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: Investia Financial Services Inc.

Heard: November 1, 2018 in Toronto, Ontario
Decision: November 1, 2018
Reasons for Decision: January 22, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC	Chair
Guenther W.K. Kleberg	Industry Representative
Kenneth P. Mann	Industry Representative

Appearances:

Lyla Simon	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
David Di Paolo	)	Counsel for the Respondent

Background

1. This is a Settlement Hearing under Section 24.4 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on November 1, 2018. The full Settlement Agreement, dated September 12, 2018, entered into between Staff of the MFDA and Investia Financial Services Inc. ("Investia" or the "Respondent") is available on the MFDA website. Investia was represented by counsel. A senior officer of the Respondent, Louis DeConinck, President and Ultimate Designated Person of Investia, attended the hearing, as did John Pereira, Senior Vice President and Chief Operating Officer Asset Management, Scotia Capital Inc.

2. The Panel accepted the proposed Settlement Agreement at the conclusion of the November 1st hearing, with reasons to follow. These are our reasons for our decision.

3. The company involved in the misconduct was HollisWealth Advisory Services Inc. ("HollisWealth"). HollisWealth, formerly known as Dundee Private Investors Inc., had been purchased in February 2011 by the Bank of Nova Scotia ("Scotiabank"). On August 4, 2017, HollisWealth was sold by Scotiabank to Industrial Alliance Insurance and Financial Services ("Industrial Alliance") and was merged with another Industrial Alliance company, Investia, a Member of the MFDA and the Respondent in these proceedings. HollisWealth continues to operate numerous branches across Canada under the name HollisWealth.

4. Because of the merger, HollisWealth is no longer a Member of the MFDA and Investia is the named Respondent in this proceeding. As a result of the merger, HollisWealth is sometimes referred to in these reasons as HollisWealth and sometimes as the Respondent.

5. All of the conduct referred to herein relates to HollisWealth and took place prior to the closing of the sale of HollisWealth to Industrial Alliance.

Contraventions

6. A Notice of Settlement Hearing was issued by the MFDA on July 23, 2018, setting a date for the present hearing for November 1, 2018. The Notice stated: "The proposed Settlement Agreement concerns an allegation that from January 1, 2014 to July 13, 2017, HollisWealth

implemented a remote branch supervision structure in at least 24 branches, without first receiving MFDA approval, contrary to MFDA Rule 2.5.5(c)."

7. A Settlement Agreement was finalized on September 12, 2018. In paragraph 37 of the Settlement Agreement, the Respondent admitted in the exact same language the above allegation that 'from January 1, 2014 to July 13, 2017, HollisWealth implemented a remote branch supervision structure in at least 24 branches, without first receiving MFDA approval, contrary to MFDA Rule 2.5.5(c)."

Terms of Settlement

8. The Settlement Agreement sets out the following terms of settlement in paragraph 38:

a) The Respondent shall pay a fine of $100,000 pursuant to s.24.1.2(b) of MFDA By-law No. 1;
b) The Respondent shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1; and
c) A senior officer of the Member will attend in person, on the date set for the Settlement Hearing.

Account Supervision

9. Supervision is a crucial component of effective securities regulation. There are many MFDA rules and policies relating to supervision. See, for example, MFDA Policy No. 2, "Minimum Standards for Account Supervision," dated January 19, 2017, which contains Part IV, relating to "Branch Office Supervision."

10. Rules relating to Branch Managers are contained in MFDA Rule 2.5.5. This Rule provides in subsection (a) that '[e]ach Member designate an individual qualified as a branch manager…for each branch office…" Subsection (c) of Rule 2.5.5 goes on to provide, however, that notwithstanding this requirement, and 'subject to the approval of the Corporation [i.e., the MFDA], a Member may designate branch managers for branch offices who are not normally present at the offices[,] provided the Member has a system to ensure effective supervision of activities at the branches.' The MFDA, therefore, must approve such a system to ensure effective supervision.

