



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: Cheng Han Lee

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 Pacific Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located in the MFDA offices at 650 West Georgia Street, Suite 1220, Vancouver, British Columbia on August 30, 2012 at 10:00 a.m. (Pacific), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Cheng Han Lee (the “Respondent”).

DATED this 20th day of July, 2012.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario, M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
Email: corporatesecretary@mfda.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between April 8, 2010 and April 14, 2010, the Respondent failed to deal fairly, honestly and in good faith with client SW by processing redemptions in client SW's accounts and then re-investing the redemption proceeds in a manner which required client SW to unnecessarily incur \$4,513 in deferred sales charges and allowed the Respondent to earn \$2,528 in sales commissions, contrary to the Member's short-term reinvestment policy and MFDA Rule 2.1.1.

Allegation #2: Commencing April 7, 2011, the Respondent has failed or refused to attend an interview requested by the MFDA during the course of an investigation, contrary to section 22.1. of MFDA By-law No. 1.

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

1. From June 1, 2009 to April 16, 2010, the Respondent was registered in British Columbia as a mutual fund salesperson with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA. Investors Group terminated the Respondent as a result of the events described herein.
2. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1: Unfair trading practice

3. Investors Group's Policies and Procedures contain a short term reinvestment policy (the "Policy") which provides, in part, that a client is entitled to receive a rebate of deferred sales charges ("DSC fees") incurred by the client on an earlier redemption when the redemption

proceeds are re-invested with Investors Group within 60 days. Under the terms of the Policy, an Approved Person is not entitled to be paid a sales commission in respect of the purchase(s) whereby the redemption proceeds are re-invested.

4. In order for a client to qualify for a DSC rebate under the Policy, an Approved Person is required to indicate on the trade instruction form that the purchase is being made using the proceeds of a redemption that occurred within the last 60 days.

Client SW

5. At all material times, SW was a client of Investors Group whose account was serviced by the Respondent.

6. On December 3, 2009, client SW invested \$80,000 with Investors Group: \$75,000 in a non-registered account and \$5,000 in a Tax-Free Savings Account (“TFSA”).

7. On January 5, 2010, client SW transferred \$5,000 of the Alto-Moderate Aggressive Portfolio A fund from the non-registered account into the TFSA.

8. On April 8 and 9, 2010, the Respondent processed the following redemptions in the TFSA and non-registered accounts of client SW:¹

TFSA Account				
Date of Redemption	Fund Type	Redemption Amount	DSC Fee Incurred	Net Redemption Amount
April 8, 2010	Alto Moderate Aggressive Portfolio A 365	\$10,340.57	\$540.57	\$9800.00
Totals		\$10,340.57	\$540.57	\$9800.00

¹ All of the redemptions described in this Notice of Hearing were authorized by client SW. As described in greater detail below, however, client SW authorized the Respondent to make the redemptions in reliance on the Respondent’s recommendation that he should sell his mutual funds before an anticipated downturn in the markets. In contrast, the Respondent informed Investors Group that client SW instructed the Respondent to process the redemptions because client SW required the redemption proceeds to make a major purchase.

Non-Registered Account				
Date of Redemption	Fund Type	Redemption Amount	DSC Fee Incurred	Net Redemption Amount
April 8, 2010	Alto Moderate Aggressive Portfolio A 354	\$15,502.65	\$852.65	\$14,650.00
April 8, 2010	Allegro Moderate Aggressive Canada Focus Portfolio A 355	\$20,674.69	\$1,124.69	\$19,550.00
April 8, 2010	Alto Moderate Aggressive Portfolio A 365	\$15,747.98	\$847.98	\$14,900.00
April 9, 2010	Alto moderate Aggressive Canada Focus Portfolio A	\$21,247.85	\$1,147.85	\$20,100.00
Totals		\$73,173.17	\$3,973.17	\$69,200.00

9. In total, on April 8 and 9, 2010, client SW redeemed the gross amount of \$83,513.74 from his TFSA and non-registered accounts. Client SW incurred a total of \$4,513 in DSC fees, for net redemption proceeds of \$79,000.74. The redemption proceeds were deposited in client SW's bank account.

10. On or about April 9, 2010, the Respondent was questioned about the redemptions in client SW's accounts by the Division Director at Investors Group. The Respondent informed the Division Director that client SW required the redemption proceeds to make a major purchase and that the client's time horizon had changed. As set out below, the Respondent's representation was false.

11. Approximately one week later, on April 14, 2010, the Respondent processed a purchase in the TFSA account of client SW for \$9,000 of the Alto Moderate Aggressive Canada Focus Portfolio A fund. The monies used to make the purchase were the proceeds of the redemptions made on April 8 and 9, 2010.

12. Also on April 14, 2010, the Respondent processed a purchase in the non-registered account of client SW for \$70,000 of the Alto Moderate Aggressive Canada Focus Portfolio A fund. The monies used to make the purchase were the proceeds of the redemptions made on

April 8 and 9, 2010.

13. Under the terms of the Policy, at the time of the April 14, 2010 purchases, client SW qualified for a rebate of the entire amount of the DSC fees, \$4,513, that he had incurred as a consequence of the April 8 and 9, 2010 redemptions. The Respondent did not inform client SW that client SW was entitled to a rebate of the DSC fees, nor did the Respondent indicate on the trade instruction forms in respect of the purchases made on April 14, 2010 that the transactions were re-investments that qualified for a DSC rebate under the terms of the Policy.

