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

IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Larry Leslie Williams

Heard: April 17, 2018 in Vancouver, British Columbia
Decision: April 17, 2018
Reasons for Decision: May 23, 2018

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC	Chair
Susan Monk	Industry Representative
Robert Sokugawa	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
Patrick Sullivan	)	Counsel for the Respondent
Larry Leslie Williams	)	Respondent, in Person

Introduction

1. A Settlement Agreement ("Settlement Agreement") was entered into on April 2, 2018 between the Mutual Fund Dealers Association of Canada ("MFDA") and Larry Leslie Williams ("Respondent") pursuant to the MFDA By-law No. 1, Section 24.4. The Settlement Agreement is subject to acceptance by a Hearing Panel and based on facts agreed to solely for the purposes of the Settlement Agreement. The Settlement Agreement expressly is without prejudice to the Respondent or the MFDA in further proceedings whether or not the Settlement Agreement is approved.

2. The Settlement Agreement provides that:

   a) The Respondent shall pay a fine in the amount of $5,000, pursuant to section 24.1.1(b) of By-law No. 1;
   b) The Respondent shall pay costs in the amount of $2,500, pursuant to section 24.2 of By-law No. 1.

Agreed Facts

3. The facts agreed to between the MFDA and the Respondent, solely for the purpose of this Hearing, are as follows:

Registration History

4. The Respondent became registered in the securities industry in September 1995.

5. Between May 24, 2005 and December 31, 2015, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) with Hub Capital Inc. ("Hub" or the "Member"), a Member of the MFDA.

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

7. At all material times, the Respondent conducted business in the Surrey, British Columbia area.

Breach of Member Policy and Procedure

8. Client A opened an account with Hub in May 2005. Client B opened an account with Hub in November 2006. At all material times, the Respondent was the Approved Person responsible for servicing the clients' accounts at Hub.

9. The Respondent states that:

a) Client A is the Respondent's brother-in-law;
b) Client B has been a close friend of the Respondent for over a decade; and
c) Client A's KYC form listed him as having "knowledgeable" investment knowledge and client B's KYC form listed him as having "sophisticated" investment knowledge.

10. At all material times, Hub had an explicit policy and procedure that prohibited its Approved Persons from becoming involved with clients in private investment schemes, including investment clubs.

11. At all material times, Hub had a policy and procedure that required its Approved Persons to immediately disclose a conflict of interest or potential conflict of interest to Hub's compliance department.

12. On or about March 6, 2015, without the knowledge, authorization or approval of the Hub, the Respondent entered into an agreement with client A and client B to form an investment club ("Investment Club"). At the time that the Respondent started the Investment Club he did not seek prior approval from Hub nor did he advise Hub that 2 clients were members of the Investment Club.

13. Prior to entering into the Investment Club, the Respondent did consult with the British Columbia Securities Commission to canvass the steps and regulatory requirements that had to be taken prior to opening an Investment Club however the Respondent did not make inquiries as to his obligation to inform the Member. The Respondent states he informed the British Columbia Securities Commission that he was an MFDA registrant.

14. The Respondent retained counsel in the United States to provide advice to members of the Investment Club with respect to the running of the Investment Club. Counsel negotiated an agreement that clearly delineated the roles of the three members to the Investment Club ("Agreement").

15. Pursuant to the Agreement, the Respondent was appointed as the Managing Partner of the Investment Club. As Managing Partner, the Respondent states he was responsible for providing administrative services for the Investment Club, liaising with legal counsel and securities regulators, and hiring third party bookkeepers. Pursuant to the Agreement, client B was appointed as trader for the Investment Club. Neither the Respondent as Managing Partner nor client B were entitled to remuneration for the services they provided to the Investment Club.

16. On May 11, 2015, the Respondent opened a joint investment account for the Investment Club with an online brokerage company called Interactive Brokers. The first trade in the Investment Club occurred on May 26, 2015.

17. The Respondent, client A and client B initially contributed the following amounts to the Investment Club's joint investment account:

a) Client A: $85,000 US Dollars;
b) Client B: $25,000 US Dollars; and
c) The Respondent: $30,000 US Dollars.

18. Based upon these contributions, the Respondent owned 22% of the Investment Club, while client A and client B owned 60% and 18%, respectively.

19. The acts of co-mingling the Respondent's own money with client money and forming an Investment Club for the purpose of jointly investing in securities with clients of the Member contravened the policies and procedures of the Member and gave rise to an actual or potential conflict of interest that the Respondent failed to disclose to the Member and ensure that it was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients.

