



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

Heard: April 29, 2013 and May 10, 22, 31, 2013 in Toronto, Ontario
Reasons for Decision (Orders): August 1, 2013

**REASONS FOR DECISION
(Orders)**

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Darcy Lake	Industry Representative
Robert Guilday	Industry Representative

Appearances:

Shelley Feld)	For the Mutual Fund Dealers Association of
Hugh Corbett)	Canada
)	
Oleg Roslak) May 10, 2013 only	For W.H. Stuart Mutuals Ltd. and Marilyn
)	Dianne Stuart
)	
Eric Fournie) May 22, 2013 only	For W.H. Stuart Mutuals Ltd.
)	
Patrick Metzler) May 31, 2013 only	For Marilyn Dianne Stuart

A. HISTORY OF PROCEEDINGS

1. On April 29, 2013, Staff of the Mutual Fund Dealers Association of Canada (the “MFDA”) brought an Application, pursuant to section 24.3 of MFDA By-law No.1 (the “By-law”), without notice to W.H. Stuart Mutuals Ltd. (“W.H. Stuart”) and Marilyn Dianne Stuart (“Stuart”) (collectively the “Respondents”) before a hearing panel of the MFDA’s Central Regional Council (the “Hearing Panel”) for certain immediate relief against the Respondents.

2. After reading and considering the Affidavit of Lara Rowles, Manager, Investigations of the MFDA, sworn April 29, 2013, and the Affidavit of Laura Milliken, Director, Financial Compliance of the MFDA, sworn April 29, 2013, and hearing the submissions of Counsel for MFDA Staff, no one appearing for the Respondents, since the Application proceeded without notice, the Hearing Panel made an interim Order against the Respondents, pursuant to sections 24.3.1(b) and 24.3.2(b) of the By-law, imposing penalties available under section 24.3.3 of the By-law.

3. This interim Order was made to take effect only upon being served on W.H. Stuart and Stuart.

4. The Application was made returnable on Notice to the Respondents on May 9, 2013.

5. In accordance with section 24.3.12 of the By-law, the entirety of the proceedings on April 29, 2013, were ordered to remain *in camera* and the public record of the proceedings were sealed until such time as the Hearing Panel ordered otherwise.

6. On consent of the parties, the return date of the Application was changed to May 10, 2013.

7. On May 10, 2013, MFDA Staff sought an Order imposing further terms and conditions on the Respondents. The contents of this Order were not opposed by the Respondents.

8. After hearing the submissions of Counsel for MFDA Staff and the Respondents, the Hearing Panel made a further Order.

9. One of the terms of the Order was that the entirety of the proceedings commenced on April 29, 2013, were to remain *in camera* and the public record of same sealed until May 21, 2013, or such earlier date as Staff, in its sole discretion, determined to be appropriate and in the public interest.

10. The Order also provided that publication of the Notice of Application, the Orders of the Hearing Panel of April 29 and May 10, 2013, as well as press releases of any steps taken in relation to the Application, were not to occur until May 21, 2013, or such earlier date as Staff, in its sole discretion, determined to be appropriate and in the public interest.

11. Another term of the Order was that a further appearance was to take place before the Hearing Panel on May 22, 2013.

12. At the appearance on May 22, 2013, the former counsel for W.H. Stuart and Stuart advised that Stuart was in the process of retaining separate Counsel and that he was only acting for W.H. Stuart.

13. The Hearing Panel was advised that an Asset Purchase Agreement had been executed by the Respondents that resulted in the transfer of client accounts and Approved Persons of W.H. Stuart to Keybase Financial Group Inc. (“Keybase”), another Member of the MFDA.

14. After hearing the submissions of Counsel for MFDA Staff and W.H. Stuart, the Hearing Panel made a further Order against the Respondents and set the next appearance date for May 31, 2013.

15. On May 31, 2013, Counsel appeared on behalf of Stuart. Counsel for W.H. Stuart advised, through Staff, that he did not intend to participate in the appearance.

16. On May 31, 2013, MFDA Staff agreed to prepare additional affidavit evidence, to be submitted to the Hearing Panel, to provide an update on information that had come to light and events which had transpired since the Application was commenced on April 29, 2013.

17. The Hearing Panel subsequently received an Affidavit of Lara Rowles, sworn June 5, 2013, and an Affidavit of Laura Milliken, sworn June 6, 2013.

18. After hearing the submissions of Counsel for MFDA Staff and Stuart, the Hearing Panel made a further Order against the Respondents.

19. As part of the Order, the proceedings against the Respondents were adjourned, *sine die*, with any party having the right to seek a further appearance before this Hearing Panel on a minimum of 5 days' notice.

20. MFDA proceedings are normally open to the public and on notice to the Member or Approved Person. This Application was commenced without notice to the Respondents. The appearance before the Hearing Panel on April 29, 2013, was without notice to the Respondents and was not open to the public.

21. The subsequent appearances on May 10, 22 and 31, 2013, were on notice to the Respondents. The appearance on May 10, 2013, was not open to the public. The appearances on May 22 and 31, 2013, were open to the public.

22. The proceedings are currently adjourned, *sine die*, on the consent of the parties. The Hearing Panel has drawn no final conclusions with respect to any of the voluminous material which has been presented to it to date. None of the affiants have been subjected to the rigours of cross-examination in a public forum. That may or may not occur in the future.

23. As these proceedings commenced in a somewhat unusual fashion, although completely in accordance with the By-law, the Hearing Panel thought it appropriate to provide brief Reasons as to why it made the four Orders which have been issued to this date.

B. NOTICE OF APPLICATION, dated April 29, 2013

24. On April 29, 2013, the MFDA issued the following Notice of Application:



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

NOTICE OF APPLICATION
(Section 24.3 of By-law No. 1)

NOTICE is hereby given that an application pursuant to section 24.3 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the “MFDA”) will be brought by Staff of the MFDA (“Staff”), without notice to W.H. Stuart Mutuals Ltd. (“W.H. Stuart”) and Marilyn Dianne Stuart (“Stuart”) (collectively, the “Respondents”), before a hearing panel of the MFDA’s Central Regional Council (the “Hearing Panel”) in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on Monday, April 29, 2013 at 10:00 am or as soon thereafter as the hearing can be held.

DATED this 29th day of April, 2013.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario, M5H 3T9
Tel.: 416-943-7431
Fax: 416-361-9781
Email: corporatesecretary@mfda.ca

THE APPLICATION IS FOR AN ORDER pursuant to s. 24.3.3 of MFDA By-Law No. 1 providing that, effective immediately:

As against W.H. Stuart:

Restrictions on house accounts

1. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall provide MFDA Staff with a daily list of its house accounts and daily report on all activity in its house accounts for the period commencing Friday, April 26, 2013 until further order of a Hearing Panel;
2. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall not process any trades in its house accounts without the prior written approval of MFDA Staff;

Restrictions on capital

3. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart is restricted from undertaking any of the following activities without first obtaining the prior written consent of MFDA Staff's Senior Vice-President, Compliance, a designate thereof, or a further order of a Hearing Panel:
 - (a) making payments directly or indirectly by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate of W.H. Stuart (regardless of whether the recipient of the payment presently has or previously had any role in the direction or control of W.H. Stuart);
 - (b) reducing the capital of W.H. Stuart in any manner including redemption, repurchase or cancellation of any of its shares;
 - (c) reducing or repaying any indebtedness which has been subordinated with the approval of Staff;
 - (d) increasing non-allowable assets, unless a prior binding commitment to do so exists, or entering into any new commitments which would have the effect of materially increasing the non-allowable assets of W.H. Stuart;

and

- (e) opening any new branch offices, hiring any new Approved Persons, opening any new client accounts (for either existing clients or new clients) or changing in any material respect the investment positions of W.H. Stuart.

Books and records

- 4. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall continue to create and keep all such books, records, emails and other documents (including any stored in any electronic format) as are necessary for the proper recording of its business transactions and financial affairs and the transactions it executes on behalf of others, in accordance with MFDA Rule 5.1;
- 5. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall maintain and preserve all of its existing books, records, emails and other documents (including those stored on any computer servers, hard drives or in any other electronic format) without alteration and in a manner which satisfies all of the requirements of MFDA Rule 5.2, until further order of a Hearing Panel;
- 6. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall, on demand, provide MFDA Staff with immediate, direct and unfettered access to:
 - a) any of its books, records, emails and other documents, including without limitation any originals thereof and any books, records, emails or other documents stored on any computers, hard drives or on any other electronic devices, whether or not such computers, hard drives or devices are the property of W.H. Stuart or are located on the premises of W.H. Stuart; and
 - b) any of the books, records, emails and other documents of W.H. Stuart Insurance Agency Ltd. (“W.H. Stuart Insurance”) as are recorded or stored on the common back office system used by both W.H. Stuart and W.H. Stuart Insurance;
- 7. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall keep all of its books, records, emails and other documents at its premises located at 20 Valleywood

Drive, Unit 100, Markham, ON L3R 6G1 and the books, records, emails and other documents shall not be moved or altered without prior written notice to and approval of MFDA Staff;

8. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, where such books, records, emails and other documents of W.H. Stuart are not presently at W.H. Stuart's premises located at 20 Valleywood Drive, Unit 100, Markham, ON L3R 6G1, W.H. Stuart shall deliver them to the said premises within 2 business days and thereafter maintain them there until further Order of a Hearing Panel;

Operating and Trust Accounts

9. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, the operation of W.H. Stuart's operating account(s) and trust account(s) is suspended until further order of a Hearing Panel;
10. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, as a consequence of the suspension of its operating and trust account(s), W.H. Stuart shall not conduct any transactions in its operating account(s) and trust account(s) and for greater certainty, W.H. Stuart is:
 - a) prohibited from accepting any new monies into its operating accounts(s) and trust account(s); and
 - b) prohibited from withdrawing, transferring or in any way disbursing monies from its operating account(s) and trust account(s) to any person or party, including without limitation W.H. Stuart, W.H. Stuart Insurance, Stuart, any other person or party related to or affiliated with W.H. Stuart, and Stuart;
11. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, notwithstanding the suspension of its trust account(s), all such trades or transactions in W.H. Stuart's self-directed registered accounts that were already in process on the date this Order is served on W.H. Stuart shall be permitted to settle or otherwise be completed;
12. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, notwithstanding paragraph 9 above, prior to the return of this application before a Hearing Panel W.H. Stuart may request permission of MFDA Staff to withdraw, transfer or disburse monies from its

- operating account(s) or trust account(s) if required by the exigencies of a situation by notifying MFDA Staff's Senior Vice-President, Compliance or a designate thereof of the reason for the transaction and obtaining prior written approval;
13. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall notify Fund Serve in writing on the same date that the Order is served on W.H. Stuart or the next business day that Fund Serve is to suspend the operation of the net settlement function in relation to all transactions processed using W.H. Stuart's trust account(s);
 14. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, the designated Chief Compliance Officer ("CCO") of W.H. Stuart or such other person acceptable to MFDA Staff shall be designated to monitor and report to MFDA Staff forthwith on W.H. Stuart's compliance with the requirements respecting the suspension of its operating account(s) and trust account(s);