11. There are numerous detailed requirements relating to Branch Supervision set out in MFDA Staff Notice 82, dated September 12, 2013, that develops and clarifies Rule 2.5.5. In particular, part II of the Notice, under the heading "MFDA Pre-Approval Process" states: "Under Rule 2.5.5(c), Members wishing to adopt an alternative supervisory structure involving remote supervision must submit a proposal for staff pre-approval." Such a proposal for remote supervision has very detailed requirements. It starts with a requirement for 'an organizational chart that: sets out all branch and sub-branch locations; identifies all locations where remote supervision is proposed; sets out the number of Approved Persons and total assets under administration…where remote supervision would be conducted…" and ends with a requirement to provide 'a description of the Policy No. 5 ["Branch Review Requirements"] and/or supervisory visits which includes: an explanation of the Member's risk-based cycle, risk criteria and number of locations within each cycle; and a description of the systems and tools used to perform remote supervision." It is a complex process, meant to satisfy the MFDA that the member is able to "implement an effective remote supervisory structure". It has been in existence since at least 2013.

12. HollisWealth reviewed its branch supervision structure in 2012. Paragraph 11 of the Settlement Agreement outlined HollisWealth's desire to reduce the potential for conflicts of interest, stating that HollisWealth "implemented the following remote supervision primary structural changes in order to reduce the potential for conflicts of interest:

a) corporate branch managers would replace producing branch managers;
b) corporate branch managers would be employees of the Respondent (not agents) and would supervise remotely from Head Office;
c) there would be arm's length supervision of the activities of the dealing representatives; and
d) a consistent approach to training, compliance and supervision."

13. Paragraph 8 of the Settlement Agreement explains that "Corporate Branch Management is an approach whereby individuals who are performing regulatory and supervisory functions at a tier one level [the branch level] are head office employees and their compensation is not tied to the performance of their branch or individual advisors in their branch." Members of Hearing Panels

are aware of the surprisingly large number of reported cases where the branch manager is part of the problem.

14. Remote supervision is a reasonable approach to supervision. The problem in the present case was that the HollisWealth did not obtain pre-approval from the MFDA for the implementation of remote supervision.

Agreed Facts

15. Paragraphs 13 to 33 of the Settlement Agreement sets out the interaction between the MFDA and HollisWealth concerning implementing a remote supervision scheme. Only the highlights will be set out in these reasons. Further details can be found in the Settlement Agreement. Paragraphs 13 and 14 outlines the onsite sales compliance examination by the MFDA of HollisWealth's many branches, which found that the Calgary and Toronto branches were being supervised remotely by HollisWealth's head office without approval from the MFDA, contrary to Rule 2.5.5(c). Paragraph 18 then states that "On May 31, 2015 the Respondent submitted an application to the MFDA for approval of remote supervision of the Respondent's branches."

16. Paragraphs 19 to 27 show the many attempts by the MFDA for clarification of the Respondent's proposal. There were many emails, a number of conference calls, and some voicemails. On June 18, 2015, for example, there was an email from the MFDA to the Respondent with a series of eleven specific questions that needed clarification.

17. Paragraph 28 then describes a letter from the MFDA, dated May 26, 2016, to the Respondent's Chief Compliance Officer and Ultimate Designated Person "advising that due to the Respondent's inactivity in responding to requests for additional information in respect of the Remote Supervision Application, the MFDA had closed its file" and went on to state that if the Respondent "wished to pursue implementation of a branch supervision structure involving remote supervision, a new proposal was required to be submitted to the MFDA prior to its implementation."

18. On November 22, 2016 the Respondent submitted a new application for remote supervision. At the same time the Respondent advised the MFDA that "24 of the Respondent's

branch locations were already being remotely supervised." (Paragraph 31). The MFDA had not given its approval.

19. Paragraph 32 states that on "December 13, 2016, MFDA staff held a conference call with the Respondent and advised that the matter was being referred to MFDA Enforcement."

20. This admitted misconduct occurred prior to the acquisition of HollisWealth by Industrial Alliance and the amalgamation of Hollis Wealth with Investia, which took place on August 4, 2017. As part of the regulatory approval of the acquisition and merger, Investia obtained MFDA approval on July 14, 2017 to implement a remote branch supervision structure which was, in Staff's view, materially different than the structure proposed by HollisWealth. (Paragraph 33 of the Settlement Agreement.)

