



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: PEAK Investment Services Inc.

Heard: August 5, 2020 by electronic hearing in Toronto, Ontario
Decision: August 5, 2020
Reasons for Decision: August 18, 2020

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Martin L. Friedland, CC, QC
Brigitte J. Geisler
Kenneth P. Mann

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	Director, Chief Litigation Counsel for the
)	Mutual Fund Dealers Association of Canada
)	
)	
David Di Paolo)	Counsel for the Respondent
)	
)	
Elisabeth Chamberland)	Compliance Associate Director – Regulatory
)	Case Management
)	
Philippe Couture)	Consultant of 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”). A Notice of Settlement Hearing was issued on July 17, 2020 and an electronic hearing was held on August 5, 2020. The full Settlement Agreement, dated July 30, 2020, entered into between Staff of the MFDA and PEAK Investment Services Inc. (“PEAK Investment Services” or the “Respondent”) is available on the MFDA website. The Respondent was represented by counsel at the Hearing, and the Respondent’s chief compliance officer as well as a consultant retained by the Respondent to assist with the process of addressing its compliance deficiencies appeared at the hearing.

2. The Hearing Panel accepted the proposed Settlement Agreement at the conclusion of the August 5, 2020, hearing, with reasons to follow. These are our reasons for the decision.

3. Since March 4, 2003, PEAK Investment Services has been a Member of the MFDA that is registered as a Mutual Fund Dealer in all 10 Canadian provinces and in the Yukon and Northwest Territories. The Respondent’s head office is located in Montreal, Quebec. On May 2, 2012, the Respondent amalgamated with former MFDA Member Promutuel Capital Financial Services Firm Inc.

4. As of February 29, 2020, there were 301 Approved Persons registered with the Respondent and working at 102 office locations (branch and sub-branch locations) outside of the province of Quebec. The Respondent has more Approved Persons working in Quebec than outside of Quebec.

Respondent’s Improper Conduct

5. Paragraph 9 of the Settlement Agreement sets out as follows the agreed-upon improper conduct by the Respondent:

- a) in 2016, during an MFDA sales compliance examination of the Respondent, it came to light that the Respondent had not adequately addressed compliance deficiencies that had previously been identified by the MFDA associated with the Respondent’s failure to ensure that, among other things, on-site branch and sub-branch reviews

occurred at each of the respondent's business locations as required by MFDA Policy No. 5 and MFDA Rule 2.5.1;

- b) between 2011 and 2017, the Respondent failed to submit mandatory reports to the MFDA on the Member Event Tracking System ("METS") on a timely basis or at all concerning incidents of possible misconduct including instances of unauthorized discretionary trading, undisclosed outside activities and personal financial dealings in contravention of MFDA Policy No. 6 and MFDA Rule 1.4(a); and
- c) between 2009 and 2017, the Respondent failed to conduct adequate or timely supervisory investigations after discovering potential misconduct by certain of its Approved Persons, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 3.

6. In paragraphs 41 to 43 of the Settlement Agreement, the Respondent admits to engaging in the above improper conduct.

7. The conduct shows widespread failure of the Respondent to review the conduct of its Approved Persons over a number of years, failure to submit reports on events to the MFDA through the Member Event Tracking System (METS), and failure to conduct adequate or timely supervisory investigations. These failures prevented timely discovery by the Member and the MFDA of improper conduct. The integrity of the capital market system depends to a great extent on adequate supervision, reporting, and investigation of Approved Persons.

The Regulatory Framework

8. **On-site Branch Reviews.** The MFDA regulatory framework is clear for each of the above three categories of misconduct. Members are expected to perform on-site reviews of their branches. See MFDA Rule 2.5.1. MFDA Policy No. 5 states, in part, that "Members are generally expected to perform an on-site review of their branches no less than once every three years. However, Members must review certain branches more frequently than once every three years if justified based on risk....Under no circumstances, however, should a Member never perform an on-site review of a branch." This aspect of the Respondent's conduct is set out in paragraphs 12 to 18 of the Settlement Agreement.