Required filings

15. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall continue to prepare, deliver and file all documents required to be filed pursuant to MFDA requirements and Ontario securities law, including without limitation all applicable registration filings, monthly and annual reports to the MFDA, and account statements where applicable;

As against Stuart:

16. Pursuant to s. 24.3.3(a) of MFDA By-law No. 1, Stuart is suspended from engaging in securities related business¹ in any capacity as an Approved Person of W.H. Stuart, until further order of a Hearing Panel;
17. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, Stuart is prohibited from accessing or performing, either personally or through a designate, any functions or transactions on W.H. Stuart's back office operating system including without limitation, exercising any authority with respect to the status, designation, handling, transfer or

¹ MFDA By-law No. 1 defines "securities related business" as follows: "securities related business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation.

assignment of any client accounts of W.H. Stuart, including “house” accounts;

18. Pursuant to s. 24.3.3(c) of MFDA By-law No. 1, except as may be required by the terms of this Order and as may otherwise be required to effect the transfer- out of client accounts, Stuart shall:
 - a) immediately cease dealing with the public, including handling any client complaints; and
 - b) ensure that all client complaints received by or referred to her are brought to the attention of the CCO, who shall be responsible for ensuring that all such client complaints are dealt with in accordance with MFDA Rule 2.11 and MFDA Policies No. 3 and No. 6;
19. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, Stuart is required to attend in person at an interview with MFDA Staff within 3 business days of the effective date of service of this Order and answer all questions pertaining to the operation of W.H. Stuart, including without limitation any transactions between W.H. Stuart and W.H. Stuart Insurance, and any investments in W.H. Stuart Insurance that were or ought to have sold through the accounts and facilities of W.H. Stuart in accordance with MFDA Rule 1.1.1;

As against both W.H. Stuart and Stuart:

20. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart and Stuart are required to produce to Staff within 2 business days:
 - (a) a list of all bank and investment accounts of W.H. Stuart and any related or affiliated companies over which Stuart or her designate has signing authority (including without limitation, all bank accounts of W.H. Stuart Insurance); and
 - (b) copies of the bank statements, transaction summaries and deposit books of all bank accounts of the W.H. Stuart Insurance dating back to January 2009 to the present and continuing forward until MFDA Staff directs otherwise in writing or until further Order of a Hearing Panel.
21. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart, any employee or agent

of W.H. Stuart, and Stuart shall not:

- a) solicit, sell or facilitate the sale of investments in W.H. Stuart, W.H. Stuart Insurance or any affiliated or related entity to any clients or other individuals;
 - b) enter into any personal financial dealings with any client of W.H. Stuart or any individual who ceased to be a client of W.H. Stuart within the past 5 years;
22. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart, any employee or agent of W.H. Stuart, and Stuart shall not directly or indirectly take any disciplinary measure against, demote, transfer, terminate or otherwise adversely affect the employment of any employee who has provided information to MFDA Staff, or threaten to do so;
23. MFDA Staff may take any action to give effect to the terms of this Order, including without limitation taking any action to facilitate the orderly transfer of client accounts from W.H. Stuart, and W.H. Stuart shall report to MFDA Staff by Friday, May 3, 2013 regarding any action taken pursuant to this Order and thereafter at least weekly and on any other occasion as may be requested by MFDA Staff;

Procedural matters

24. This Order shall take effect immediately upon being served on each of W.H. Stuart and Stuart and, notwithstanding any provisions in the MFDA's Rules of Procedure to the contrary, such service shall be deemed to be effective on W.H. Stuart on the date that a copy of the Order, the Notice of Application and the supporting materials are delivered to the offices of W.H. Stuart located at 20 Valleywood Drive, Unit 100, Markham ON L3R 6G1 and on Stuart, on the date that a copy of the same materials are delivered to the residential address of Stuart, or in the case of both, on the date on which the materials are delivered to their counsel;
25. This application shall be returnable before the Hearing Panel, on notice to the Respondents, within 5 business days on a date to be determined by the Hearing Panel, at which time MFDA Staff may request, amongst other relief, a suspension of the membership of W.H. Stuart on such terms and conditions as may be appropriate;

26. This application shall be returnable before the Hearing Panel in accordance with paragraph 25 above whether or not prior to the return of the application either or both of the Respondents requests a review of the application pursuant to section 24.3.6 of MFDA By-law No. 1;
27. In accordance with section 24.3.12 of MFDA By-law No. 1, the hearing of this application, made without notice, shall not be open to the public;
28. Publication of the Notice of Application and any steps in relation thereto shall not occur until such time as the Hearing Panel directs;
29. Such further and other relief as counsel may advise and the Hearing Panel permit.

The Grounds for the application are:

1. Proceeding without notice is in the public interest in so far as:
 - A) providing notice of the application to W.H. Stuart or Stuart would be likely to result in financial loss or imminent harm to the public, other Approved Persons or the MFDA;
 - B) the length of time required to arrange for and conduct a hearing pursuant to section 20 and 24.1 of MFDA By-law No. 1 would be prejudicial to the public interest;
2. W.H. Stuart and Stuart have failed to cooperate fully with an investigation conducted pursuant to section 21 of MFDA By-law No. 1, as more particularly described below;
3. W.H. Stuart and Stuart have failed to comply with the Rules of the MFDA, as more particularly described below;
4. On January 2, 2013, W.H. Stuart gave notice of its intention to resign;

Diane Stuart

5. Stuart is a part owner of W.H. Stuart and is its controlling mind. She oversees and directs all of W.H. Stuart's operations, including its financial affairs, and in many instances personally performs important regulatory functions, such as client complaint handling and financial reporting to the MFDA;

6. Stuart is the only Approved Person of W.H. Stuart with meaningful knowledge and an understanding of W.H. Stuart's financial affairs and practices;
7. Stuart is registered in Ontario as a dealing representative and as the Ultimate Designated Person ("UDP") of W.H. Stuart. Stuart has been registered as an officer and director of W.H. Stuart since it became a Member of the MFDA on March 4, 2003.
8. Stuart is also part owner of companies affiliated with W.H. Stuart, including the aforementioned W.H. Stuart Insurance Agency Ltd. (defined herein as "W.H. Stuart Insurance") and a company called "S21C Technologies", which developed and owns the proprietary back office software technology that W.H. Stuart and W.H. Stuart Insurance use in common to manage their operations;

Declining Risk Adjusted Capital ("RAC")

9. Pursuant to MFDA Rule 3.1.1, W.H. Stuart is required at all times to have and maintain risk adjusted capital ("RAC") greater than zero;
10. Prior to 2011, W.H. Stuart's risk adjusted capital ("RAC") consistently exceeded \$100,000 and sometimes exceeded \$200,000;
11. From 2011 to the present, W.H. Stuart's RAC has declined to the point that it reported RAC of \$6,948 for the month of February 2013 and \$9,552 for the month of March 2013;
12. W.H. Stuart's accumulated historical losses amount to at least approximately \$1.3 million;
13. W.H. Stuart was designated in discretionary early warning by MFDA Compliance Staff effective January 22, 2013 as a result of a transfer of funds from its operating account to a related entity, W.H. Stuart Insurance Agency Ltd. ("W.H. Stuart Insurance"), which appeared to trigger a capital deficiency;
14. Effective April 23, 2013, MFDA Compliance Staff referred its 2012 Compliance Examination of W.H. Stuart to MFDA Enforcement Staff as a result of serious deficiencies noted during the course of the examination;

15. If the pattern of decline in W.H. Stuart's RAC continues, W.H. Stuart is at serious risk of becoming under-capitalized (i.e. RAC < 0);
16. In light of the current amount of W.H. Stuart's RAC, any failure by W.H. Stuart to have properly accounted for a material liability would, once corrected, most likely result in W.H. Stuart being undercapitalized;
17. W.H. Stuart has not appointed a Chief Financial Officer ("CFO") and Stuart, the Ultimate Designated Person ("UDP"), is not a qualified accountant;

Potential material liability: client TM

18. TM became a client of W.H. Stuart in August 2001 at the age of 60. Her initial investment in her account was \$26,075.42;
19. In May 2009, acting on the advice of Stuart, client TM redeemed the investments in her account and invested the proceeds, totaling \$27,595.26, in W.H. Stuart Insurance. Stuart led client TM to believe that the investment would pay client TM interest at 7% per year, compounded and payable monthly;
20. Client TM's investment in the W.H. Stuart Insurance was unsecured and evidenced only by a promissory note;
21. According to Stuart, client TM's investment has apparently been renewed annually with interest continuing to accrue but not paid. As of May 13, 2011, client TM's investment was purportedly worth \$31,593.78;
22. W.H. Stuart and Stuart have refused to answer material questions posed by Staff concerning the formation, handling and status of client TM's investment in W.H. Stuart Insurance;
23. It appears that, at a minimum, client TM's investment in W.H. Stuart Insurance:
 - (a) was not carried on for the account or through the facilities of W.H. Stuart, contrary to MFDA Rule 1.1.1(a); and
 - (b) gave rise to a conflict or potential conflict of interest between client TM, on the one hand, and W.H. Stuart and Stuart, on the other hand, that Stuart and W.H. Stuart did not ensure was addressed by the exercise of responsible business

judgment influenced only by the best interests of client TM, contrary to MFDA Rule 2.1.4.

24. In light of the current amount of W.H. Stuart's RAC, if client TM's investment in W.H. Stuart Insurance is determined to be a liability of W.H. Stuart, then W.H. Stuart's RAC would be less than zero, contrary to MFDA Rule 3.1.1;
25. During the course of a recent on-site examination of W.H. Stuart during the week of April 22, 2013, MFDA Staff found copies of documents evidencing that other clients had been solicited by an agent or representative of W.H. Stuart to invest in a promissory note similar to the one invested in by client TM. The status of those investments, if any, is unknown to Staff at this time.

