”

Martin L. Friedland, CC, QC  
Chair

“Susan L. Dicks”

Susan L. Dicks  
Industry Representative

“Guenther W.K. Kleberg”

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