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

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Russell Chang

Heard: April 7, 2016 in Vancouver, British Columbia
Decision and Reasons (Penalty): May 26, 2016.

DECISION AND REASONS
(Penalty)

Hearing Panel of the Pacific Regional Council:

Jean P. Whittow, Q.C.	Chair
Brian Cheung	Industry Representative
Susan Monk	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
	)	
Owais Ahmed	)	Counsel for the Respondent
	)	
	)	
	)	

I. INTRODUCTION

1. In a decision issued December 7, 2015 (the "Decision"), this Panel found that the following allegations were proven against Russell Chang (the "Respondent"):

> **Allegation #1:** Between May 29, 2012 and June 12, 2012, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, referring or facilitating the sale outside the Member of $550,000 of investment products to two clients and one other individual, contrary to MFDA Rules 1.1.1(a), 2.4.2 and 2.1.1.
>
> **Allegation #2:** Between May 29, 2012 to August 1, 2012, the Respondent had and continued in another gainful occupation that was not approved by the Member by being employed by an investment company and by selling, recommending, referring or facilitating the sale of $550,000 of investment products to three investors on behalf of the investment company, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

2. The circumstances are summarized at paragraphs 47-61 of the Decision. The Panel adopts throughout this decision the defined terms used in its earlier Decision:

> 47. The Respondent was registered to Investia from June 30, 2008 to August 1, 2012 and at all times with Investia.
>
> 48. Between January 2012 and April 2012, the Respondent was recruited for employment at Providence Preferred.
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> 49. During this time, the Respondent told his friends and clients TL, JL and AC that he was pursuing an opportunity with Providence and the nature of its business.
>
> 50. The Respondent did not "encourage" or "recommend" that the Investors purchase the Notes. However, the tone of the Respondent's conversations with TL and JL, set out above, and his description to them of the Providence investments, had the effect of promoting its products.

51. When TL, JL and AC expressed an interest in investing in Providence, the Respondent gave them the name and contact information for a representative, JW, and, in his words, “directed” or “referred” them to JW.

52. Near the end of May, 2012, the Respondent accepted an offer of employment from Providence to commence June 1, 2012.

53. On May 29, 2012, the Respondent was asked by JW to meet with TL to complete a partially completed subscription form for the purchase of the Notes, which he did. On May 29, 2012 TL purchased $250,000 of Notes.

54. On May 31, 2012, the Respondent spoke with his manager about the “possibility that [he] may be involved in another firm”, but did not did not disclose the name of the company, or that he had already accepted an offer of employment. This does not constitute approval by Investia.

55. On June 1, 2012 the Respondent commenced employment at Providence Preferred.

56. At the request of JW, the Respondent met with JL on June 1, 2012 and assisted her to complete her subscription agreement for the purchase of $100,000 and $150,000 of Notes and submitted these to Providence.

57. On June 6, 2012 client AC redeemed approximately $50,000 from his mutual fund account with Investia. The only evidence before this Panel is that the redemption was unsolicited. Further, it did not result in any commission to the Respondent.

58. At the request of JW, the Respondent met with AC on June 12, 2012 and assisted him to complete a subscription agreement for the purchase of $50,000 of Notes, which he submitted to Providence.

59. On June 13, 2012 the Respondent sent an e-mail to Investia attaching his OBA Form disclosing his involvement in Providence Preferred.

60. On July 23, 2012 the Respondent tendered his resignation letter to Investia, with an effective resignation date of August 1, 2012.

61. Investia did not at any time approve of the Respondent’s involvement with Providence Preferred.

3. A penalty hearing was conducted on April 7, 2016. Staff submits there should be a prohibition on re-registration for five years, a fine of $60,000 and costs of $10,000. The Respondent submits the disposition should be a 3 month prohibition, a $10,000 fine and costs of $2,500.

II. PRINCIPLES

4. The primary purpose of securities regulation is the protection of the investor: *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557

5. The MFDA has published Penalty Guidelines. These are not binding, but guide the analysis of penalty.

6. Factors frequently considered in the imposition of sanctions are as follows:

(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 leve1 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 to 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 to 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.

(*Lameouroux (Re)* [2002] A.S.C.D. No. 125)

7. We consider the relevant principles below.

Seriousness of the proven conduct

8. Staff argues that any proven violation of Rule 1.1.1 is an extremely serious offence, relying on the following passage from *In the Matter of Luc Marc Andre Laverdiere*, MFDA File No. 200936, Reasons for Decision May 12, 2010:

> MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision."(para 5).