Potential material liabilities: unauthorized transactions in client accounts

26. In March 2013, the value of client MD's account at W.H. Stuart was \$3,142.67. Approved Person NN was the dealing representative at W.H. Stuart responsible for servicing client MD's account;
27. Without speaking to client MD or Approved Person NN or otherwise being authorized to do so, Stuart:
 - (a) Requested that the mutual fund company redeem the entirety of the investments in client MD's account;
 - (b) directed the mutual fund company to deliver the redemption proceeds of \$3,142.67 to W.H. Stuart in the form of a cheque made payable to W.H. Stuart (as opposed to an electronic transfer of funds or cheque payable to client MD); and
 - (c) deposited the redemption cheque in the bank account of W.H. Stuart Insurance;
28. Neither W.H. Stuart nor Stuart brought the redemption to the attention of client MD or Approved Person NN;
29. At the time of the redemption, client MD was in the midst of a lengthy visit to Trinidad & Tobago which had commenced in November 2012;

30. Approved Person NN discovered the redemption in client MD's account and, after making inquiries of W.H. Stuart, reported the unauthorized transaction to securities regulators;
31. In response to Approved Person NN's inquiries, Stuart claimed that the transaction was processed in error and restored client MD's account to its original state by purchasing the mutual fund that was previously held in the account using a cheque drawn on the bank account of the W.H. Stuart Insurance Agency;
32. Stuart and W.H. Stuart have failed to:
 - (a) provide a credible explanation as to how the redemption in client MD's account occurred in error and why, if an error occurred, Stuart deposited the redemption proceeds in the bank account of the W.H. Stuart Insurance Agency; and
 - (b) produce the original T2033 form purportedly signed by client MD that Stuart submitted to the mutual fund company to process the redemption.
33. Staff's investigation has determined that there are likely numerous other instances in which Stuart may have processed unauthorized redemptions in client accounts and directed redemption proceeds to W.H. Stuart, W.H. Stuart Insurance or related entities;
34. The full nature and extent of the unauthorized activity in the client accounts, including whether and to what extent the investments in the accounts may have subsequently been restored, is not known at this time due in part to the failure of W.H. Stuart and Stuart to cooperate fully with Staff's investigation;
35. The decline in W.H. Stuart's RAC coupled with the nature and extent of the potentially unauthorized activity in the client accounts gives rise to a serious concern that W.H. Stuart may be attempting to finance its continuing operation by drawing upon the investments held in client accounts and selling promissory notes or other forms of investment in W.H. Stuart Insurance or other affiliated entities;
36. If any material amounts improperly withdrawn from client account are determined to be a liability of W.H. Stuart, then W.H. Stuart's RAC would most likely be less than zero, contrary to MFDA Rule 3.1.1.

Concerns raised by W.H. Stuart's proprietary back office operating system

37. W.H. Stuart uses proprietary software for its back office operating system which was developed by an affiliated company, S21C Technologies;
38. The ability of W.H. Stuart and Stuart to control the design and operation of the software, and by implication the contents of the back office operating system gives rise to a serious concern that the financial information and reports made available to MFDA Staff by W.H. Stuart in monthly and annual reports and during on-site examinations may not accurately and reliably present the true state of W.H. Stuart's financial affairs or client account activity;

Prior disciplinary history of W.H. Stuart and Stuart

39. W.H. Stuart was disciplined by the MFDA in 2012 for, among other things, failing to comply with early warning requirements in 2009 by making payments to related parties without the prior written consent of the MFDA;
40. Stuart has been registered in some capacity in all provincial jurisdictions in Canada since 1986, except in Alberta where the Alberta Securities Commission imposed a lifetime ban on her from acting as an officer and director, among other penalties, as a consequence of her participation in an illegal distribution of securities in Alberta;

THE FOLLOWING evidence will be relied upon at the hearing on of the application:

1. The Affidavit of Lara Rowles sworn April 29, 2013;
2. The Affidavit of Laura Milliken sworn April 29, 2013; and
3. Such further and other evidence as Staff may submit and the Hearing Panel may permit.

DATED this 29th day of April, 2013

C. APRIL 29, 2013 ORDER

25. On April 29, 2013, the Hearing Panel was presented with voluminous evidence in the

form of a 44-page, 137-paragraph Affidavit of Lara Rowles, which contained 105 Exhibits and a 10-page, 42-paragraph Affidavit of Laura Milliken, which contained 6 Exhibits.

26. Among the sworn statements of Lara Rowles, Manager, Investigations of the MFDA, were the following:

- (a) Since January 2012, Staff of the MFDA has had questions about suspicious transactions processed by Stuart which have resulted in the transfer of money, including client money, from W.H. Stuart to an affiliated company called W.H. Stuart Insurance Agency.
- (b) Since January 2012, when the MFDA Enforcement Department began questioning Stuart and W.H. Stuart about suspicious transactions involving mutual fund clients, Stuart evaded questioning by Staff for many months by asserting that as a result of a medical condition, she was not physically able to respond to Staff's questions. Other Approved Persons of W.H. Stuart also provided excuses to delay or refuse to attend interviews with Staff and subsequently claimed that they had no knowledge of the suspicious transactions.
- (c) In at least one case, it appears that Stuart solicited and obtained the consent of an elderly client to liquidate the client's mutual fund investments and to advance the proceeds to W.H. Stuart Insurance Agency in return for an unsecured investment note promising a guaranteed rate of return. In Staff's view, by doing so, Stuart engaged in securities related business with a client that was not carried on for the account of W.H. Stuart or processed through the facilities of the Member contrary to MFDA Rule 1.1.1(a) or alternatively, Stuart engaged in personal financial dealings with the client of W.H. Stuart, contrary to MFDA Rule 2.1.1 and 2.1.4. Stuart has refused to answer many of Staff's questions concerning this transaction and has thereby failed to co-operate with an MFDA investigation, contrary to Section 22.1 of MFDA By-law No. 1.
- (d) During the week of April 22, 2013, Staff discovered evidence that appears to indicate that Stuart has offered similar investment opportunities to other clients of

W.H. Stuart.

- (e) Between March 15, 2013 and April 24, 2013, Staff has discovered that Stuart appears to be engaging in the practice of processing unauthorized transactions in inactive client accounts whereby redemptions are processed from the mutual fund account of the client using falsified or photocopied client signatures on documentation that is submitted to fund companies directly (and not processed through the books and records of the Member) without the knowledge or approval of the clients (or even the Approved Person responsible for servicing the client's account) and the proceeds of the redemptions are deposited into a bank account of W.H. Stuart Insurance Agency without notification to or consent of the client.
- (f) Unlike most MFDA Members, W.H. Stuart uses a back office software system that has been developed by and which is exclusively controlled by a company called S21C Technologies that is affiliated with the Member (as it is wholly owned and operated by Stuart and/or non-arm's length individuals or entities associated with her). Stuart personally controls all aspects of the back office system and is able to exclude other employees and Approved Persons of W.H. Stuart and third parties including regulators. Stuart appears to have the ability without assistance, knowledge, supervision or control by any other employee or Approved Person of W.H. Stuart to manipulate the records on the back office system to transfer or remove mutual fund accounts and all transaction records of a client account such that any information about a client or an account can be rendered completely inaccessible to other employees and Approved Persons of W.H. Stuart and third parties including the MFDA, by among other means, transferring the mutual fund account of the client to the insurance section of the back office software system.
- (g) As a result, in a number of cases that Staff have discovered recently, after suspicious unauthorized transactions have been processed from the account of an inactive client of W.H. Stuart, all records of the client and mutual fund account of the client are removed or rendered inaccessible to other Approved Persons of W.H. Stuart and to the MFDA. If the client complains to the dealer about their

missing investments, few if any records of the client account are available to other employees or Approved Persons of W.H. Stuart and, accordingly, Stuart is the only person who is able to respond to the client complaint or even confirm whether transactions have been processed in the client's account.

- (h) In multiple cases that have come to Staff's attention in the past few weeks, Stuart asserts that the suspicious transactions discovered in client accounts were processed "in error" and Stuart apparently offers to repurchase the mutual fund assets that were previously held by the client.
- (i) Staff's investigation has revealed that the initial suspicious transactions at least in some cases appear to be processed off the books and records of the Member by submitting trade orders directly to the fund companies using forms generated from the back office system without the involvement of any other employee or Approved Person of W.H. Stuart. In at least one case, the transaction rectifying a suspicious transaction was also processed off the books and records of W.H. Stuart. Unbeknownst to the fund company, the documents that are submitted to the fund company for processing of suspicious unauthorized transactions or the transactions processed to rectify client complaints bear a digital "authorized signature" of an individual who no longer works at W.H. Stuart or of a current employee of the Member who has no knowledge of and no involvement with the transaction.
- (j) After the client complaints are addressed by Stuart (apparently to the satisfaction of the client), the substance of the client complaints are not documented by the Member, the complaints are not reported to the MDFA in accordance with MFDA Policy No. 3 and MFDA Policy No. 6 and the complaints are not documented in the complaint log of the Member, contrary to MFDA Policy No. 3.
- (k) In cases in which Staff has requested records of the transaction history of the account, no meaningful audit trail has been preserved and the original transaction documents have not been produced. Staff has only been able to obtain some records of the suspicious transactions from the fund company that has been

instructed to process some of these suspicious transactions.

- (l) When Staff questioned Approved Persons of W.H. Stuart about the suspicious transactions that had come to Staff's attention, the Approved Persons referred Staff to Stuart.

- (m) On April 22 and April 24, 2013, during on-site attendances at the head office of W.H. Stuart when Staff requested that Approved Persons who work at W.H. Stuart head office participate in interviews to provide information about matters under investigation in accordance with Section 22.1(c) of MFDA By-law No. 1, multiple Approved Persons disclosed to Staff that they are aware of:
 - (i) clients and Approved Persons calling W.H. Stuart's head office to inquire about unauthorized redemptions being processed in client accounts;
 - (ii) purchases frequently being processed in client accounts by Stuart using power of attorney documents prepared by Stuart, paid for with cheques signed by Stuart to rectify redemptions that Stuart claims were processed from client accounts "in error";
 - (iii) many cases in which clients have submitted requests to transfer their accounts from W.H. Stuart to another dealer or financial institution and prior to the transfer, the client's investment account at W.H. Stuart are redeemed and the proceeds from their investment account at W.H. Stuart are withheld for many weeks or months before being released by W.H. Stuart to the new dealer or financial institution in accordance with the client's request;
 - (iv) purchases in client name accounts using powers of attorney that are only supposed to be used to process transactions in nominee name accounts;
 - (v) the disappearance of all records of a mutual fund client account as a result of the account being transferred from the mutual fund side of the back office system to the insurance side of the back office system which apparently occurs frequently without the knowledge or approval of the clients or the Approved Persons responsible for servicing their accounts;and

- (vi) the disappearance of all records of a client account on the back office system because the account is designated as “inactive” on the back office system.

- (n) Multiple Approved Persons reported to Staff that they were aware of multiple cases of complaints regarding transactions processed in client accounts. It was estimated that at least 40-50 complaints have been reported to W.H. Stuart’s head office in the past 2 years concerning a combination of unauthorized redemptions and delayed transfers and that in at least half of those cases, when the complaints were received no records of the complainant’s mutual fund account were accessible on the back office system because the account had been transferred to the insurance side of the back office system. The Approved Persons also reported that Stuart is the only person with the authority and ability to process such transfers between the mutual fund and insurance side of the back office system. They also reported that typically after the “errors” have been rectified, the complainant’s account records are restored to the mutual fund side of the back office system and are accordingly accessible to Approved Persons of the Member.