9. In a 2014 MFDA sales compliance examination, it was found that the Respondent failed to complete branch reviews in one branch and 10 sub-branch locations within the previous three years. The Respondent agreed to update its policies and procedures to facilitate compliance with MFDA rules and policies, yet when a subsequent MFDA sales compliance examination was conducted in 2016, it was found that the Respondent had failed to conduct on-site branch reviews during the 3 years preceding the 2016 compliance examination at 35 of its 102 business locations outside of Quebec, where 55 Approved Persons conducted business on behalf of the Respondent. Moreover, it was found that the Respondent had not documented all deficiencies that were identified during branch reviews that were conducted and failed to adequately follow up to ensure that the compliance deficiencies that were identified during branch reviews were addressed appropriately.

10. **Member Event Tracking System (METS).** Paragraphs 19 to 24 of the Settlement Agreement deal with the Respondent's failure to make mandatory reports on METS on a timely basis. Again, the rules are clear. MFDA Rule 1.4(a) and MFDA Policy 6 concern the reporting obligations of Members. Generally, client complaints are supposed to be reported to the MFDA on METS within 20 days, but other serious matters, such as termination of an Approved Person's registration or payment of compensation to a client that exceeds \$15,000 must be reported within 5 business days. It was found in the 2014 MFDA sales compliance examination of the Respondent that a number of failures to report events had occurred. The Respondent made amendments to its policies and procedures, yet in the subsequent sales compliance investigation by the MFDA in 2016, additional cases came to light which should have triggered METS reporting by the Respondent.

11. **Reasonable Supervisory Investigations.** Paragraphs 25 to 31 of the Settlement Agreement outline the Respondent's failure to conduct adequate or timely reasonable supervisory investigations. Again, the MFDA policy is clear. MFDA Policy No. 3 deals principally with complaint handling, but section III of the Policy concerns "Supervisory Investigations" and includes investigations that arise from client complaints. The opening paragraph of section III of Policy No. 3 states: "A Member must monitor, through its supervisory personnel, all information that it receives regarding potential breaches of applicable requirements on the part of the Member and its current and former Approved Persons that raise the possibility of risk to the Member's

clients or other investors....For example, such information may come from client complaints, be identified during the Member's routine supervisory activity, or come from other Approved Persons of the Member or individuals outside the Member who are not clients.”

12. Between 2011 and 2017, the Respondent was aware of information that should have triggered reasonable supervisory investigations concerning possible misconduct. Nine Approved persons of the Respondent whose conduct should have been, but was not, the subject of adequate and timely reasonable supervisory investigations, were subsequently named as Respondents in MFDA disciplinary proceedings and were found to have engaged in regulatory misconduct.

13. The completion of adequate and timely reasonable supervisory investigations increases the likelihood that it will be possible for a Member to determine whether the subject of an investigation actually engaged in the possible regulatory misconduct that came to the attention of the Member; that Approved Persons or others engaged in any additional misconduct beyond the conduct that initially triggered an investigation; and additional clients were impacted by misconduct of the subjects of the investigation.

Terms of Settlement

14. The Respondent agreed to the following Terms of Settlement (see paragraph 44 of the Settlement Agreement):

- a) the Respondent shall pay a fine in the amount of \$75,000, pursuant to s. 24.1.2(b)(i) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$15,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.5.1 and 1.4, and MFDA Policy Nos. 3, 5 and 6; and
- d) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

Acceptance of the Settlement Agreement

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

16. The conduct in the present case is very serious. It involved the failure over a number of years to review the conduct of its Approved Persons, failure to submit reports on events to the MFDA through the Member Event Tracking System (METS), and failure to conduct adequate or timely supervisory investigations.

17. It should be noted, however, that the Respondent, although a Member of the MFDA since 2003, has not been the subject of discipline by the MFDA before this proceeding.

18. Further, there is no evidence that the Respondent's misconduct resulted in financial harm to its clients, although the Settlement Agreement notes that in one of the nine cases mentioned earlier, "it is unknown whether the Approved Person misappropriated client money from a family member's account due to his failure to cooperate with Staff's investigation."

19. It should also be noted that the Respondent cooperated with the MFDA during the investigation process.

20. The primary reason why we have accepted the Settlement Agreement is because of the positive steps that the Respondent has taken to correct its systems as well as the considerable costs incurred by the Respondent in taking those steps. These steps influenced the MFDA to accept the Settlement Agreement.

21. The Sanctions Guidelines (section 12) now specifically states that the steps taken by a Respondent are to be taken into account in assessing the penalty. The guidelines state that Hearing Panels "should consider whether the Respondent voluntarily implemented corrective measures to avoid recurrence of the misconduct, for example, where a Member revises procedures or internal controls." See the recently released MFDA decision of *Re Keybase Financial Group Inc.* MFDA Case No.2017100.