20. As of June 18, 2015, the account opened for the Investment Club held shares of three biotechnology companies and options in three technology companies. The transactions to purchase securities in the investment account held by the Investment Club were not carried on for the account of Hub, or processed through its facilities. The Respondent did not disclose to Hub that he was participating in the Investment Club with clients of Hub. He also did not disclose to the Member or seek authorization or approval from the Member to participate in an Investment Club with clients of the Member.

21. The Respondent states that during the time that he was an Approved Person, he did not place any trades in the account of the Investment Club. The trades that were processed in the account of the Investment Club were processed by client B. The Respondent has provided evidence that he did not create his own investor profile with Interactive Brokers until May 24, 2016, after he resigned from Hub.

22. On June 24, 2015, Hub's Regional Compliance Officer conducted a branch audit, at which time, in response to questioning by the Regional Compliance Officer, the Respondent disclosed his involvement in the Investment Club to Hub. Immediately after discussing the Investment Club with the Regional Compliance Office, the Respondent contacted his immediate supervisor and disclosed details concerning the Investment Club.

23. On August 5, 2015, Hub's Chief Compliance Officer contacted the Respondent to discuss the course of action and, as a result the Respondent decided to resign from the Investment Club and received the current market value of his portion of the investments, which was $20,000 USD.

24. On September 15, 2015, Hub issued a reprimand letter to the Respondent regarding his involvement with clients in the Investment Club.

25. On December 31, 2015, the Respondent resigned from Hub.

26. No complaints were received by Hub from the clients who participated in the Investment Club with the Respondent.

Allegation

27. The allegation is:

a) Between March 6, 2015 and June 24, 2015, the Respondent participated in an investment club with two clients, and co-mingled his monies with client monies in an account for the investment club, which conduct gave rise to a conflict of interest that the Respondent did not disclose to the Member prior to June 24, 2015 or address appropriately, contrary to MFDA Rules 2.1.4 and 2.1.1, and the policies and procedures of the Member.

Nature of the Misconduct

28. In summary, the formation of, and participation in, the Investment Club was in breach of the Member's policies and procedures and deprived the Member of the ability to address any conflicts or potential conflicts. The Respondent co-mingled his money with two clients' money in an Investment Club that he did not disclose to the Member, nor did he disclose that two clients were also involved in the Club for a period of 3 months. Such conduct, it is alleged, gives rise to a potential or actual conflict of interest.

Objective of Settlement Agreements

29. The overriding objective in considering whether or not a settlement agreement should be accepted is the protection of the public. Settlement agreements are intended to proscribe activities harmful to the public.

> *British Columbia Securities Commission v. Seifert,* [2007] BCCA 484 at para 31, citing from *R. v. 974649 Ontario Inc.* 2001 SCC 81 [2001] 3 S.C.R. 575 at para 49 *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557.

Considerations of a Hearing Panel in Deciding Whether or Not to Accept the Settlement Agreement

30. The Hearing Panel, in deciding whether or not it is in the public interest to accept a Settlement Agreement, may either accept or reject the Settlement Agreement.
By-law No. 1, Section 24.4.3

31. As the Section makes clear, the Hearing Panel is to determine whether or not a penalty is within a reasonable range. It should not reject a settlement agreement arrived at unless it is clearly outside of the reasonable range of appropriateness.

> *Re Sterling Mutuals Inc.,* [2008] MFDA 16 para 37, referring to *Re Milewski*, [1999] I.D.A.C.D No. 17, page 11, a decision of the Ontario District Council dated July 28, 1999

32. The considerations which a Hearing Panel should take into account have been stated on many occasions. Clearly the public interest and protection of investors is paramount. In considering whether or not the objective has been arrived at, the Panel is to consider (inter alia) specific and general deterrence, confidence in the integrity of the Canadian capital markets and confidence in the integrity of the MFDA.

> *Re Jacobson,* [2007] MFDA 27, page 9
> *Re Headley*, [2006] MFDA 3, pages 25 to 26

33. As set out in the Re Headley decision, the Panel is also to consider (inter alia) harm to investors as a result of the Respondent's activities, benefits to the Respondent as a result of the improper activity, potential risk to investors, and prior decisions in similar circumstances.

Re Headley, [2006] MFDA 3, pages 25 to 26

34. Further guidance for the Hearing Panel is contained in the MFDA Penalty Guidelines, Part 1, which are not binding on Hearing Panels, but are intended to assist.