- (o) None of these client complaints were reported to the MFDA by Stuart or by W.H. Stuart. When Staff requested back up documentation regarding suspicious transactions that were known to Staff, W.H. Stuart and Stuart were unwilling or unable to produce original copies of the documentation used to process the transactions, some of the transactions did not appear on the trading records of the Member, the proceeds from the transactions that were processed “in error” were not deposited into W.H. Stuart’s trust account, the client’s investment account or forwarded to the client and no records of client complaints were maintained by W.H. Stuart or reported or produced to Staff.

27. The remainder of the Rowles Affidavit provided specific details and documentary back-up for the concerns of MFDA Staff.

28. The Affidavit of Laura Milliken, Director, Financial Compliance of the MFDA, outlined the MFDA’s Financial Reporting Requirements, as well as the “early warning” system.

29. She detailed W.H. Stuart's Financial Compliance history, including the fact that it had been designated in early warning on three occasions since 2009, the most recent from January 22, 2013, to the date of her Affidavit.

30. Ms. Milliken noted that Financial Compliance Staff have . . . "been concerned about W.H. Stuart's practice of transferring large amounts of money between W.H. Stuart and affiliated companies like W.H. Stuart Insurance Agency without any agreement in place or formal reporting or accountability for the money transferred. It is not clear, for instance, whether common expenses between the entities should be shared and, if so, on what basis. These concerns grow as W.H. Stuart's reported capital approaches minimum levels which has frequently occurred over the past year."

31. She described W.H. Stuart as a Level 4 dealer that was required to maintain minimum capital of \$200,000.00 and a Risk Adjusted Capital ("RAC") greater than zero.

32. The Milliken Affidavit then described, in detail, a trend of declining RAC surpluses and the concerns of Staff "about the absence of a robust and transparent process for ensuring that inter-company transfers will not result in a capital deficiency."

33. The Affidavit also expressed concern about the potential unreported liabilities set out in detail in the Rowles Affidavit, any of which could result in a W.H. Stuart capital deficiency.

34. Attached as an Exhibit to the Milliken Affidavit was a letter, dated January 2, 2013, to the MFDA, informing of W.H. Stuart's intention to resign from membership in the MFDA.

35. The Affidavit, finally, indicated that Staff had been informed that W.H. Stuart was planning to sell its business to another MFDA Member, although the current status of this potential transaction was unknown.

36. After a thorough review of the extensive affidavit material, and hearing the detailed submissions of Counsel for Staff, the Hearing Panel was unanimously of the view that the allegations were so serious, and the potential imminent harm to the public was so grave, that proceeding without notice to bring this matter to the attention of a Hearing Panel, in order to seek

interim relief, was in the public interest.

37. The Hearing Panel was also concerned about the apparent lack of co-operation by the Respondents with Staff in the investigation and, consequently, was amenable to making Orders requiring the immediate production of appropriate documentation, without coming to any conclusion as to what a review of this documentation would show.

38. We were also prepared to make Orders requiring the personal attendance by Stuart at an interview to answer all questions pertaining to the operation of W.H. Stuart, including any transactions between W.H. Stuart and W.H. Stuart Insurance that were, or ought to have been, sold through the accounts and facilities of W.H. Stuart, Insurance in accordance with MFDA Rule 1.1.1.

39. The Notice of Application sought an Order suspending the operation of both the trust and general accounts of W.H. Stuart and prohibiting W.H. Stuart from accepting any new monies into its operating and trust accounts or disbursing monies from those accounts.

40. We were reluctant to grant such an Order, on an ex-parte basis, especially where the Respondents had Counsel whom, we felt, should be provided with an opportunity to make submissions on the impact such an Order would have on the continued viability of W.H. Stuart.

41. After hearing further submissions from Counsel for Staff, we made an Order requiring Fund SERV Inc. only to make payments to the clients named in any W.H. Stuart accounts. We also ordered the Chief Compliance Officer of W.H. Stuart to monitor W.H. Stuart's compliance with our Order and report any deficiencies forthwith to MFDA Staff.

42. The Notice of Application also sought an Order suspending Stuart from engaging in securities related business, in any capacity, as an Approved Person of W.H. Stuart.

43. After considerable reflection and discussion, the Hearing Panel elected to reserve its Decision on this request until after the Respondents had been served with the Application material and had had an opportunity to respond to same.

44. However, owing to the serious nature of the allegations, we made the matter returnable before us in 10 days' time.

45. A copy of the Order which the Hearing Panel made on April 29, 2013, is attached as Appendix "A" to these Reasons for Decision.

D. MAY 10, 2013 ORDER

46. The April 29, 2013 Order, along with the Notice of Application and the supporting material, were served on the Respondents on May 1, 2013.

47. In accordance with paragraph 13 of the April 29, 2013 Order, Stuart and her Counsel attended an interview with MFDA Staff on May 6, 2013.

48. During the course of that interview, Stuart informed Staff that she believed that an asset sale of W.H Stuart was likely to be completed imminently.

49. Subsequent to the interview, Stuart agreed that she would:

- (a) immediately resign and terminate her registration as Ultimate Designated Person of W.H. Stuart and as an Approved Person of W.H. Stuart; and
- (b) cease engaging in any role concerning the management, operations and regulatory requirements of W.H. Stuart including, without limitation, she would no longer:
 - (i) submit or otherwise process trades and account transfers;
 - (ii) access the W.H. Stuart back office system on behalf of the Member;
 - (iii) have any role in banking transactions of W.H. Stuart;
 - (iv) be involved with the distribution of commissions to Approved Persons of W.H. Stuart;
 - (v) participate in the preparation of financial reporting for W.H. Stuart; or
 - (vi) have any role in complaint handling (other than answering questions about her knowledge or involvement in transactions or dealings with clients in order to enable compliance staff of W.H. Stuart to respond to complaints or client inquiries).
- (c) cease to have or exercise signing authority over the bank accounts of W.H. Stuart.

50. On the consent of the parties, the return date of the Application was changed from May 9 to May 10, 2013.

51. On May 10, 2013, Counsel appeared on behalf of the Respondents before the Hearing Panel.

52. The parties jointly requested that, in light of the matters they wished to discuss, the proceedings continue *in camera*. They relied upon Rule 1.8(2) of the MFDA Rules of Procedure, which provides as follows:

“1.8 Hearings Open to the Public

(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

53. The Hearing Panel granted this Order so that it was in a position, *inter alia*, to receive details of the pending asset sale of W.H. Stuart. However, it was made clear that the Notice of Application and related materials had to be made public prior to the next appearance before the Hearing Panel.

54. Counsel for Staff then presented the Hearing Panel with a draft of a proposed Order. Counsel for the Respondents indicated that the Respondents did not oppose the Hearing Panel making this Order.

55. The draft put into Order form the commitments made by Stuart as outlined in paragraph 49 hereof. It also imposed certain duties on the Chief Compliance Officer of W.H. Stuart, and required Stuart to take certain defined steps to deliver documents to Staff and to provide timely and complete co-operation with the on-going investigation of Staff concerning her conduct as an Approved Person of W.H. Stuart.

56. After hearing and considering the submissions of the parties, the Hearing Panel granted

the Order, a copy of which is marked as Appendix “B” to these Reasons for Decision.

E. MAY 22, 2013 ORDER

57. The May 10, 2013 Order provided that the next appearance before the Hearing Panel was to take place on May 22, 2013.

58. At the appearance on May 22, 2013, Stuart’s former Counsel informed the Hearing Panel that he continued to represent W.H. Stuart but no longer represented Stuart and that she was retaining separate Counsel to represent her interests.

59. Neither Stuart personally, nor Counsel or agent representing her, chose to participate in this appearance although Stuart was aware of same.

60. On May 22, 2013, the Hearing Panel was informed of the following events:

- (a) On May 10, 2013, Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA, signed an Asset Purchase Agreement with W.H. Stuart and related companies pursuant to which all assets of W.H. Stuart and certain related companies were sold to the parent company of Keybase.
- (b) On May 17, 2013, the Approved Persons (other than Stuart) and client accounts of W.H. Stuart were transferred to Keybase.
- (c) Stuart’s registration with the Ontario Securities Commission as Ultimate Designated Person and as an Approved Person of W.H. Stuart was terminated.
- (d) On May 13, 2013, Stuart provided written confirmation to Staff that all books, records, e-mails and other documents of W.H. Stuart that were in her power, possession or control had been delivered to the head office premises of W.H. Stuart.

61. At the May 22, 2013 appearance, Counsel for Staff provided details and submissions with respect to the following matters:

- (a) Stuart had, apparently, not complied with some of the terms of the April 29, 2013

and May 10, 2013 Orders.

- (b) Banking records produced to Staff appear to show that substantial withdrawals have occurred from bank accounts of W.H. Stuart and W.H. Stuart Insurance Agency and some of these accounts were substantially overdraft.
- (c) Staff believed that W.H. Stuart was capital deficient contrary to the terms of the May 10, 2013 Order and MFDA Rule 3.1.1.
- (d) Staff regarded certain answers to undertakings given on the May 6, 2013 interview were substantially deficient.
- (e) Staff had information about additional allegedly suspicious transactions which had been processed in the client accounts of W.H. Stuart.

62. After hearing and considering the submissions of Counsel for Staff and Counsel for W.H. Stuart, the Hearing Panel were unanimously of the view that it was in the public interest to issue an Order to expedite the implementation of certain terms of the Asset Purchase Agreement with Keybase and to require the Respondents to comply in full with the terms of the April 29, 2013 and May 10, 2013 Orders prior to the next appearance before the Hearing Panel.

63. A copy of the May 22, 2013 Order is attached as Appendix "C" to these Reasons for Decision.

F. MAY 31, 2013 ORDER

64. The May 22, 2013 Order set the next appearance before the Hearing Panel on May 31, 2013. It required Stuart to attend.

65. At the appearance on May 31, 2013, Counsel for W.H. Stuart advised that he would not be participating. Stuart chose not to appear in person. She was represented by Counsel.

66. Counsel for Staff made detailed and extensive submissions relating to the alleged conduct of Stuart. He advised that all of his statements would be corroborated by the sworn Affidavits of Lara Rowles and Laura Milliken. They were.

67. He advised that many of the banking records which the Hearing Panel had ordered the

Respondents to produce had not been made available. He stated that password authorizations and the information necessary to enable Staff to request and obtain records from banks had been withheld.

68. He advised that the answers provided to date by Stuart are largely evasive and unresponsive. A large number of undertakings remain unfulfilled.

69. He stated that there was evidence that some of the provisions of the Hearing Panel's previous Orders had been contravened.

70. Counsel for Staff then provided details of four types of conduct of the Respondents which were currently being investigated by Staff. He indicated that Staff has not reached any conclusion as to whether any additional disciplinary action is warranted but was providing this information as the basis for his submission that it was no longer necessary or appropriate for Stuart to conduct any securities related business and also as grounds for Staff's request for certain Orders enabling Staff to secure additional documents under the power or control of the Respondents.