9. The Respondent argues that his conduct falls at the low end of the spectrum due to the following mitigating factors:

(a) he did not attempt to hide his employment with Providence Preferred;
(b) the OBA form was submitted on June 13, 2012 and there was "no specific reason for the delay" – this was two weeks after the Respondent had commenced employment with Providence;
(c) there were no complaints by Investors;
(d) there is no evidence of any loss or harm to the Investors;
(e) the Panel found the Respondent did not encourage or recommend the investment;
(f) he received no compensation for their purchases, and therefore there was no conflict between his interests and the interests of the investors, and
(g) an investigation by British Columbia Securities Commission "concluded that 'Providence could have relied on available prospectus exemptions to distribute its securities' to the Investors. Accordingly, the Commission closed its investigation with no further action."

10. Any unauthorized outside occupation is a serious matter and facilitating trades in "off-book" securities is particularly significant because such conduct undermines the regulatory regime, whereby an approved person may only sell approved investments.

11. This Panel found that the Respondent disclosed to his manager on May 31, 2012 that he "was looking at another firm", but did not disclose its name or that he had in fact already accepted a job by that point. In our view this cannot be considered a mitigating factor.

12. While the Respondent did not "encourage or recommend" the investment, the Panel found that the tone of the Respondent's conversations with the Investors and his description of the Providence investments had the effect of promoting its products. Further, the Panel found that the Respondent deliberately facilitated the purchase of investments that were not approved by the Member. However, the Respondent's activities were modest relative to those in the cases referred to by counsel in the course of submissions before this Panel, referred to below. The Respondent's activities took place over a few months, and the actual purchases took place over a few weeks. The Investors did not suffer a loss. The Respondent received no remuneration. In our view these facts mitigate the seriousness of the misconduct.

Prior Discipline Record

13. The Respondent has no prior discipline record.

Past Experience

14. The Respondent had a little more than four years' experience in the industry when these events occurred. Anyone in the industry would know this conduct was forbidden.

Whether the Respondent recognizes the seriousness of the conduct

15. A contested hearing was conducted. A member has a right to defend him or herself and the failure to make an admission may not aggravate the penalty. This factor is neutral in this case.

Harm to investors

16. There was no financial harm to any of the three Investors. TL testified that she profited and reinvested.

Benefit to Respondent

17. The Respondent received no remuneration for the Investors' purchases. However, in this Panel's view, that the Respondent introduced investors to his new employer would have improved his standing in the eyes of the employer and thereby benefitted the Respondent.

Deterrence

18. The Panel is mindful that the penalty imposed upon this Respondent must deter him and other would-be offenders from similar conduct. The Respondent is no longer registered, so specific deterrence is not a factor. However, general deterrence is a relevant consideration.

19. We also consider that the penalty imposed must demonstrate to the industry and to the public the seriousness with which the MFDA regards the Respondent's misconduct.

Similar cases.

20. Staff referred to numerous authorities concerning instances where an approved person has engaged in securities related business outside the authority of the member:

a) *Re: Jawad Rathore*, [2005], Ontario Regional Council, MFDA File No. 200504, Panel Decision dated June 28, 2005 ("*Re Rathore*")
b) *Re: Luc Marc Andre Laverdiere* [2010], Pacific Regional Council, MFDA File No. 200936, Panel Decision May 12, 2010 ("*Re Laverdiere*")
c) *Re Meiz Mohammed Majdoub* [2010], Decision of the Central Regional Council, MFDA File No. 201010, November 12, 2010 ("*Re Majdoub*")
d) *Michael Franco (Re)*, [2011] MFDA Prairie Regional Council, MFDA File No. 201016, Panel Decision dated May 6, 2011 ("*Re Franco*")
e) *Bayant S. Dhindsa (Re)*, [2012] MFDA Pacific Regional Council, MFDA File No. 201119, Panel Decision dated May 15, 2012 ("*Re Dhindsa*")

f) *Re: Robert Bruce Rush*, [2014], Pacific Regional Council, MFDA File No. 201241, Panel Decision dated February 2, 2010 ("*Re Rush*")
g) *Re: Ayokunnu Are* [2014], MFDA Central Regional Council, MFDA File No. 201504, Panel Decision dated (misconduct) October 2014 and (Penalty) October 16, 2014 ("*Re Are*")
h) *Rouzbeh Vatanchi and Kitty Ho (Re)*, [2015], Central Regional Council, MFDA File No. 201430, Panel Decision dated August 4, 2015 ("*Re Vatanchi and Ho*")
i) *Patrick Pasquale Caicco (Re)*, [2015] MFDA Central Regional Council, MFDA File No. 201503, Panel Decision dated August 4, 2015 ("*Re Caicco*")
j) *Re: Charanjit Goody Aul*, [2015], Pacific Regional Council, MFDA File No. 201429, Panel Decision September 29, 2015 ("*Re Aul*")
k) *Re: Satya Prakash Agarwal* [2015], MFDA Central Regional Council, MFDA File No. 201504, Panel Decision dated November 24, 2015 ("*Re Agarwal*")

21. In all of the cases referred to above, the penalty included either a five year suspension (or prohibition on re-registration) or a permanent prohibition. The two cases in which a five year suspension/prohibition was imposed, *Re Franco* and *Re Agarwal*, were both cases that proceeded by way of settlement agreement. In some cases, settlements attract a reduced penalty, due to the cooperation of the respondent. However, the basis for a settlement is not set out in the same detail in a decision regarding settlement as an analysis in a contested hearing, and such cases are of less utility in assessing a suitable penalty.

