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: WFG Securities Inc.

Heard: May 4, 2016, in Toronto, Ontario
Reasons for Decision: June 2, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Frederick W. Chenoweth	Chair
Brigitte J. Geisler	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Charles Toth	)	Counsel for the Mutual Fund Dealers
	)	Association of Canada
	)	
Nigel Campbell	)	Counsel for the Respondent
	)	
	)	

1. By Notice of Settlement Hearing dated April 21, 2016, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada ("MFDA") was convened to consider whether pursuant to section 24.4 of By-law No. 1 of the MFDA, the Panel should accept a settlement agreement, dated April 20, 2016 (the "Settlement Agreement") entered into by the Staff of the MFDA ("Staff") and WFG Securities Inc. (the "Respondent").

2. At the outset of the proceedings, the Panel considered a joint motion by Staff and the Respondent to move the proceedings "in camera". The motion was granted. The Panel then considered the provisions of the Settlement Agreement aided by submissions as to the applicable law which should guide this Panel in determining whether to accept or reject the Settlement Agreement.

THE ALLEGATIONS

3. In the Settlement Agreement, the Respondent admits that:

(a) between November 1, 2010 and January 31, 2013, the Respondent failed to record client information and/or transaction details for scholarship plans on its back office system and/or failed to maintain trade blotters that included scholarship plan transactions, and thereby failed to facilitate branch and head office supervision of the Heritage Plan client account activities, contrary to MFDA Rule 5.1 and MFDA Policy No. 2.

(b) between November 1, 2010 and January 31, 2013, the Respondent failed to establish, implement and maintain policies and procedures for the supervision of client activity in scholarship plans, thereby failing to ensure the handling of its business was in accordance with the By-laws, Rules and Policies and with applicable securities legislation, contrary to MFDA Rules 2.5.1, MFDA Policy No. 2 and MFDA Policy No. 5.

(c) between November 1, 2010 and January 31, 2013, the Respondent failed to require its Approved Persons to complete the Respondent's Know-Your-Client ("KYC") forms and/or obtain KYC information for clients opening scholarship plans, thereby failing to use due diligence to learn the essential facts relative to each client and to each order or account accepted, contrary to MFDA Rules 2.2.1 and 2.2.2 and MFDA Policy No. 2.

4. The Panel heard submissions from Staff and counsel for the Respondent concerning the facts of this matter and as to why this particular Settlement Agreement should be accepted by the Panel. After deliberation, the Panel unanimously concluded that it was appropriate to accept the Settlement Agreement.

THE FACTS

5. The facts as agreed upon by the parties are as follows.

Registration History

a. The Respondent[1] has been a Member of the MFDA since April 12, 2002. The Respondent is registered as a mutual fund dealer in all provinces and territories.
b. The Respondent was registered as a scholarship plan dealer in Ontario, British Columbia and Québec. The Respondent ceased registerable activities as a scholarship plan dealer on January 1, 2014 and submitted its surrender of registration as a scholarship plan dealer to the Ontario Securities Commission ("OSC") on September 14, 2015.

Background

c. From March 18, 2013 to May 10, 2013, Staff conducted a field review and completed the fourth round sales compliance examination of the Respondent's

[1] Previously, named WFG Securities Canada Inc. and Transamerica Securities Inc.

head office and six branch locations for the period of November 1, 2010 to January 31, 2013 (the "Examination").

d. Before commencing the Examination, Staff contacted the Respondent to inquire about the Respondent's distribution and offering of scholarship plans to clients.

e. The Respondent informed Staff that all scholarship plans were offered through Heritage Education Funds Inc. ("Heritage" or "HEFI"). The Respondent's Approved Persons completed the Heritage Enrolment Application Form and, following a review by the Respondent's head office to ensure the form was complete, submitted the form to Heritage for processing and the opening of the plan (the "Heritage Plan"). Nothing was recorded on the Respondent's back office system. The Respondent relied on Heritage for the issuance of account statements and confirmations. The Respondent's policies and procedures did not require the Respondent's Know-Your-Client ("KYC") form to be completed for clients opening only Heritage Plans.[2] The Respondent did not have any written guidelines with respect to the suitability and affordability of the Heritage Plans.

f. The Respondent relied upon Heritage to assess the suitability of the Heritage Plans.