71. The type of conduct being investigated, as outlined by Counsel for Staff and in the subsequent Affidavit of Lara Rowles, is as follows:

- (a) Stuart appears to have processed unauthorized redemptions in several client accounts that had an inactive trading history during the period preceding the unauthorized transactions. The redemptions were processed using computer scanned signatures of the clients without the knowledge or approval of the clients. The unauthorized redemptions were not reported to the clients or to any Approved Person of W.H. Stuart who was responsible for servicing the client's account. The proceeds of the unauthorized redemptions were deposited into a bank account of the W.H. Stuart Insurance Agency prior to inquiries being communicated to W.H Stuart questioning the status of the client's account and investment holdings. After such inquiries were made, W.H. Stuart processed trades in the client accounts to repurchase the investments that had been redeemed without authorization. Staff is not aware of the source of funds used to repurchase

investments.

- (b) Multiple clients of W.H. Stuart and possibly other individuals were solicited to purchase “guaranteed investment notes” issued by an affiliate of W.H. Stuart (such as the W.H. Stuart Insurance Agency) that purported to offer 7% interest per annum to the investors. These notes were not offered for the account of the Member or processed through facilities of W.H. Stuart and may have been marketed by unregistered individuals subject to the direction of Stuart.
- (c) Stuart was responsible for processing transfers of accounts from W.H. Stuart to third parties (such as banks or other mutual fund or investment dealers) and, in many cases, it appears that, during the course of processing such transactions, Stuart processed transactions to liquidate the investments that the client held at W.H. Stuart and then deposited the proceeds of such redemptions into a bank account of W.H. Stuart Insurance Agency where the money was held and potentially used for the benefit of W.H. Stuart or its affiliates pending the completion of the account transfer.
- (d) Multiple cases have been reported in which clients held cash positions in their investment accounts of W.H. Stuart, but, at least temporarily, their cash holding did not appear on portfolio summaries of W.H. Stuart until they inquired about the status of their cash holding. Following such inquiries, the cash position of such individuals was restored to W.H. Stuart records, but it remains unclear to Staff whether there are sufficient monies available to W.H. Stuart to honour these liabilities to clients.

72. Counsel for Staff advised that, during the first week of May 2013, a third party service provider called Digital Evidence International Inc. (“DEI”), had prepared forensic images of electronic data of W.H. Stuart so that such data would be preserved for potential future investigation by Staff. Counsel requested an Order authorizing Staff to obtain from DEI and review e-mails sent to and from a specific W.H. Stuart e-mail address. Counsel for the Respondents did not object to this request.

73. Counsel for Stuart did not object to any of the relief sought by Counsel for Staff.

74. Counsel for Staff indicated that a period of time will be required to secure the requested documentation and to review same before a determination can be made as to what additional relief, if any, will be sought by Staff against one or both of the Respondents. Counsel for the Respondents will also require some time to consider whether any Applications will be made to ameliorate or rescind any of the Orders made to date by the Hearing Panel.

75. Consequently, it was agreed that this proceeding would be adjourned, sine die, with any party having the ability to seek a further appearance before this Hearing Panel on a minimum of 5 days' notice.

76. A copy of the May 31, 2013 Order is attached as Appendix "D" to these Reasons for Decision.

77. The Hearing Panel has reached no conclusion as to whether either or both of the Respondents should be subjected to any further Orders.

78. We are aware that the Affidavit evidence of Staff has not been subjected to cross-examination. We are also aware that neither of the Respondents have served and filed any responding materials.

79. The Orders which the Hearing Panel have made to date are largely of an interim nature to facilitate an orderly sale of assets and to enable Staff to secure documentation so that a full and proper investigation can be completed. Whether the investigation will result in any further proceedings is unknown at this time.

DATED this 1st day of August, 2013.

"Thomas J. Lockwood"

Thomas J. Lockwood, Q.C.,
Chair

"Darcy Lake"

Darcy Lake,
Industry Representative

“Robert Guilday”

Robert Guilday,
Industry Representative



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

**ORDER
(Without Notice)**

WHEREAS on April 29, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Application pursuant to section 24.3 of MFDA By-law No. 1 (the "By-law") in respect of an application to be brought without notice against W.H. Stuart Mutuals Ltd. ("W.H. Stuart"), a Member of the MFDA, and Marilyn Dianne Stuart ("Stuart"), an Approved Person of W.H. Stuart (collectively, the "Respondents");

AND WHEREAS the application was brought before a hearing panel of the Central Regional Council of the MFDA (the "Hearing Panel") on Monday, April 29, 2013 at or around 10 a.m. at the offices of the MFDA located at 121 King Street West, Suite 1000, Toronto, Ontario;

AND WHEREAS pursuant to sections 24.3.1(b) and 24.3.2(b) of the By-law, the Hearing Panel may impose any of the penalties available under section 24.3.3 of the By-law on an Approved Person and Member respectively on an application made without notice if the Hearing Panel is satisfied that it is in the public interest to proceed without notice;

AND WHEREAS pursuant to 24.3.3(b) and (c) of the By-law, the Hearing Panel may upon application by the MFDA impose terms and conditions on Membership and on the authority of an Approved Person to conduct securities related business, and may also direct that an Approved Person cease dealing with the public;

AND UPON READING the affidavit of Lara Rowles, Manager, Investigations of the MFDA, sworn April 29, 2013 and the affidavit of Laura Milliken, Director, Financial Compliance of the MFDA, sworn April 29, 2013;

AND UPON HEARING the submissions of counsel for MFDA Staff, no one appearing for the Respondents since the application proceeded without notice;

AND WHEREAS in the opinion of the Hearing Panel it is in the public interest to proceed without notice because, among other things, providing notice to the Member or Approved Person would be likely to result in financial loss or imminent harm to the public, to other Approved Persons or Members, or to the MFDA and the length of time required to arrange for and conduct a hearing pursuant to section 20 and 24 of the By-law would be prejudicial to the public interest;

IT IS HEREBY ORDERED THAT:

Restrictions on house accounts

1. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall provide MFDA Staff with a daily list of its house accounts and daily report on all activity in its house accounts for the period commencing Friday, April 26, 2013 until further order of a Hearing Panel;
2. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall not process any trades in its house accounts without the prior written approval of MFDA Staff;

Restrictions on capital

3. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall comply with all early warning requirements and restrictions set out in MFDA Rules 3.4.2 and 3.4.3 including without limitation, the restrictions prohibiting W.H. Stuart from undertaking any of the following activities without first obtaining the prior written consent of MFDA Staff's Senior Vice-President, Compliance, a designate thereof, or a further order of a Hearing Panel:
 - (a) making payments directly or indirectly by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate of W.H. Stuart (regardless of whether the recipient of the payment presently has or previously had any role in the direction or control of W.H. Stuart);
 - (b) reducing the capital of W.H. Stuart in any manner including redemption, repurchase or cancellation of any of its shares;
 - (c) reducing or repaying any indebtedness which has been subordinated with the approval of Staff;
 - (d) increasing non-allowable assets, unless a prior binding commitment to do so exists, or entering into any new commitments which would have the effect of materially increasing the non-allowable assets of W.H. Stuart; and
 - (e) opening any new branch offices, hiring any new Approved Persons, opening any new client accounts (for either existing clients or new clients) or changing in any material respect the investment positions of W.H. Stuart.

Books and records

4. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall continue to create and keep all such books, records, emails and other documents (including any stored in any electronic format) as are necessary for the proper recording of its business transactions and financial affairs and the transactions it executes on behalf of others,

in accordance with MFDA Rule 5.1;

5. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall maintain and preserve all of its existing books, records, emails and other documents (including those stored on any computer servers, hard drives or in any other electronic format) without alteration and in a manner which satisfies all of the requirements of MFDA Rule 5.2, until further order of a Hearing Panel;
6. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall, on demand, provide MFDA Staff with immediate, direct and unfettered access to:
 - (a) any of its books, records, emails and other documents, including without limitation any originals thereof and any books, records, emails or other documents stored on any computers, hard drives or on any other electronic devices, whether or not such computers, hard drives or devices are the property of W.H. Stuart or are located on the premises of W.H. Stuart; and
 - (b) any of the books, records, emails and other documents of W.H. Stuart Insurance Agency Ltd. (“W.H. Stuart Insurance”) as are recorded or stored on the common back office system used by both W.H. Stuart and W.H. Stuart Insurance;
7. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall keep all of its books, records, emails and other documents at its premises located at 20 Valleywood Drive, Unit 100, Markham, ON L3R 6G1 and the books, records, emails and other documents shall not be moved or altered without prior written notice to and approval of MFDA Staff;
8. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, where such books, records, emails and other documents of W.H. Stuart are not presently at W.H. Stuart’s premises located at 20 Valleywood Drive, Unit 100, Markham, ON L3R 6G1, W.H. Stuart shall deliver them to the said premises within 2 business days of the effective date of service of this Order and thereafter maintain them there until further Order of a Hearing Panel;

FundSERV Inc.

9. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall notify FundSERV Inc. in writing on the same date that the Order is served on W.H. Stuart or the next business day that FundSERV Inc. is not to make any payments in relation to any transactions processed under W.H. Stuart's dealer code for accounts held in client name payable to any person or party other than the named client on the account;

Monitoring and reporting on compliance with Order

10. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, the designated Chief Compliance Officer ("CCO") of W.H. Stuart or such other person acceptable to MFDA Staff shall monitor W.H. Stuart's compliance with the terms of this Order and report any deficiencies forthwith to MFDA Staff and shall also provide MFDA Staff with a copy of the notification to FundSERV Inc. required by paragraph 9 above;

Required filings

11. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart shall continue to prepare, deliver and file all documents required to be filed pursuant to MFDA requirements and Ontario securities law, including without limitation all applicable registration filings, monthly and annual reports to the MFDA, and account statements to clients where applicable;

Stuart

12. Pursuant to s. 24.3.3(c) of MFDA By-law No. 1, except as may be required by the terms of this Order and as may otherwise be required to effect the transfer-out of client accounts, Stuart shall:
 - (a) immediately cease dealing with the public, including handling any client complaints; and

- (b) ensure that all client complaints received by or referred to her are brought to the attention of the CCO, who shall be responsible for ensuring that all such client complaints are dealt with in accordance with MFDA Rule 2.11 and MFDA Policies No. 3 and No. 6;
13. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, Stuart is required to attend in person at an interview with MFDA Staff within 3 business days of the effective date of service of this Order or on such date as mutually agreed upon with MFDA Staff and answer all questions pertaining to the operation of W.H. Stuart, including without limitation any transactions between W.H. Stuart and W.H. Stuart Insurance, any investments in W.H. Stuart Insurance that were or ought to have sold through the accounts and facilities of W.H. Stuart in accordance with MFDA Rule 1.1.1;

Banking records

14. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart and Stuart are required to produce to Staff within 3 business days of the effective date of service of this Order or on such date as mutually agreed upon with MFDA Staff:
- (a) a list of all bank and investment accounts of W.H. Stuart and any related or affiliated companies over which Stuart or her designate has signing authority (including without limitation, all bank accounts of W.H. Stuart Insurance); and
- (b) copies of the bank statements, transaction summaries, cheques and deposit books of all bank accounts of the W.H. Stuart Insurance dating back to January 2009 to the present and continuing forward until MFDA Staff directs otherwise in writing or until further Order of a Hearing Panel.

