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: Independent Accountants' Investment Group Inc.

Heard: March 30, 2012 in Toronto, Ontario
Decision and Reasons: April 5, 2012

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Martin L. Friedland, C.C., Q.C.	Chair
Selwyn Kossuth	Industry Representative

Appearances:

Shelly Feld	)	For the Mutual Fund Dealers Association of Canada ("MFDA")
Kara Beitel	)	Counsel for the Respondent

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"). A settlement hearing – most of which was heard *in camera*, as is usual in such cases because of the nature of the proceedings – was held on Friday, March 30, 2012. The full Settlement Agreement, dated February 23, 2012, entered into between Staff of the MFDA and Independent Accountants' Investment Group Inc. (the "Respondent") is available on the MFDA website and will not be set out in detail here. The president of the Respondent, Ian Moorhouse, appeared at the settlement hearing with counsel.

2. This is a two-person panel because one of the industry members was unable to continue to serve on the Hearing Panel. Section 19.9(b) of By-law No. 1 permits a two-member panel to hold the hearing if an industry representative "is unable to continue to serve on a Hearing Panel."

3. The Respondent is registered as a mutual fund dealer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario, and has been a Member of the MFDA since April 12, 2002. The Respondent's head office is located in Listowel, Ontario and it currently has 13 sub-branch offices located in cities and towns throughout Ontario.

4. Previously, the Respondent had three other branch offices located in Kelowna, British Columbia, Edmonton, Alberta, and Oakville, Ontario, which it had absorbed between October 27, 2009 and March 9, 2010 into its organization and compliance structure.

5. During a MFDA Compliance Examination in 2010, Compliance Staff conducted a review of the Respondent's operations at the Respondent's Head Office in Listowel, Ontario and at the branch offices located in Oakville, Ontario and in Kelowna, British Columbia. The results of the 2010 Compliance Examination were summarized and delivered to the Respondent in a report dated August 30, 2010.

6. The 2010 Report identified compliance deficiencies, including the fact that the Respondent failed to establish, implement and maintain adequate policies and procedures for conducting trade supervision. In particular, the Settlement Agreement states, the Respondent failed to:

(a) maintain adequate records of supervisory inquiries made, responses received and resolutions achieved at both the branch and head office levels; and

(b) designate individuals who:

i) were employees or agents of the Respondent ;
ii) were supervised by and accountable to the Respondent; and
iii) had the required proficiency

to conduct branch and head office trade supervision in order to ensure the suitability of trade recommendations made by Approved Persons to clients.

7. BM, the person who was handling branch level trade supervision for the Respondent at its Oakville branch was not an employee of, an agent of or a registrant with the Respondent, as required by the MFDA Rules and MFDA Policy No. 2, "Minimum Standards for Account Supervision."

8. As well, the Respondent failed to designate an individual at head office to conduct supervision of client account activity at its Oakville branch, contrary to MFDA Rules and MFDA Policy No. 2.

9. Further, when the Kelowna and Edmonton branches became associated with the Respondent, the head office supervision was undertaken by BM, the same unqualified person who was handling branch supervision in Oakville.

10. On June 1, 2010 the Respondent replaced BM with another person, SG, to supervise accounts for the Oakville, Edmonton and Kelowna branches. SG had not, however, satisfied the proficiency requirements necessary to conduct account supervision under the MFDA rules and MFDA Policy No. 2.

11. After receiving the 2010 Report, the Respondent notified MFDA Staff in December 2010 that steps were being taken to rectify its compliance deficiencies, in particular by no longer

relying on SG to conduct account supervision.

12. In May 2011, MFDA Enforcement Staff attended at the Respondent's head office to assess whether deficiencies identified in the 2010 Report had been resolved and discovered that SG had continued to conduct account supervision for almost two months after the December 2010 communication to the MFDA that SG would no longer conduct such supervision.

13. Subsequently, the Respondent closed its Oakville, Kelowna and Edmonton branches, hired a new chief compliance officer, and has assured MFDA Staff that it has established and implemented changes to its policies and procedures to ensure that trade supervision is conducted by qualified persons and that proper records are prepared and maintained of all compliance and supervisory activities undertaken by the Respondent.

14. The Respondent has cooperated in the resolution of this matter by entering into the Settlement agreement.

Contraventions

15. In the Settlement, the Respondent admits that between March 1, 2008 to March 31, 2010, the Respondent failed to ensure that individuals responsible for trade supervision for the Respondent, at both the branch and head office levels, maintained records of trade inquiries made, responses received or resolutions achieved with respect to trade supervision.