Acceptance of the Settlement Agreement

21. As stated above, the Panel accepted the terms of the Settlement Agreement. A Panel can either accept or reject a Settlement Agreement. It cannot modify it.

22. The conduct of HollisWealth in the present case was very serious. It could be described as shocking and egregious. Here we have the senior officers of an MFDA Member blatantly disregarding MFDA rules and policies designed to protect investors. They must have known what the rules required, but chose to ignore the clear requirement to obtain MFDA approval for their remote branch supervision procedures. As counsel for the MFDA stated: "This is not the way matters should proceed." It was, counsel stated, a "serious regulatory contravention."

23. Yet, their objective would seem to have been a desirable one, that is, to improve the system of supervision of branches.

24. No client complained and there is no evidence of client loss. And it does not appear that the Member profited from the actions.

25. Moreover, after this matter was escalated to MFDA Enforcement, the Respondent cooperated fully with MFDA Staff and proactively sought to settle this matter. By entering into a Settlement Agreement the Respondent has accepted responsibility for its misconduct and saved the MFDA the time, resources and expenses associated with conducting a full hearing.

26. We also take into account the fact that the Member eventually did achieve its objective of introducing a responsible system of remote branch supervision.

27. A fine of $100,000 is a significant penalty. It offers a substantial measure of specific and general deterrence. The award of costs seems reasonable.

28. The present case is significant because, as counsel informed us, they are not aware of another MFDA case of this nature. There are, of course, numerous cases relating to supervision, but apparently no case dealing with remote supervision. Members will obviously take note of the present case and the necessity to follow the MFDA Rules.

29. It may well be – indeed it is likely – that a significantly higher fine would have resulted if HollisWealth was still a Member of the MFDA. But that is not the present situation. Another firm took over HollisWealth from its owner, Scotiabank. It would be counterproductive in terms of protecting the public to make it difficult for troubled companies to be taken over by imposing heavy fines for conduct for which the new company was not responsible. A balance between the two extremes is desirable.

30. This was not the first disciplinary case against HollisWealth. There were several others on unrelated matters, cited by counsel for the MFDA: see *Re HollisWealth Advisory Services Inc.*, File No. 201532; and *Re HollisWealth Advisory Services Inc.*, File Number 201616. Prior misconduct is, is of course, a factor to take into account, but, again, one has to consider the fact that the new owners have taken steps to correct the situation.

31. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

32. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where there were, as both counsel informed us, "substantial" and "robust" negotiations.

33. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated: "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

34. The penalty and the costs agreed to in this case clearly fall within "a reasonable range of appropriateness."

35. An issue arose at the start of the present hearing, which the panel had to deal with. It appears that the Notice of Settlement Hearing, dated July 23, 2018, was given to the Respondent, but, likely through inadvertence, was not published on the MFDA website at the time or following the Settlement Agreement dated September 12, 2018. This was noticed a day or two before the hearing and counsel for the MFDA and the Respondent made a joint motion to the Panel that we abridge the ten day period required before a hearing should take place. We are satisfied that we have the authority to do so. (See MFDA Rules 1.3(1), 1.5(1), and 2.2(1).) A number of cases were cited where panels have abridged the time between the Notice and the Hearing. In some cases, the notice was as little as two days. Here it is only one day. We would likely not have granted the motion for abridgment if this was a contested hearing. But it is a Settlement Hearing and, as is well known,

the public is typically excluded from such hearings. There were no complaints by clients in the present case and no member of the public was harmed. The Panel therefore concluded, adopting the language of an earlier Hearing Panel in connection with a Settlement Agreement: "After hearing both parties, the Hearing Panel was satisfied that there would be no prejudice to members of the public in the circumstances of this case and granted the order sought.' See *Re Sun Life Financial Services (Canada) Inc.* File No. 101775, at paragraph 2.

36. For the above reasons the Panel accepted the Settlement Agreement.

DATED this 22nd day of January, 2019.

"Martin L. Friedland"
Martin L. Friedland, CC, QC
Chair

"Guenther W.K. Kleberg"
Guenther W.K. Kleberg
Industry Representative

"Kenneth P. Mann"
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