No solicitation

15. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart, any employee or agent of W.H. Stuart, and Stuart shall not:

(a) solicit, sell or facilitate the sale of investments in W.H. Stuart, W.H. Stuart Insurance or any affiliated or related entity to any clients or other individuals;

(b) enter into any personal financial dealings with any client of W.H. Stuart or any individual who ceased to be a client of W.H. Stuart within the past 5 years;

No retaliation

16. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1, W.H. Stuart, any employee or agent of W.H. Stuart, and Stuart shall not directly or indirectly take any disciplinary measure against, demote, transfer, terminate or otherwise adversely affect the employment of any employee who has provided information to MFDA Staff, or threaten to do so;

Giving effect to the order

17. MFDA Staff may take any action to give effect to the terms of this Order, including without limitation taking any action to facilitate the orderly transfer of client accounts from W.H. Stuart, and W.H. Stuart shall report to MFDA Staff by Friday, May 3, 2013 regarding any action taken pursuant to this Order and thereafter at least weekly and on any other occasion as may be requested by MFDA Staff;

Procedural matters

18. This Order shall take effect immediately upon being served on each of W.H. Stuart and Stuart and, notwithstanding any provisions in the MFDA's Rules of Procedure to the contrary, such service shall be deemed to be effective on W.H. Stuart on the date that a copy of the Order, the Notice of Application and the supporting materials are delivered to the offices of W.H. Stuart located at 20 Valleywood Drive, Unit 100, Markham ON L3R 6G1 and on Stuart, on the date that copies of the same materials are delivered to the residential address of Stuart, or in the case of both, on the date on which the materials are delivered to their counsel;

19. This application shall be returnable before the Hearing Panel, on notice to the Respondents, at 12 o'clock noon on Thursday, May 9, 2013 in the main Hearing Room at the offices of the MFDA located at 121 King St. West, Suite 1000, Toronto, Ontario, at which time MFDA Staff may at its discretion present requests for such further and other relief as it considers appropriate in the circumstances, which may include, among other things, a suspension of the membership of W.H. Stuart, restrictions on the operating and trust accounts of W.H. Stuart, a suspension of the authority of Stuart to conduct securities related business or terms and conditions on such authority, and the Respondents shall be afforded an opportunity to adduce evidence of their own and make submissions with respect to the relief granted in this Order and any other matters before the Hearing Panel;
20. Prior to the return of this application on Thursday, May 9, 2013, MFDA Staff may serve and file any additional evidence that comes into its possession as a result of this Order or by any other means;
21. This application shall be returnable before the Hearing Panel on Thursday, May 9, 2013 in accordance with paragraph 19 above whether or not prior to the return of the application, either or both of the Respondents requests a review of the application pursuant to section 24.3.6 of MFDA By-law No. 1;
22. In accordance with section 24.3.12 of MFDA By-law No. 1, the hearing of this application, made without notice, shall not be open to the public and for greater certainty, the entirety of the proceeding on Monday, April 29, 2013 shall remain *in camera* and the public record of the proceeding sealed until such time as the Hearing Panel orders otherwise;
23. Publication of the Notice of Application, this Order and any steps in relation to the application on the MFDA's website shall not occur until such time as the Hearing Panel permits and in any event, no earlier than the conclusion of the appearance on Thursday, May 9, 2013;

24. Notwithstanding anything in paragraphs 22 and 23 above, MFDA Staff may disclose the existence of the application and the contents of the Notice of Application, this Order and any evidence filed in respect of the application to the Ontario Securities Commission, the Financial Services Commission of Ontario and any other regulatory body as MFDA Staff considers necessary for the purposes of its continuing review and investigation of W.H. Stuart and Stuart; and
25. Subject to the restrictions in paragraphs 22 and 23 above, if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 29th day of April, 2013.

“Thomas Lockwood”

Thomas Lockwood, Q. C.
Chair

“Darcy Lake”

Darcy Lake,
Industry Representative

“Robert Guilday”

Robert Guilday,
Industry Representative



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

ORDER

WHEREAS on April 29, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Application pursuant to section 24.3 of MFDA By-law No. 1 (the “By-law”) in respect of an application to be brought without notice against W.H. Stuart Mutuals Ltd. (“W.H. Stuart”), a Member of the MFDA, and Marilyn Dianne Stuart (“Ms. Stuart”), an Approved Person of W.H. Stuart (collectively, the “Respondents”);

AND WHEREAS the application was brought before a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) without notice to the Respondents on Monday, April 29, 2013 at the offices of the MFDA located at 121 King Street West, Suite 1000, Toronto, Ontario;

AND WHEREAS on April 29, 2013, the Hearing Panel made an Order against the Respondents pursuant to sections 24.3.1(b) and 24.3.2(b) of the By-law imposing penalties available under section 24.3.3 of the By-law and ordering that the materials filed in the proceeding and the Order issued on April 29, 2013 should not published prior to a further order of the Hearing Panel;

AND WHEREAS pursuant to the April 29, 2013 Order of the Hearing Panel, the application was returnable on notice to the Respondents on Thursday, May 9, 2013;

AND WHEREAS the Order and the materials filed by Staff of the MFDA (“Staff”) in support of the Order were delivered to Ms. Stuart and to her counsel on Wednesday, May 1, 2013;

AND WHEREAS on consent of the parties, the return date was changed to Friday, May 10, 2013 at 1 p.m. or as soon thereafter as the matter can be heard;

AND WHEREAS in accordance with the April 29, 2013 Order of the Hearing Panel, Ms. Stuart and her counsel attended an interview with MFDA Staff on Monday, May 6, 2013 during which she informed Staff, among other things that:

- (a) as of May 6, 2013, she had not delivered to W.H. Stuart’s head office premises located at 20 Valleywood Drive, Unit 100, Markham, ON L3R 6G1 all of the books, records, e-mails and other documents of W.H. Stuart that she maintains in other locations;
- (b) as of May 6, 2013, she had produced copies of the banking records of the W.H. Stuart Insurance Agency that she had been able to locate but had not yet been able to produce all of the banking records referenced in s. 14(b) of the Order; and
- (c) she believed that an asset sale of W.H. Stuart was likely to be completed imminently.

AND WHEREAS Ms. Stuart and her counsel agreed following her interview with Staff on May 6, 2013 that:

- (a) Ms. Stuart would immediately resign and terminate her registration as Ultimate Designated Person (“UDP”) of W.H. Stuart and as an Approved Person of W.H. Stuart; and
- (b) Ms. Stuart would cease engaging in any role concerning the management, operations and regulatory requirements of W.H. Stuart including without limitation, Ms. Stuart would no longer:
 - (i) submit or otherwise process trades and account transfers;

- (ii) access the W.H. Stuart back office system (S21C) on behalf of the Member;
- (iii) have any role in banking transactions of W.H. Stuart;
- (iv) be involved with the distribution of commissions to Approved Persons of W.H. Stuart;
- (v) participate in the preparation of financial reporting for W.H. Stuart; or
- (vi) have any role in complaint handling (other than answering questions about her knowledge or involvement in transactions or dealings with clients in order to enable compliance staff of W.H. Stuart to respond to complaints or client inquiries).

(c) Ms. Stuart will provide answers to undertakings that were requested during the interview.

AND WHEREAS Ms. Stuart and her counsel subsequently agreed that Ms. Stuart would also cease to have or exercise signing authority over the bank accounts of W.H. Stuart;

AND WHEREAS the content of this Order is not opposed by the Respondent;

UPON HEARING the submissions of counsel for MFDA Staff and counsel for the Respondents;

AND WHEREAS in the opinion of the Hearing Panel it is in the public interest to impose the terms set out in this Order;

IT IS HEREBY ORDERED THAT:

1. Pursuant to s. 24.3.3(b) of MFDA By-law No. 1:
 - (a) on or before Monday, May 13, 2013, W.H. Stuart shall provide MFDA Staff with a copy of the submission to the Ontario Securities Commission (the "OSC") indicating that Ms. Stuart's registration as UDP of W.H. Stuart and as an Approved Person of W.H. Stuart has been terminated;

(b) Ms. Stuart shall not engage in any role concerning the management, operations and regulatory requirements of W.H. Stuart and shall not:

- (i) submit or otherwise process trades and account transfers;
- (ii) access W.H. Stuart's back office system (S21C) on behalf of the Member;
- (iii) have any role in banking transactions of W.H. Stuart;
- (iv) have or exercise signing authority over the bank accounts of W.H. Stuart;
- (v) be involved with the distribution of commissions to Approved Persons of W.H. Stuart;
- (vi) participate in the preparation of financial reporting for W.H. Stuart; or
- (vii) have any role in complaint handling (other than answering questions about her knowledge or involvement in transactions or dealings with clients in order to enable compliance staff of W.H. Stuart to respond to complaints or client inquiries);

(c) The Chief Compliance Officer (the "CCO") of W.H. Stuart:

- (i) shall assume responsibility for all management functions of W.H. Stuart pending the implementation of an agreement of purchase and sale of the assets of W.H. Stuart to another Member of the MFDA and the transfer of client accounts to such a purchaser or until a Hearing Panel orders otherwise;
- (ii) is permitted to seek training from Ms. Stuart as required to perform the functions set out in sub-paragraph (1)(b) above, however, the CCO will be responsible for ensuring that those functions are completed properly and in accordance with regulatory requirements and shall not permit Ms. Stuart to train or otherwise instruct other employees or Approved Persons of W.H. Stuart unless the CCO is present to hear and approve any advice or training that Ms. Stuart provides to such individuals;

(d) Ms. Stuart shall complete the process of delivering all books, records, e-mails and other documents of W.H. Stuart that are not presently at W.H. Stuart's premises

located at 20 Valleywood Drive, Unit 100, Markham, ON L3R 6G1 and shall provide written certification to Staff by Monday, May 13, 2013 at 5 p.m. confirming that this process has been completed;

(e) Ms. Stuart shall provide timely and complete co-operation with the on-going investigation of Staff concerning her conduct as an Approved Person of W.H. Stuart including without limitation, by:

(i) providing Staff with answers to the undertakings that were provided to Staff during an interview with Staff on May 6, 2013; and

(ii) scheduling and attending further interviews with Staff to answer questions regarding her conduct while registered as an Approved Person of W.H. Stuart;

(f) On or before Tuesday, May 14, 2013, Ms. Stuart shall provide Staff with:

(i) the information and records described in s. 14 of the April 29, 2013 Order of the Hearing Panel that are within Ms. Stuart's knowledge, possession or control and which have not been produced to Staff to date;

(ii) banking records that are available electronically with respect to bank accounts of W.H. Stuart Insurance Agency dating back to January 2009 to the present to the extent that such records have not been produced to Staff prior to the date of this Order including, without limitation, the bank account records referenced in Schedule "A" to this Order; and

(iii) authorization to obtain the banking records of W.H. Stuart and the W.H. Stuart Insurance Agency from the banks where accounts are held and by electronic access.