16. The requirement to maintain adequate records can be found in MFDA Rules 2.5.1 and former MFDA Rule 2.5.4 (now Rule 2.5.7) and MFDA Policy No. 2, "Minimum Standards for Account Supervision." MFDA Policy No. 2 has been in place since 2001 (see now the policy dated December 3, 2011).

17. The Respondent also admits that it failed to establish, implement and maintain adequate policies and procedures and designate appropriately qualified and accountable individuals to fulfill its supervisory obligations, as set out above.

18. The requirement to provide branch level and head office trade supervision can be found in MFDA Rules 2.1.1(b), (c) and (d), 2.2.1, 2.5, 2.10, former MFDA Rules 1.2.2, 1.23, and MFDA Policy No. 2, "Minimum Standards for Account Supervision."

19. The respondent also admits that after receiving the 2010 MFDA Compliance Examination Report dated August 30, 2010, the Respondent provided inaccurate information to MFDA Staff in its letter dated December 10, 2010, when the Respondent reported that it would no longer be relying on SG to conduct account supervision for the Respondent's Oakville, Edmonton and Kelowna branches because SG lacked the necessary proficiency to conduct such account supervision.

20. The requirement to provide accurate information to staff can be found in MFDA Rules 2.1.1(b), (c) and (d), 2.2.1, 2.5.1, 2.5.4 (now 2.5.7) and 2.5.5 (now 2.5.8), former Rules 1.2.2 and 1.2.3 and MFDA Policy No. 2, "Minimum Standards for Account Supervision."

Terms of Settlement

21. The Respondent agrees to the following terms of settlement:

(a) The Respondent shall pay a fine in the amount of $25,000, pursuant to section 24.1.2(b) of By-law No. 1;
(b) the Respondent shall pay costs of this proceeding in the amount of $2,500, pursuant to section 24.2 of By-law No. 1;
(c) in accordance with section 24.4.2(b) of By-law No. 1, the Respondent agrees that in the future it will comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.5, 2.10 and MFDA Policy No. 2; and
(d) a senior officer of the Respondent will attend the Settlement Hearing in person.

22. If the Settlement Agreement is accepted by the Hearing Panel, MFDA Staff will not initiate any proceedings under the By-laws of the MFDA against the Respondent or any of its officers or directors in respect of the facts set out in the Settlement Agreement, subject to being

able to proceed against the Respondent or any of its officers or directors if "the respondent fails to honour any of the Terms of Settlement."

Approval of Settlement

23. The panel approves the terms of the Settlement Agreement. We find that the proposed penalties are reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case.

24. Supervision of client trades and keeping records of such supervision is obviously important – indeed, crucial – to achieve effective securities regulation. The misconduct in the present case, however, took place shortly after the Respondent absorbed the three branches that were the locale of the misconduct. The MFDA acknowledges in the Settlement Agreement that the 'integration of these new geographically dispersed branches posed a significant operational challenge for the Respondent." Further, it should be noted that the use of SG as an account supervisor was terminated by the Respondent before her continuing employment was discovered by the MFDA.

25. The Respondent has never been the subject of a disciplinary proceeding by the MFDA and there were no client complaints and no evidence of harm to its clients resulting from the misconduct. Further, by entering into a Settlement Agreement the Respondent has accepted responsibility for its misconduct and recognizes its seriousness. In the circumstances of this case, a Monitor is not requested by MFDA Staff.

26. The penalty is appropriate and is in line with other approved settlements that were cited by counsel. It is certainly within the reasonable range of appropriateness. In such cases, a panel should be careful not to interfere with the agreement. Settlements can either be accepted or rejected. They cannot be modified by a panel.

27. We agree with the reasoning of a 2009 MFDA case (*Re: Professional Investments (Kingston) Inc.*, File No. 200836) where it is stated at para. 13:

> "In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

28. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal agreed with the trial judge who stated with respect to a settlement by the B.C. Securities Commission (*British Columbia Securities Commission v. Seifert* [2007] BCCA 484 at para. 31 (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."

29. As stated above, the Panel approves the terms of the Settlement Agreement.

DATED this 5th day of April, 2012.

"Martin Friedland"
Martin L. Friedland, C.C., Q.C.,
Chair

"Selwyn Kossuth"
Selwyn Kossuth,
Industry Representative

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