22. In addition, the penalties imposed in the cases referred to as precedents included a fine. The fines range dramatically, from a low of $15,000 up to $725,000. The highest fines ($90,000 and higher) were coupled with permanent prohibitions (*Re Vatanchi and Ho*, *Re Rush*, and *Re Are*). In the other cases, the fines were under $50,000.

23. Generally, the cases involved some or all of the following facts:

a) a prolonged course of conduct by the respondent (*Re Caicco*, *Re Franco*, *Re Dhindsa, Re Majdoub*);
b) investors suffered a loss, sometimes a total loss (*Re Laverdiere*, *Re Aul*, *Re Are, Re Majdoub*);
c) the respondent actively promoted the investment (*Re Franco*, *Re Laverdiere*, *Re Are*);
d) the respondent received direct remuneration for the sale (*Re Franco*, *Re Rush*, *Re Caicco*, *Re Are*);

e) numerous clients were involved (*Re Franco*, *Re Caicco*);
f) the investment was a form of Ponzi scheme (*Re Rush*, *Re Aul*); and
g) several cases involved instances of misleading the member or the MFDA as to the respondent's activities or during the investigation (*Re Vatanchi and Ho*) or failing to cooperate (*Re Rathore*).

24. The cases emphasize the seriousness of the very nature of the offence, regardless of the particulars. For example, in *Re Majdoub,* where the respondent and employees had facilitated investments of $840,000 from 19 family members and friends who then suffered substantial losses, a permanent prohibition was imposed, even though the respondent did not "solicit his mutual fund clients [to invest]', reasoning "[t]he purpose of the rules that he breached is to provide a safeguard to the public through the supervision by members of the industry in order to prevent such questionable investments taking place" (*Re Majdoub*, para 9).

25. In *Re Dhindsa*, the respondent was issued a permanent prohibition, a fine of $15,000 and costs of $5,000 for becoming involved as a director in three outside businesses without the consent of the Member and despite a warning from his employer. The panel stated it regarded the fact he had earned no remuneration as irrelevant and there was no evidence of loss.

26. The Respondent suggests that the facts present in the case before the Panel are such that the case does not meet the criteria for suspension set out in the Penalty Guidelines (although we note the Respondent submitted a 3 month suspension is appropriate). The Panel is of the view that by meeting with several Investors and facilitating their investments without obtaining authority from the Member, the Respondent engaged in multiple incidents or a pattern of conduct. As set out above, the misconduct is of a serious nature, striking at the core of regulation. The Panel is of the view that a fine alone is insufficient, and a greater penalty is in order.

27. However, the Panel is also of the view that when looking at the totality of the circumstances, the Respondent's conduct is less extensive and prolonged than that of the respondents in any of the other cases referred to, and for this reason warrants a lesser penalty than imposed in those cases. We note the relatively short duration of the conduct, the relatively

modest involvement of the Respondent in the transaction, the fact that no direct remuneration was paid, the small number of Investors, and the fact that no loss was apparently suffered.

28. For these reasons, the Panel is of the view that a prohibition on re-registration of three years and a fine of $25,000 is sufficient having proper regard to the relevant factors.

29. In addition, costs may be imposed under s. 24.2 of MFDA By-law No. 1. The costs awarded in the cases referred to the Panel also range, although much less widely than the amounts of the fines that have been imposed. The low in a settlement hearing is $2,500. The high in a contested hearing, and where specific evidence was led as to the costs incurred, was $20,000. In the present case, no specific evidence was led on the costs incurred. The case has occurred over five days of hearing, but there have been several partial days. We note as well that the delays were not attributable to the Respondent. We are satisfied that costs of $2,500 are appropriate in the circumstances.

30. For these reasons, this Panel orders that the Respondent:

a) be prohibited from conducting securities related business in any capacity while in the employ or associated with an MFDA Member for 3 years;
b) pay a fine of $25,000; and
c) pay costs of $2,500.

DATED this 26th day of May, 2016.

"Jean P. Whittow"

Jean P. Whittow, Q.C.
Chair

"Brian Cheung"

Brian Cheung
Industry Representative

"Susan Monk"

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Industry Representative

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