(g) On or before Friday, May 24, 2013, Ms. Stuart shall provide Staff with a list of all amounts that have been deposited into a bank account of W.H. Stuart Insurance Agency since January 2009 which constituted the proceeds of investments held by clients or former clients of W.H. Stuart (including without limitation clients who had requested that the content of their accounts be transferred to another dealer); and

(h) Ms. Stuart shall not process any transactions in the bank accounts of W.H. Stuart

Insurance Agency except with the prior written consent of Staff.

2. The next appearance in this proceeding shall take place by teleconference before the Hearing Panel on May 22, 2013 at 2 p.m. or as soon thereafter as the appearance can be held;
3. The execution of any agreement for the sale of any assets of W.H. Stuart shall not affect the obligation of W.H. Stuart to maintain minimum capital at all times in accordance with MFDA Rule 3.1.1 and to comply with its obligations to maintain insurance in accordance with MFDA Rule 4. W.H. Stuart shall not withdraw, transfer or make payments directly or indirectly from any bank account of W.H. Stuart without the prior written consent of MFDA Staff's Vice-President, Compliance, a designate thereof, or a further order of a Hearing Panel.
4. The entirety of this proceeding commenced on Monday, April 29, 2013 shall remain *in camera* and the public record of the proceeding sealed until Tuesday, May 21, 2013 or such earlier date as Staff in its sole discretion determines to be appropriate and in the public interest;
5. Publication of the Notice of Application, the Order of the Hearing Panel dated April 29, 2013, this Order and press releases of any steps in relation to the application shall not occur until Tuesday, May 21, 2013 or such earlier date as Staff in its sole discretion determines to be appropriate and in the public interest;
6. Notwithstanding anything in paragraphs 4 and 5 above:
 - (a) Staff may disclose the existence of the application and all or any part of the contents of the Notice of Application, the Order of the Hearing Panel dated April 29, 2013, this Order and any evidence filed in respect of the application to:
 - (i) any law enforcement agency, regulatory authority or investor protection or compensation fund to which Staff is permitted to provide information pursuant to s. 23.3 of the By-law;
 - (ii) the Financial Services Commission of Ontario;

- (iii) any other regulatory authority or service provider to whom Staff considers it necessary to provide such documents or information for the purposes of furthering Staff’s continuing review and investigation of W.H. Stuart and Ms. Stuart; or
 - (iv) any potential purchaser of assets of W.H. Stuart;
- (b) Exhibits 85, 87 and 88 to the affidavit of Lara Rowles sworn April 29, 2013 shall be sealed and shall not be disclosed to a non-party to this proceeding except a non-party referenced in sub-paragraph 6(a) above to whom Staff in its sole discretion considers it appropriate to disclose those Exhibits, unless a Hearing Panel orders otherwise;
- (c) If at any time subsequent to the publication of the Notice of Application and the Orders issued in this proceeding, a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure and without first removing the documents referenced in sub-paragraph 6(b) above.

DATED this 10th day of May, 2013.

“Thomas Lockwood”
Thomas Lockwood, Q. C.
Chair

“Darcy Lake”
Darcy Lake,
Industry Representative

“Robert Guilday”
Robert Guilday,
Industry Representative

Schedule "A"

Scotiabank – Account: ----- 14 (W.H. Stuart Insurance Agency Ltd.)

- i. April 2013
- ii. February 2012
- iii. January 2012
- iv. December 2011
- v. November 2011
- vi. October 2011
- vii. December 2010

CIBC – Account: -----18 (W.H. Stuart Insurance Agency Ltd.)

- i. April 2013
- ii. December 2011
- iii. November 2011
- iv. October 2011
- v. September 2011
- vi. June 2011

CIBC – Account: -----12 (W.H. Stuart Mutuals Ltd. formerly W.H. Stuart Insurance Agency Ltd.)

- i. April 2013
- ii. December 2012
- iii. November 2012
- iv. October 2012
- v. May 2011
- vi. April 2011
- vii. March 2011
- viii. February 2011
- ix. May 2009
- x. April 2009
- xi. March 2009
- xii. February 2009
- xiii. January 2009



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

ORDER

WHEREAS on April 29, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Application pursuant to section 24.3 of MFDA By-law No. 1 (the "By-law") in respect of an application to be brought without notice against W.H. Stuart Mutuals Ltd. ("W.H. Stuart"), a Member of the MFDA, and Marilyn Dianne Stuart ("Ms. Stuart"), an Approved Person of W.H. Stuart (collectively, the "Respondents") and brought the application before a hearing panel of the Central Regional Council of the MFDA (the "Hearing Panel") without notice to the Respondents on Monday, April 29, 2013 at the offices of the MFDA located at 121 King Street West, Suite 1000, Toronto, Ontario;

AND WHEREAS on April 29, 2013, the Hearing Panel made an Order against the Respondents pursuant to sections 24.3.1(b) and 24.3.2(b) of the By-law imposing penalties available under section 24.3.3 of the By-law and ordering that the materials filed in the proceeding and the Order issued on April 29, 2013 should not be published prior to a further order of the Hearing Panel;

AND WHEREAS in accordance with the April 29, 2013 Order of the Hearing Panel, Ms. Stuart and her counsel attended an interview with MFDA Staff on Monday, May 6, 2013 during which she answered some questions of Staff and informed Staff that, among other things, she had not yet complied with all of the requirements set out in the April 29, 2013 Order and she believed that an asset sale of W.H. Stuart was likely to be reached imminently;

AND WHEREAS Ms. Stuart and her counsel agreed following her interview with Staff on May 6, 2013 that, among other things, Ms. Stuart would immediately resign and terminate her registration as Ultimate Designated Person (“UDP”) of W.H. Stuart and as an Approved Person of W.H. Stuart and cease engaging in any role concerning the management, operations and regulatory requirements of W.H. Stuart including, without limitation, the processing of trades and transfers, accessing W.H. Stuart’s back office system (S21C) on behalf of W.H. Stuart, the banking of W.H. Stuart, financial reporting and complaint handling. Ms. Stuart also agreed to provide Staff with answers to undertakings that were requested during the interview;

AND WHEREAS Ms. Stuart and her counsel subsequently agreed that Ms. Stuart would also cease to have or exercise signing authority over the bank accounts of W.H. Stuart;

AND WHEREAS on May 10, 2013, a further appearance was held on notice to the Respondents and an additional Order (the “May 10, 2013 Order”) was issued by the Hearing Panel that was requested by Staff and unopposed by the Respondents which imposed by Order terms that Ms. Stuart had previously agreed to and required that, among other things:

- (a) Ms. Stuart terminate her registration with the Ontario Securities Commission (the “OSC”) as Ultimate Designated Person (“UDP”) and as an Approved Person of W.H. Stuart;
- (b) Ms. Stuart shall not engage in any role concerning the management, operations and regulatory requirements of W.H. Stuart and shall not:
 - (i) submit or otherwise process trades and account transfers;
 - (ii) access W.H. Stuart’s back office system (S21C) on behalf of the Member;
 - (iii) have any role in banking transactions of W.H. Stuart;
 - (iv) have or exercise signing authority over the bank accounts of W.H. Stuart;
 - (v) be involved with the distribution of commissions to Approved Persons of

W.H. Stuart;

- (vi) participate in the preparation of financial reporting for W.H. Stuart; or
 - (vii) have any role in complaint handling (other than answering questions about her knowledge or involvement in transactions or dealings with clients in order to enable compliance staff of W.H. Stuart to respond to complaints or client inquiries)
- (c) the Chief Compliance Officer of W.H. Stuart assume responsibility for all management functions of W.H. Stuart pending the implementation of an agreement of purchase and sale of the assets of W.H. Stuart to another Member of the MFDA;
- (d) Ms. Stuart deliver all books, records, e-mails and other documents of W.H. Stuart to the head office premises of W.H. Stuart and certify in writing that the process was completed;
- (e) Ms. Stuart provide timely and complete co-operation with Staff's investigation including outstanding answers to undertakings and attend further interviews to answer questions of Staff regarding her conduct as an Approved Person of W.H. Stuart;
- (f) Ms. Stuart provide Staff with additional banking records of W.H. Stuart Insurance Agency that had not yet been produced and provide Staff with authorization to obtain banking records of W.H. Stuart and W.H. Stuart Insurance Agency from the banks where accounts are held and by electronic access;
- (g) by May 24, 2013, Ms. Stuart provide Staff with a list of all amounts deposited into a bank account of W.H. Stuart Insurance Agency since January 2009 which constituted proceeds of investments held by clients or former clients of W.H. Stuart; and
- (h) Ms. Stuart not process any transactions in the bank accounts of W.H. Stuart Insurance Agency except with the prior written consent of Staff;
- (i) W.H. Stuart continue to comply with MFDA Rules 3.1.1 and 4 to maintain minimum capital and insurance even after execution of an agreement for the sale

of assets of W.H. Stuart; and

- (j) a further delay in the publication of the Notice of Application and the Orders of the Hearing Panel was authorized until Tuesday May 21, 2013 or such earlier date as Staff in its sole discretion determined to be appropriate and in the public interest;

AND WHEREAS on Friday, May 10, 2013, Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA, signed an asset purchase agreement (the “Agreement”) with W.H. Stuart and related companies pursuant to which all assets of W.H. Stuart, W.H. Stuart Insurance Agency, W.H. Stuart Investments Inc., S21C Ltd. and S21C Technologies Ltd. are to be sold to Keybase National Financial Services Inc., the parent company of Keybase, the Approved Persons of W.H. Stuart including its head office compliance and trade processing staff (other than Ms. Stuart) will have their registration transferred to Keybase and all client accounts of W.H. Stuart will be transferred to Keybase;

AND WHEREAS the OSC and the MFDA authorized bulk transfers of the registration of Approved Persons and client accounts from W.H. Stuart to Keybase;

AND WHEREAS on Friday, May 17, 2013, Approved Persons and client accounts of W.H. Stuart were transferred from W.H. Stuart to Keybase in accordance with the Agreement;

AND WHEREAS Ms. Stuart’s registration with the OSC as UDP and as an Approved Person of W.H. Stuart has been terminated;

AND WHEREAS, W.H. Stuart and Ms. Stuart remain subject to the jurisdiction of the MFDA even though the assets of W.H. Stuart have been sold and Ms. Stuart’s registration has been terminated;