g. From approximately November 30, 2011 to January 13, 2012, OSC Staff conducted a compliance review of Heritage's head office and at various branch locations. On June 14, 2012, OSC Staff issued its 2012 Compliance Report which identified, among others, the following deficiencies: (i) Heritage lacked an adequate system of compliance controls and supervision; (ii) Heritage head office did not adequately discharge its obligations as a registered firm to supervise its dealing representatives; (iii) inadequate collection and documentation of KYC information for each of HEFI's clients for the purpose of assessing suitability; (iv) inadequate suitability assessment, including concerns over the affordability guidelines used to assess trade suitability; (v) ineffective trade review process; and vi) unsuitable investments. On August 13, 2012, the OSC issued a temporary section 127 order of the *Securities Act,* R.S.O. 1990, c. S.5, as amended, which imposed terms and conditions on Heritage's registration. The terms and

[2] Clients opening non-Heritage Plan accounts would complete KYC forms in respect of those accounts.

conditions required Heritage to, among other things, retain a consultant to implement a plan to strengthen its compliance system and retain an independent monitor to address deficiencies relating to the collection of accurate client KYC information and the determination that the investments were suitable for clients.[3] In January 2015, Heritage entered into a Settlement Agreement with the OSC in which it admitted that its compliance systems did not meet reasonable compliance practices and that changes were required to strengthen its compliance systems to better serve the public interest. Heritage received a reprimand and was ordered to report to the OSC on the implementation of the corrective actions it had taken to address its compliance deficiencies.

h. Staff informed the Respondent of the Staff's concerns regarding the Respondent's distribution of scholarship plans and its alleged non-compliance with MFDA Rules. On February 15, 2013, Staff received a letter from the Respondent stating that the Respondent had voluntarily suspended its distribution of scholarship plans.

i. On June 27, 2013, the Respondent informed Staff that the Respondent was considering terminating the Respondent's scholarship business and scholarship plan dealer registration. The Respondent had discussed terminating the Respondent's business relationship with Heritage and Heritage had agreed to take on the clients with the Respondent as the dealer of record.

j. In August 2013, there were 877 Approved Persons registered as a Scholarship Plan Dealing Representative with the Respondent and 7,137 Heritage Plans with the Respondent being the dealer of record. Of the 878 Approved Persons, 525 were duly licensed to sell mutual funds and scholarship plans, and 352 were licensed to sell only scholarship plans. The Respondent received total compensation of $6,392,291.48 from the sale of the Heritage Plans. Approximately 85% of the total compensation received, $5,942,921.66, was paid to the Approved Persons.

[3] Heritage had previously been found to have similar compliance deficiencies which had resulted in the imposition of terms and conditions on Heritage's registration from April to October 2003 and from July 2004 to March 2005.

Compliance Examination

k. During the Examination, Staff identified the following areas in which the Respondent's distribution of scholarship plans to clients was deficient.

A. **Supervision and Record Keeping**

l. The Respondent's Approved Persons were registered as a Scholarship Plan Dealing Representative and sold the Heritage Plans to clients, but the Respondent did not record client information and transaction details on its back office system for any of the Heritage Plans it opened. As a result, the Respondent did not maintain trade blotters that included Heritage Plan transactions and there were no reports available to supervisory staff at the branch and at head office for review of clients' Heritage Plans.

m. By failing to record client information and/or transaction details for the Heritage Plans on its back office system and/or failing to maintain trade blotters that included Heritage Plan transactions, the Respondent failed to comply with MFDA Rule 5.1.

n. By failing to keep system records of the Heritage Plan transactions, no reports or trade blotters on the Heritage Plans were available to the supervisory staff at the branch or head office and the Respondent thereby failed to facilitate branch and head office supervision of the Heritage Plan client account activities, contrary to MFDA Policy No. 2.

o. The Respondent did not have any written policies and procedures on supervision of client activity in scholarship plans. Supervision and review of the Heritage Plans was limited to approval of the Heritage application form by the branch manager at the account opening and a form review of the application at Head Office.

p. By failing to establish, implement and maintain policies and procedures on the supervision of client activity in the Heritage Plans, the Respondent failed to

ensure the handling of its business was in accordance with the By-laws, Rules and Policies of the MFDA and with applicable securities legislation, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 2.

