



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: Ellen Grace Batac, Hazel Gaminde, Dandy Macareag,
Cesar Martin and Lilibeth Ocampo**

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the “Hearing Panel”) of the Central Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on February 23, 2012 at 10:00 a.m. (Eastern), concerning a disciplinary proceeding commenced by the MFDA against Ellen Grace Batac (“Batac”), Hazel Gaminde (“Gaminde”), Dandy Macareag (“Macareag”), Cesar Martin (“Martin”) and Lilibeth Ocampo (“Ocampo”), collectively (the “Respondents”).

DATED this 22nd day of December, 2011.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: From at least September 2005 to 2008, the Respondents engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling or facilitating the sale of investments in a hedge fund to members of the public, contrary to MFDA Rules 1.1.1(a) and 2.1.1 and the Member's policies and procedures.

Allegation #2: From at least September 2005 to 2008, the Respondents had and continued in another gainful occupation that was not disclosed to and approved by the Member by selling or facilitating the sale of a hedge fund to members of the public, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1 and the Member's policies and procedures.

Allegation #3: Commencing in 2009, Batac, Macareag, Martin and Ocampo have failed or refused to provide documents and information to MFDA Staff and/or to attend an interview requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-Law No. 1.²

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History of the Respondents

1. From February 2002 to November 2006, Ellen Grace Batac ("Batac") was licensed to sell insurance with WFG Securities of Canada Inc. ("WFG"). On March 15, 2007, Batac became registered in Ontario as a mutual fund salesperson with W.H. Stuart Mutuals Ltd. ("WH Stuart"). On October 24, 2008, Batac resigned from WH Stuart and is not currently registered in the securities industry in any capacity.

2. From January of 2005 to March of 2008, Hazel Gaminde ("Gaminde") was registered in

¹ MFDA Rule 1.2.1(d) has since been renumbered as MFDA Rule 1.2.1(c).

² The Respondent Gaminde attended an interview with MFDA Staff on November 3, 2009 and has otherwise cooperated with MFDA Staff's investigation.

Ontario as a mutual fund salesperson with WFG. On April 2, 2008 Gaminde became registered as a mutual fund salesperson with WH Stuart. On December 15, 2008, Gaminde resigned from WH Stuart and is not currently registered in the securities industry in any capacity.

3. On February 22, 2007, Dandy Macareag (“Macareag”) was registered in Ontario as a mutual fund salesperson with WFG. On September 30, 2008, Macareag resigned from WFG and is not currently registered in the securities industry any capacity.

4. From February 2005 to March 2008, Cesar Martin (“Martin”) was registered in Ontario as a mutual fund salesperson with WFG. On April 7, 2008, Martin became registered as a mutual fund salesperson with WH Stuart. In July 2009, Martin resigned from WH Stuart and is not currently registered in the securities industry any capacity.

5. From October 2005 to November 2006, Lilibeth Ocampo (“Ocampo”) was registered in Ontario as a mutual fund salesperson with WFG. On January 23, 2007 Ocampo became registered as a mutual fund salesperson with WH Stuart. On December 15, 2008 Ocampo resigned from WH Stuart and is not currently registered in the securities industry in any capacity.

6. WFG became a Member of the MFDA on April 12, 2002.

7. W. H. Stuart became a Member of the MFDA on March 4, 2003.

Background: Havaway and Knight Fox

8. During the material time (2005 to 2009), Batac owned or controlled a network of companies, each containing the word “Havaway” in its name. The companies were incorporated primarily in Canada and the United States, with one company incorporated in the Philippines. The Havaway companies purportedly carried on business selling or facilitating the sale of a hedge fund managed by Knight Fox Holdings Inc. (“Knight Fox”, as described in greater detail below).

9. It appears that the names of the companies in the Havaway group were used interchangeably in communications and dealings with investors. Transaction statements in relation to trading in the Knight Fox hedge fund were produced on various company letterheads

and witnesses interviewed by MFDA Staff were frequently unable to specify which Havaway company they had been dealing with. Accordingly, for the remainder of this Notice of Hearing, except where a specific Havaway company is referred to by its full name, the term “Havaway” will be used generically to refer to one or more of the Havaway companies that purportedly sold investments to members of the public.