AND WHEREAS Ms. Stuart provided written certification to Staff on Monday May 13, 2013 that all books, records, e-mails and other documents of W.H. Stuart that were in the power, possession or control of Ms. Stuart had been delivered to the head office premises of W.H. Stuart;

AND WHEREAS Ms. Stuart’s former counsel informed the Hearing Panel that he

continues to represent W.H. Stuart but no longer represents Ms. Stuart;

AND WHEREAS Staff informed the Hearing Panel that Ms. Stuart has not apparently complied with some of the terms of the April 29, 2013 and May 10, 2013 Orders as, among other things, she has not:

- (a) provided disclosure of many of the banking records that she was previously ordered to produce;
- (b) provided Staff with authorization to obtain disclosure of banking records from the banks at which accounts of W.H. Stuart and W.H. Stuart Insurance Agency are held;
- (c) responded to requests for information from the Chief Compliance Officer of W.H. Stuart about matters including banking records and transactions, trading in client accounts of W.H. Stuart and complaints or inquiries from clients (or former clients) of W.H. Stuart;
- (d) apparently relinquished signing authority over the bank accounts of W.H. Stuart or W.H. Stuart Insurance Agency;
- (e) apparently ceased to have a role in banking transactions processed in the accounts of W.H. Stuart;
- (f) apparently requested prior written approval from the MFDA before processing banking transactions in accounts of W.H. Stuart Insurance Agency;
- (g) apparently ceased to access the back office system (S21C) of W.H. Stuart and appears to have processed additional trades in client accounts after she was ordered to cease engaging in such activity and terminated her registration;

AND WHEREAS banking records that have been produced to Staff appear to show that substantial withdrawals have occurred from bank accounts of W.H. Stuart and W.H. Stuart Insurance Agency and some of the accounts are now substantially overdraft;

AND WHEREAS Staff believes that W.H. Stuart is now capital deficient contrary to the terms of the May 10, 2013 Order and MFDA Rule 3.1.1;

AND WHEREAS Ms. Stuart provided answers to undertakings that were given to Staff

on May 6, 2013 but Staff regards the answers that were provided as substantially deficient and has requested more responsive answers from Ms. Stuart;

AND WHEREAS Staff has been informed about additional suspicious transactions that have been processed in client accounts of W.H. Stuart;

AND WHEREAS neither Ms. Stuart personally nor counsel or an agent representing her participated in the appearance by teleconference;

AND UPON HEARING the submissions of counsel for MFDA Staff and counsel for W.H. Stuart;

AND WHEREAS in the opinion of the Hearing Panel it is in the public interest to impose the terms set out in this Order;

IT IS HEREBY ORDERED THAT:

1. The next appearance in this proceeding shall take place by teleconference before the Hearing Panel on May 31, 2013 at 3 p.m. or as soon thereafter as the appearance can be held;
2. Pursuant to section 20.6.2(a), Ms. Stuart shall attend the next appearance by teleconference;
3. Pursuant to section 24.3.3(d), the Respondents shall:
 - (a) immediately take any and all steps necessary to effect the transfer of all client accounts to Keybase whether such accounts are held in nominee name or client name and to transfer any assets of clients or former clients of W.H. Stuart including the proceeds of redemptions of investments of clients or former clients or assets intended to be transferred out of W.H. Stuart to Keybase;
 - (b) immediately take all steps necessary to ensure that any information, disclosure, authorization or signed documentation necessary to transfer assets or provide information to Keybase that is necessary to service accounts or transfer accounts of clients or former clients of W.H. Stuart, to provide financial reporting to clients

or regulators and to comply with all regulatory requirements including complaint handling requirements;

- (c) immediately notify all third parties including trustees, fund companies and any other individuals or entities that accept instructions with respect to accounts or investments of clients or former clients of W.H. Stuart that they are no longer authorized to accept instructions from Ms. Stuart or W.H. Stuart with respect to the accounts or investments of clients or former clients of W.H. Stuart and shall only accept instructions from Keybase or any other securities dealer to whom the accounts and investments of W.H. Stuart clients have been transferred.
4. Nothing in this Order affects the obligation of the Respondents to comply with previous orders of the Hearing Panel prior to the next appearance including without limitation:
- (a) the requirement to produce banking records to Staff as described in s. 14 of the April 29, 2013 Order and in s. 1(f) of the May 10, 2013 Order;
 - (b) the requirement to provide Staff with a list on or before May 24, 2013 of all amounts that have been deposited into a bank account of W.H. Stuart Insurance Agency since January 2009 which constituted the proceeds of investments held by clients or former clients of W.H. Stuart (including without limitation clients who had requested that the content of their accounts be transferred to another dealer);
 - (c) the requirement to take any necessary steps including without limitation, producing signed documentation, passwords or other information required to authorize Staff to obtain banking records from banks where W.H. Stuart or W.H. Stuart Insurance Agency holds or previously held bank accounts and to facilitate electronic access to any banking records that can be accessed electronically;
 - (d) the requirement that Ms. Stuart cease any role in banking transactions involving accounts of W.H. Stuart, relinquish signing authority over any accounts of W.H. Stuart and cease to process any transactions in accounts of W.H. Stuart Insurance Agency without prior written authorization from Staff of the MFDA;
 - (e) the requirement that Ms. Stuart shall cease to process trades or account transfers or otherwise engage in securities related business (except as may be necessary to comply with the requirements of this Order as set out in s. 3 above);

- (f) the requirement that W.H. Stuart maintain minimum capital and insurance in accordance with MFDA Rules 3 and 4;
- (g) the requirement that the Respondents shall not withdraw, transfer or make payments directly or indirectly from any bank account of W.H. Stuart without the prior written consent of MFDA Staff's Vice-President, Compliance, a designate thereof, or a further order of a Hearing Panel;
- (h) the requirement that Ms. Stuart answer questions of the Chief Compliance Officer of W.H. Stuart in order to facilitate the Member's compliance with regulatory requirements including the obligation to handle complaints and respond to inquiries from clients; and
- (i) the requirement that Ms. Stuart provide timely and complete co-operation with the on-going investigation of Staff concerning her conduct as an Approved Person of W.H. Stuart including without limitation, the requirement to provide Staff with complete and responsive answers to the undertakings that were provided to Staff during an interview with Staff on May 6, 2013 and the requirement to schedule and attend further interviews with Staff to answer questions regarding her conduct while registered as an Approved Person of W.H. Stuart.

DATED this 22nd day of May, 2013.

“Thomas Lockwood”

Thomas Lockwood, Q. C.
Chair

“Darcy Lake”

Darcy Lake,
Industry Representative

“Robert Guilday”

Robert Guilday,
Industry Representative



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

**IN THE MATTER OF AN APPLICATION
PURSUANT TO SECTION 24.3 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: W.H. Stuart Mutuals Ltd. and Marilyn Dianne Stuart

ORDER

WHEREAS on April 29, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Application pursuant to section 24.3 of MFDA By-law No. 1 (the “By-law”) in respect of an application to be brought without notice against W.H. Stuart Mutuals Ltd. (“W.H. Stuart”), a Member of the MFDA, and Marilyn Dianne Stuart (“Ms. Stuart”), an Approved Person of W.H. Stuart (collectively, the “Respondents”);

AND WHEREAS the application was brought before a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) without notice to the Respondents on Monday, April 29, 2013 at the offices of the MFDA located at 121 King Street West, Suite 1000, Toronto, Ontario;

AND WHEREAS on April 29, 2013, the Hearing Panel made an Order against the Respondents pursuant to sections 24.3.1(b) and 24.3.2(b) of the By-law imposing penalties available under section 24.3.3 of the By-law;

AND WHEREAS subsequent appearances before the Hearing Panel occurred on notice to the Respondents on May 10, 2013 and May 22, 2013;

AND WHEREAS on May 9, 2013, a notice of termination was filed by W.H. Stuart on behalf of Ms. Stuart indicating that Ms. Stuart was resigning from registration as a dealing representative and as the Ultimate Designated Person (“UDP”) of W.H. Stuart;

AND WHEREAS on May 10, 2013, an asset purchase agreement was signed between the Respondents that resulted in the transfer of the client accounts and Approved Persons of W.H. Stuart to Keybase Financial Group Inc. (“Keybase”), another Member of the MFDA;

AND WHEREAS it is no longer necessary or appropriate for W.H. Stuart to conduct securities related business following the implementation of the asset purchase agreement;

AND WHEREAS financial and banking information recently submitted by W.H. Stuart to Staff appears to indicate that W.H. Stuart is now capital deficient;

AND WHEREAS Staff intends to continue to investigate allegations of misconduct involving the Respondents;

AND WHEREAS during the first week of May 2013, a third party service provider called Digital Evidence International Inc. (“DEI”) prepared forensic images of electronic data of W.H. Stuart so that such data would be preserved for potential further investigation by Staff;

AND WHEREAS Staff has requested an order authorizing Staff to obtain from DEI and review e-mails sent to and from W.H. Stuart e-mail address transfers@whstuart.com and no objection to the review of such e-mails has been communicated to Staff or the Hearing Panel by counsel for the Respondents;

AND WHEREAS Staff has agreed to prepare additional affidavit evidence to be submitted to the Hearing Panel following this appearance to provide an update on information that has come to light and events that have transpired since the application was commenced on April 29, 2013;

AND UPON HEARING the submissions of counsel for Staff and counsel for Ms. Stuart and counsel for W.H. Stuart notified counsel for Staff that he did not intend to participate in this appearance;

AND WHEREAS in the opinion of the Hearing Panel it is in the public interest to impose the terms set out in this Order;

IT IS HEREBY ORDERED THAT:

1. Pursuant to s. 24.3.3(a) of MFDA By-law No. 1, W.H. Stuart is suspended and shall not have any of the rights or privileges of Membership and shall not be permitted to conduct securities related business except with prior authorization pursuant to a future order of a Hearing Panel;
2. For purposes of its investigation of the Respondents conduct, Staff is authorized to obtain from DEI and review any e-mail records that were sent to or from the W.H. Stuart e-mail account with the e-mail address transfers@whstuart.com;
3. Staff may access additional imaged electronic data that was obtained from W.H. Stuart by DEI with the consent of Ms. Stuart or her counsel or pursuant to a future order of a Hearing Panel;
4. If Ms. Stuart has power, possession or control over:
 - (a) any assets;
 - (b) the proceeds from any assets; or
 - (c) assets acquired with the proceeds of any assets;

of clients or former clients of W.H. Stuart, she shall immediately disclose the existence of such assets to Staff and transfer such assets to Keybase.

5. This proceeding is adjourned *sine die*;

6. Any party to this proceeding can seek a further appearance before this Hearing Panel on a minimum of 5 days' notice.

DATED this 31st day of May, 2013.

“Thomas Lockwood”

Thomas Lockwood, Q. C.
Chair

“Darcy Lake”

Darcy Lake,
Industry Representative

“Robert Guilday”

Robert Guilday,
Industry Representative

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