Prior Authorities

35. Counsel has put forth a number of cases in support of the Settlement Agreement. The first is the decision of *Re Pilkey* MFDA File No. 201747 [2017]. While the case has some similarities, it is to be noted that Mr. Pilkey also obtained, possessed and in some instances used to process transactions, pre-signed account forms that he further falsified – two account forms in respect of clients by altering information on the forms without having the clients' initial alterations, contrary to Rule 2.1.1. Mr. Pilkey received a substantial penalty. The case is distinguishable in the Panel's view.

36. The next case presented by counsel is *Re Kimberly and Haylock*, MFDA File No. 201243 [2013]. In this case the Respondent engaged in personal financial dealings by borrowing money from the client and failing to repay it on request. In fact, the Member repaid the loan, and the Respondent later needed to reimburse the Member. In that case the amounts were small, and the Respondent and her client were friends. Nevertheless, the conflict of interest appears obvious as does the failure of the Respondent to act only in the best interests of the client, contrary to MFDA Rule 2.1.4.

37. In *Re Zollo*, MFDA File No. 200610 [2007] the Respondent entered into a joint investment scheme pursuant to which 49 mutual fund clients contributed $1.5 million to an investment account. The Respondent admitted he engaged in security-related business, advised clients and conducted trading in securities contrary to the terms of his registration under the *Securities Act* of Ontario as a mutual fund sales person. He indirectly borrowed money from mutual fund clients,

and acted clearly in pursuit of his personal interest, in breach of the Member's policies and procedures, in conflict of interest and in a manner unbecoming an Approved Person.

38. The next case presented was *Re Deck*, decided in a disciplinary hearing of IIROC: [2007] IDACD 19. This also involved an investment club, accessing investments not available through the Member firm, and involved clients of the Respondent introduced by him. The Respondent also provided investment recommendations and dealt with administrative matters for the club, including valuations of portfolio and periodic investors, newsletters and other matters. He failed to disclose his activities and that he was a Director, President, Secretary and controlling mind of a company created for the purpose of having multiple hedge fund managers available to both his cash and registered account holders. Investors had about $1.9 million involved, and he personally lent $125,000 to a client. The similarities are that he was involved in an investment club, accessing investments not available through the Member firm, but the differences are significant, involving transactions with a value in excess of $3 million and more than 22 investors.

39. The precedent authorities presented, while having aspects which are in some regards similar to the facts of this case, appear, largely, distinguishable. That is not to say that there are prior authorities which have been overlooked.

Considerations of the Panel

40. There is no evidence of anyone suffering a financial loss.

41. The Respondent was not entitled to remuneration for the services provided.

42. The other persons in the Club are the Respondent's brother-in-law and a close friend, neither of whom were harmed by the conduct of the Respondent.

43. The Respondent has been registered in the mutual fund industry since 1995, and has not previously been subject to any disciplinary proceedings.

44. The Respondent accepts responsibility for misconduct and thereby avoids the necessity of a hearing.

45. The Respondent was involved in the Investment Club contrary to the policy and procedure of the Member.

46. While the Respondent was careful to consult with the British Columbia Securities Commission and to retain counsel in the United States, presumably ensuring that the club was run legally, he did not seek approval from the Member, did not advise the Member that two clients were members of the investment club.

47. MFDA Rule 2.1.4 provides:

> "*Conflicts of Interest*
>
> *Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.*
>
> *In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).*
>
> *Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.*
>
> *Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).*"

48. Rule 2.1.1 provides:

> *2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:*

(a) deal fairly, honestly and in good faith with its clients;
(b) observe high standards of ethics and conduct in the transaction of business;
(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

49. The Investment Club purchased securities which were not carried on for the account of Hub or processed through Hub's facilities. He also did not create his own investor profile with the investment club until May 24, 2016, following his resignation from Hub.

50. By co-mingling his money with the clients' money and forming an investment club to jointly invest in securities without advising the Member, he removed from the Member the ability to supervise his activities.

51. The Respondent, by his conduct as described, is in breach of MFDA Rule 2.1.4 in that he did not disclose to the Member a potential conflict of interest between the Member and the Respondent or his clients.

52. The Respondent further breached Rule 2.1.1 which requires each Member and Approved Person to deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business, conduct or practice which is unbecoming or detrimental to the public interest.

Conclusion

53. We recognize that the penalty is not high, but in our judgment the mitigating factors are significant. We believe the penalty is adequate to address both specific and general deterrence, to maintain confidence in the integrity of the MFDA and regulatory process, and in the public interest. We approve the Settlement Agreement.

DATED this 23rd day of May, 2018.

"Robert G. Ward"

Robert G. Ward, QC
Chair

"Susan Monk"

Susan Monk
Industry Representative

"Robert Sokugawa"

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Industry Representative

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