22. A number of MFDA Hearings had – previous to the new Sanctions Guidelines – held that taking corrective measures and the cost associated with doing so is an important mitigating factor

in disciplinary cases. In *Re Equity Associates Inc.* 2015 LNCMFDA 56 at paragraph 18, for example, the Hearing Panel considered it an important factor that the Member had “put in place systems which will protect against the repetition of these contraventions.” And in *Re Professional Investment Services (Canada) Inc.* MFDA Case No. 200928 at paragraph 12, the Hearing Panel stated: “We take into account the mitigating factors of the Respondent...and its acceptance of the extensive and expensive Independent Monitor.”

23. Since the Respondent received the 2016 Compliance Report, the Respondent has expended significant resources and engaged several external consultants and lawyers to review and assist it to revise its policies and procedures. In total, the Respondent states that it has spent over \$1,000,000 on external consultants and lawyers to assist the Respondent with establishing and implementing revised policies and procedures, reviewing and updating its governance structure, and providing supplement training to its staff to address its compliance deficiencies.

24. Since 2017, the Respondent states that it has hired 10 additional compliance staff, restructured the compliance department to delineate responsibilities for daily supervision, branch audits, and regulatory affairs, promoted two employees into supervisor/associate director roles and increased salaries of compliance staff. The Respondent also retained a consultant to assist with the branch review program and subsequently hired the consultant as a permanent employee. The Respondent also established a compliance committee composed of senior executives that attend management meetings to ensure that all issues raised in the annual report by the Chief Compliance Officer are being addressed.

25. In sum, as paragraph 40 of the Settlement Agreement states, “The Respondent has enhanced its policies and procedures, increasing its compliance resources and retaining the services of external consultants when appropriate to assist the Respondent to ensure that it appropriately addresses the compliance deficiencies described in the Settlement Agreement in the future.”

26. There is an additional element of the case that we have taken into account. At the same time that the MFDA was pursuing proceedings against the Respondent for its conduct outside Quebec, the Respondent and its former Chief Compliance Officer were subject to disciplinary action by Quebec’s provincial securities regulator, the *Autorité des marchés financiers* (the

“AMF”) for the Respondent’s conduct within Quebec. That conduct involved a different set of compliance deficiencies associated with shortcomings in the Respondent’s internal controls and supervision processes. In May 2018, a settlement agreement between the Respondent and the AMF was accepted that resulted in the payment by the Respondent to the AMF of an administrative penalty of \$200,000 and costs of \$20,000. In November 2018, the Respondent hired a new Chief Compliance Officer in compliance with conditions of the resolution of the disciplinary proceeding taken by the AMF against the Respondent and its former Chief Compliance Officer. These sanctions are therefore in addition to the penalty provided in the present Settlement Agreement.

27. Further, 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.

28. The penalty agreed upon is not out-of-line with the cases cited by counsel for the MFDA. *Re Sentinel Financial Management Corp.*, 2018 LNCMFDA 184; *Re Sterling Mutuals Inc.*, 2016 LNCMFDA 77; *Re Professional Investments (Kingston) Inc.* 2009 LNCMFDA 9; *Re De Thomas Wealth Management Corp.* MFDA File No. 2018133; *Re Professional Investment Services (Canada) Inc.* 2009 LNCMFDA 24; and *Re Investia Financial Services Inc. and FundEx Investments Inc.* 2012 LNCMFDA 31.

29. The penalty imposed will have a significant deterrent effect on the Respondent and others in the industry.

Settlement Agreements

30. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal affirmed the British Columbia Supreme Court’s statement with respect to a settlement by the British Columbia Securities Commission (*British Columbia. Securities Commission v. Seifert* [2007] BCCA 484, para. 31):

“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.”

31. As a Hearing 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 Hearing 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.”

32. Hearing Panels should respect settlements worked out by the parties. A Hearing 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 Hearing 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 Hearing Panel. Respecting settlements is particularly desirable in cases, such as this one, where experienced counsel were involved and where there were extensive negotiations.

33. The penalty agreed to in this case falls within “a reasonable range of appropriateness.”

34. For the above reasons, the Hearing Panel accepted the Settlement Agreement.

DATED this 18th day of August, 2020.

“Martin L. Friedland”

Martin L. Friedland, CC, QC
Chair

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