10. Knight Fox Holdings Inc. was incorporated in Georgia, U.S.A. on June 13, 2005. Knight Fox purportedly carried on business managing a hedge fund that offered investors the opportunity to engage in foreign exchange (“forex”) trading. The Knight Fox hedge fund purportedly invested 20% of its assets in forex investments and the remaining 80% in fixed income. Knight Fox claimed that its hedge fund generated a return of 20% per quarter.

11. Like the Havaway group of companies, it appears that the term “Knight Fox” was used in the name of two or more related companies, such as Knight Fox Capital Investments, which also had dealings with Havaway. Accordingly, for the remainder of this Notice of Hearing, except where a specific Knight Fox company is referred to by its full name, the term “Knight Fox” will be used generically to refer to one or more of the companies that comprised the “Knight Fox” group of companies that had dealings with Havaway.

12. Due to the Respondents’ failure to cooperate, MFDA Staff was unable to determine the nature and extent of the relationship, if any, between Havaway and Knight Fox.

13. Batac recruited the other four respondents, Gaminde, Macareag, Martin and Ocampo to act as “account managers” for Havaway (collectively the “Account Managers”). The Account Managers sold or facilitated the sale of the Knight Fox hedge fund to members of the public. All such investments were processed outside the accounts and facilities of WFG and WH Stuart, contrary to their respective policies and procedure.

14. Batac introduced the Account Managers to Havaway by first having the Account Managers invest their own monies in the Knight Fox hedge fund. Batac required the Account Managers to sign a non-disclosure agreement prior to discussing Havaway and Knight Fox with them. The Account Managers were informed by Batac that the non-disclosure agreement prevented them from disclosing to or discussing with WFG (and later WH Stuart) their involvement with Havaway and Knight Fox.

15. Between September 2005 and October 2008, Batac and the Account Managers sold or facilitated the sale of investments in the Knight Fox hedge fund to members of the public through Havaway. The Account Managers were entitled to a sales commission or fee of 5% to 8% of the amounts invested, as well as trailer fees of 5% per year payable every three months.

16. The Account Managers also personally made the following investments in Knight Fox through Havaway:

- a. Martin: December 2006 – \$10,000 and April 2007 - \$15,000;
- b. Gaminde: August 4, 2006 - \$10,000; August 11, 2006 - \$10,000; December 21, 2006 - \$5000; November 1, 2007 - \$25,000 and March 7, 2008 - \$25,000;
- c. Macareag: April 2008 - \$25,000 USD; and
- d. Ocampo: August 2006 - \$5,000 and October 2006 - \$5,000.

17. All of the investors who invested through Havaway were also required to sign a non-disclosure agreement prior to receiving detailed information about Havaway or Knight Fox. The investors signed a subscription agreement at the time of their investment and thereafter received quarterly investment statements purportedly informing them of the progress of their investment.

18. The Account Managers sold the investments to investors on the following terms:

- a. The monies would be invested in a hedge fund managed by Knight Fox;
- b. The hedge fund invested in 20% forex investments and 80% in fixed income assets and would provide a guaranteed return of 20% per quarter;
- c. The principal amount of the investment would be refunded within 45 banking days after request; and
- d. The interest accrued on the principal amount would be received within 5 to 10 banking days after request.

19. The Respondents failed to inform WFG and/or WH Stuart that they were involved with Havaway or Knight Fox and, when subsequently questioned about it, denied their involvement in Havaway and Knight Fox.

20. Neither WFG nor WH Stuart were aware of or approved Havaway and Knight Fox as outside business activities for the Respondents.

21. Neither WFG nor WH Stuart were aware of or approved the sale of investments in Havaway or Knight Fox by any of its Approved Persons, including the Respondents.

22. The policies and procedures of both WFG and WH Stuart prohibited an Approved Person from selling or facilitating sales of a security that was not approved by them. The policies and procedures of both WFG and WH Stuart also prohibited an Approved Person from engaging in any outside business activities without their prior written approval.

23. In July 2008, the Ontario Securities Commission forwarded an anonymous complaint that it had received to the MFDA for review and investigation. The complaint alleged that Martin appeared to be involved in or was running a Ponzi scheme promoting a foreign exchange hedge fund investment product that promised investors a return of 6% per month. The anonymous complaint further alleged that Martin was encouraging prospective investors to mortgage their homes and invest the mortgage proceeds in the hedge fund investment. MFDA Staff commenced an investigation.