B. **Know-Your-Client Form**

a. With respect to clients only purchasing Heritage Plans, the Respondent did not require its Approved Persons to complete the Respondent's NAAF/KYC form. Clients only completed the Heritage Application Form when opening a plan. Staff found that the Heritage Application Form had the following issues:

- The KYC terms were not defined;
- Investment objective and time horizon were not collected;
- Investment knowledge was not collected for all clients;
- Other persons with trading authorization on the account were not collected; and
- Other persons with a financial interest in the account were not collected.

b. By failing to require its Approved Persons to complete KYC forms and/or obtain KYC information for clients opening Heritage Plans, the Respondent failed to use due diligence to learn the essential facts relative to each client and to each order or account accepted, contrary to MFDA Rules 2.2.1 and 2.2.2 and MFDA Policy No. 2.

The Respondent Ceased Its Scholarship Plan Business

c. On or about January 1, 2014, the Respondent transferred its scholarship plan business to Heritage and the Respondent ceased to conduct any business relating to scholarship plans.

d. On September 14, 2015, the Respondent applied to surrender its scholarship plan dealer registration. The Respondent will no longer be registered as a scholarship plan dealer in any province in Canada.

DISCUSSION

6. It is trite to say that the Rules, Regulations and Policies of the MFDA are designed to preserve the integrity of its Members and to protect the public with whom they deal. It is, therefore, of the utmost importance that they be followed, and that deficiencies identified as a result of the efforts of the MFDA be corrected in a timely fashion. The Panel was concerned with the type of conduct which the Respondent had acknowledged in the Settlement Agreement. The Panel concluded that the admitted contraventions were serious.

7. In determining whether the Settlement Agreement should be accepted, Hearing Panels frequently consider the following factors:

(a) the seriousness of the allegations proved against the Respondent;
(b) the Respondent's past conduct, including prior sanctions;
(c) the Respondent's experience and level of activity in the capital markets;
(d) whether the Respondent recognizes the seriousness of the improper activity;
(e) the harm suffered by investors as a result of the Respondent's activities;
(f) the benefits received by the Respondent as a result of the improper activity;
(g) the risk of investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
(h) the damage caused by the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
(i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
(j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
(k) previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3, at para. 85

The Panel considered that the Settlement Agreement marked as Exhibit 1 in this proceeding, appropriately considered all of the above factors.

8. The Panel also noted the submitted case law that confirmed that while on a contested hearing, the Panel attempts to determine the correct penalty, in a settlement hearing, the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the facts that the parties have agreed to. It will not reject a settlement unless it views the penalty as clearing falling outside a reasonable range of appropriateness".

Re Milewski, [1999] I.D.A.C.D. No. 17.

9. The Panel considered that this is not a case where the Respondent knew that the Heritage Plans were being sold to clients without any supervision whatsoever. It was common ground that if that were the case, the proposed penalties would be higher. Rather, the Respondents in this case acted on the improper assumption that Heritage was supervising the sale of the Heritage Plans and the Respondent was not required to perform those functions.

10. Additionally, in the present case, corrective measures were taken by the Respondent at an early time, even prior to the commencement of a formal MFDA investigation. The Panel noted that on September 14, 2015, the Respondent applied to surrender its Scholarship Plan Dealer Registration and that that application has now been granted. Accordingly, the Respondent will no longer be registered as a scholarship plan dealer in any Province in Canada.

RESULT

11. The Panel notes that limited information with respect to the relative size of the Respondent and its business was available to the Panel when considering the proportionality of the penalty. There was, however, adequate evidence before the Panel with respect to other

aspects of proportionality that allowed the Panel to conclude that this factor had been considered and that the penalty did not fall outside a reasonable range of appropriateness. Having considered the facts in this case, the criteria set out above and the submissions and case law to which it was referred by Counsel, the Hearing Panel was unanimously of the opinion that the Settlement Agreement reached between the parties should be approved, and so it was. The following penalty was accordingly imposed:

(a) The Respondent shall pay a fine in the amount of $50,000 pursuant to s. 24.1.2 of MFDA By-law No. 1 upon the acceptance of the Settlement Agreement.

(b) The Respondent shall pay costs in the amount of $10,000 pursuant to s. 24.2 of MFDA By-law No. 1 upon the acceptance of the Settlement Agreement.

(c) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.2.2, 2.5.1, 5.1 and 5.3, and MFDA Policies No. 2 and No. 5.

(d) 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*.

12. After accepting the Settlement Agreement the Panel rescinded the "in camera" order and signed the Order as prepared and presented by Staff. The Hearing Panel advised counsel that it would prepare brief Reasons for having approved the Settlement Agreement, which are set forth herein.

DATED this 2nd day of June, 2016.

“Frederick W. Chenoweth”

Frederick W. Chenoweth
Chair

“Brigitte J. Geisler”

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Industry Representative

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