24. Each of the four Account Managers has admitted to MFDA Staff that they worked for Havaway and sold or facilitated the sale of investments in Knight Fox through Havaway to members of the public.

25. As a consequence of the full or partial failure of Batac, Macareag, Martin and Ocampo to cooperate with MFDA Staff's investigation (described in Allegation #3 below), MFDA Staff has been unable to confirm the total amounts of commissions and fees received by the Respondents from Havaway. However, banking records for the period September 2007 to October 2008 show that at least the following payments were made to the Respondents' TD Canada Trust accounts from Havaway:

- a. Martin: \$98,430;
- b. Macareag: \$110,430;
- c. Ocampo: \$217,962;
- d. Gaminde: \$24,300; and

e. Batac: \$600,000 USD plus \$55,000 CDN.

26. In or around August 2008, the Account Managers began to receive emails and memos from Havaway regarding delays in the settlement period for client redemptions. Some of the emails were signed by Batac and others were sent from Batac's email address. As well, the sales commissions payable to the Account Managers were reduced and eventually stopped altogether. By October 2008, redemptions and sales commissions were no longer being paid out by Havaway. Havaway continued to send emails stating that redemptions were going to be delayed and restricted due to the decline in the markets and numerous redemption requests from November 2008 through to early 2009.

27. In May 2009, a class action lawsuit was commenced by an investor, RT on behalf of himself and the class members against Havaway, Knight Fox and the Respondents, among others. The claim alleged, among other things, that the defendants had failed to account for the monies that investors had provided to them. On November 14, 2011, the plaintiffs obtained default judgment against the defendants awarding the plaintiffs, among other things, compensatory damages in the amount of \$5.6 million and punitive damages in the amount of \$1 million.

28. In June 2009, the Account Managers commenced a lawsuit against Batac and other individuals. In the Statement of Claim, the Account Managers alleged that they were contracted by Havaway to make presentations to prospective investors and received sales commissions of 5% to 10% on the amounts invested. The Account Managers further alleged that a total of \$19 million was invested in or through Havaway by them and the other investors.

Allegation #1: Securities related business outside the Member

29. By engaging in the conduct described above, the Respondents engaged in securities related business that was not carried on for the account and through the facilities of the Member(s) by selling or facilitating the sale of investments in Havaway or Knight Fox to members of the public, contrary to MFDA Rules 1.1.1(a) and 2.1.1 and the Member's policies and procedures.

Allegation #2: Unauthorized dual occupation

30. In the event the conduct described above did not constitute securities related business, then the Respondents had and continued in another gainful occupation that was not disclosed to and approved by the Member(s) by selling or facilitating the sale of investments in Havaway or Knight Fox to members of the public, contrary to MFDA Rules 1.2.1(d) and 2.1.1 and the Member's policies and procedures.

Allegation #3: Failure to Cooperate

31. As described in greater detail below, all of the respondents except Gaminde failed in full (Batac) or in part (Martin, Macareag and Ocampo) to cooperate with MFDA Staff's investigation of this matter.

Batac:

32. On January 22, 2010, MFDA Staff wrote to Batac requesting information and documents related to Havaway as well as her attendance for an interview.

33. Between February 1, 2010 and April 16, 2010 MFDA Staff and Batac's counsel exchanged further communications with respect to Staff's request for information and Batac's attendance for an interview.

34. On April 21, 2010, Staff received a letter from Batac's counsel advising that Batac would not "voluntarily cooperate with the MFDA investigation".

35. On May 20, 2010, Staff received another letter from Batac's counsel advising that Batac:

"...understands that it is likely that the MFDA will commence an investigation against her for failing to cooperate with the Investigation" and that "among the penalties which may be imposed, include a permanent prohibition on her ability to conduct securities related business in the future. I have received instructions from Ms. Batac that she would in fact consent to such an order thereby obviating the need for the MFDA to go to the time, trouble and expense of an investigation and/or contested hearing in this matter."

36. Despite numerous requests, Batac has failed to provide information and documents requested by MFDA Staff and has failed to attend at the offices of the MFDA for an interview.

Martin:

37. As a result of an anonymous online tip to the OSC and the email complaint referred to above, MFDA Staff arranged to conduct an unannounced inspection of a WH Stuart sub branch from which Martin worked on July 21, 2009. The WH Stuart sub branch was located in Mississauga, ON (“Sub Branch”).

38. MFDA Staff attended at the Sub Branch and made several requests to gain access to the Sub Branch to complete the inspection, however Martin refused access to MFDA Staff.

39. A WH Stuart branch manager contacted Martin and instructed him to allow MFDA Staff access to the Sub Branch. Martin failed to follow the instructions of WH Stuart and did not permit MFDA Staff to access the Sub Branch.

40. On July 31, 2009, MFDA Staff contacted WH Stuart to arrange for another inspection of the Sub Branch. WH Stuart advised MFDA Staff that Martin had resigned from WH Stuart on July 30, 2009.

41. Between December 1, 2009 and May 18, 2010, MFDA Staff and Martin's agent corresponded with respect to scheduling Martin's attendance at an interview with MFDA Staff. MFDA Staff also made a request for documentation relating to Martin's involvement with Havaway. MFDA Staff requested documents which included lists of investors in Havaway and banking records that evidenced the receipt of sales commissions or fees from Havaway.

42. On July 9, 2010 and October 8, 2010, Martin attended an interview with MFDA Staff. At the interview, Martin undertook to provide MFDA Staff with, amongst other things, copies of all bank statements for bank accounts that evidenced the payments that Martin had received from Havaway.

43. On October 14, 2010 MFDA Staff sent a letter to Martin requesting his response with respect to a client complaint. Martin did not respond to MFDA Staff.

44. Despite numerous requests, Martin has failed to respond to MFDA Staff's requests for documentation relating to Martin's involvement with Havaway and to fulfill the undertakings he gave at his interview to provide copies of his banking records evidencing payments from Havaway.

Macareag and Ocampo:

45. Between December 1, 2009 and May 7, 2010, MFDA Staff and the agent for Macareag and Ocampo corresponded with respect to scheduling their attendance at an interview with MFDA Staff. MFDA Staff also made a request for documentation relating to Macareag and Ocampo's involvement with Havaway. MFDA Staff requested documents which included lists of investors in Havaway and banking records that evidenced the receipt of sales commissions and fees from Havaway.

46. On July 8, 2010, Macareag attended an interview with MFDA Staff. On August 17, 2010, Ocampo attended an interview with MFDA Staff. At the interviews, Macareag and Ocampo undertook to provide MFDA Staff with, amongst other things, copies of all bank statements which evidenced the amounts they had received from Havaway.

47. Despite numerous requests, Macareag and Ocampo have failed to provide MFDA Staff with documentation relating to their involvement with Havaway and have failed to fulfill the undertakings given at their interviews.

Gaminde:

48. Gaminde cooperated with MFDA Staff's investigation. Gaminde attended an interview requested by Staff and produced documents where available.

Summary:

49. As a result of the failure of Batac, Martin, Macareag and Ocampo to cooperate either in full or in part with MFDA Staff's investigation, MFDA Staff has not been able to determine the full nature and extent of Respondents' unauthorized outside business activities in relation to

Havaway and Knight Fox. In particular, MFDA Staff has been unable to determine the total number and identities of the investors in Havaway or Knight Fox Knight and the amounts invested. As a consequence, MFDA Staff has been unable to determine the number of investors in Havaway or Knight Fox, if any, who may have been clients of either WFG or WH Stuart.

50. Commencing July 2009, Batac, Macareag, Martin and Ocampo have failed or refused to provide documents and information, and/or to attend an interview requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-Law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- (a) has failed to carry out any agreement with the MFDA;
- (b) has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- (c) has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- (d) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- (e) is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - i. \$5,000,000.00 per offence; and
 - ii. an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation.
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;

- d) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- e) revocation of the authority of such person to conduct securities related business;
- f) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- g) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: H. C. Clement Wai, Enforcement Counsel
Facsimile: 416-361-9073
Email: cwai@mfd.ca

A **Reply** shall be **filed** by:

- a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- i.) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- ii.) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-Laws.

End.

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