14. As a result, client SW was not reimbursed for the DSC fees he incurred on the April 8 and 9, 2010 redemptions and the Respondent was paid a sales commission of \$2,528 in respect of the re-investment of those same monies on April 14, 2010 when in fact he was not entitled to the sales commission under the Policy.

15. Investors Group met with the Respondent to discuss the trading activity in client SW's accounts. On April 16, 2010, Investors Group terminated the Respondent.

16. On April 19, 2010, Investors Group reimbursed client SW \$540 for the DSC fees incurred in his TFSA account and \$3,973 for the DSC fees incurred in his non-registered account as a result of the April 8 and 9, 2010 redemptions.

17. Investors Group also reimbursed client SW for the decline in value of the investments in his TFSA account and non-registered account in the amount of \$884 and \$3400 respectively as a result of the decrease in value of the accounts between the time of the redemptions and the re-investments.

18. On or about April 20, 2010 the Division Director contacted client SW regarding the redemption and purchase activity in client SW's accounts. Contrary to the explanation provided by the Respondent to the Division Director, client SW informed the Division Director that the Respondent had advised him to redeem the mutual funds in his TFSA and non-registered accounts on April 8 and 9, 2010 and transfer the redemption proceeds to his bank account as part of an investment strategy to ride out a downturn in the markets.

19. By engaging in the conduct described above, the Respondent failed to deal fairly, honestly and in good faith with client SW, contrary to MFDA Rule 2.1.1.

Allegation #2: Failure to Cooperate

20. As set out in greater detail below, the Respondent has failed to cooperate with an investigation commenced by MFDA Staff in relation to the subject matter of Allegation #1 and the following matters.

Client HMC

21. In September 2009, client HMC opened a TFSA account and made an initial contribution of \$1,000. The Respondent was the mutual fund salesperson responsible for servicing the account. The Know-Your-Client (“KYC”) information for the TFSA account indicated, among other things, the following:

PRIMARY INVESTMENT OBJECTIVE: Major Purchase

INVESTMENT TIME HORIZON: 1 – 3 years

22. On December 31, 2009, the holdings in client HMC’s TFSA account consisted of approximately 9% DSC funds.

23. On March 12, 2010, client HMC contributed an additional \$1,000 to the TFSA account. The monies were invested in the Investors Income Plus Portfolio A fund, a DSC fund.

24. By March 31, 2010, all of the holdings in HMC’s account were in DSC funds.

25. By June 30, 2010, HMC’s TFSA account was rebalanced and approximately 24% of the holdings consisted of DSC funds.

26. Client HMC filed a complaint with Investors Group regarding the suitability of the DSC funds in his account given his short investment time horizon.

27. On or about August 11, 2010, Investors Group completed its Complaint Investigation Summary for client HMC and concluded that the DSC funds held in the TFSA account recommended by the Respondent were not suitable for the client.

Blank Pre-Signed Cheques

28. After the Respondent was terminated by Investors Group on April 16, 2010, the client files in respect of the accounts he had previously serviced were transferred to another mutual fund salesperson, TA.

29. TA found pre-signed blank cheques payable to Investors Group in the client files of HMC, JF, VG and CG.

30. Investors Group's review of the matter determined that the Respondent had advised some of his TFSA clients to initiate withdrawals from their mutual funds and to direct the proceeds to their personal bank accounts purportedly as a means of avoiding a market downturn. The clients were then advised by the Respondent to provide him with a pre-signed blank cheque payable to Investors Group to facilitate reinvestment activity in their accounts.

31. Investors Group was able to determine that no pre-signed blank cheques were used by the Respondent to facilitate investments in client JF's account.

32. Investors Group was unable to determine if any pre-signed blank cheques were used by the Respondent to facilitate investments in client HMC's accounts.

33. Investors Group was unable to determine how many pre-signed blank cheques clients VG and CG provided to the Respondent and whether the Respondent used blank pre-signed cheques to facilitate investments in the clients' accounts.

34. MFDA Staff commenced an investigation to determine the nature, extent and frequency of the Respondent's use of blank pre-signed cheques and possibly other pre-signed forms or documents in the accounts of clients HMC, JF, VG and CG and possibly other clients, as well as possible suitability concerns relating to the purchase of DSC mutual funds in client accounts.

35. As set out in the chart below, due to the Respondent’s failure to cooperate with MFDA Staff’s investigation, MFDA Staff has been unable to determine the full nature, extent and frequency of the Respondent’s involvement in the activities described in Allegation #2. MFDA Staff made the following attempts to arrange an interview with the Respondent concerning the matters under investigation:

Date	Content of Letter	Method of Delivery	Outcome
June 2, 2010	Respondent requested to respond in writing to the MFDA regarding the complaints made by SW, HMC and JF. Deadline: June 23, 2010	Regular & registered mail (June 15, 2010: confirmation registered mail was claimed by Respondent)	Respondent did not respond.
June 28, 2010	Respondent requested to respond in writing to the MFDA regarding the complaints made by SW, HMC and JF; Respondent advised matter could be escalated to MFDA Investigations including for failure to cooperate. Deadline: July 12, 2010	Regular & registered mail (Registered mail was returned to the MFDA on July 26, 2010 as “unclaimed by recipient”)	July 12, 2010, Respondent sent email correspondence to MFDA acknowledging his mistake in relation to SW and that his actions were not in the best interest of the client. He further stated that he had discussed DSC fees with HMC & JF. No further response was received.
September 28, 2010	Respondent was advised that the matter being escalated to MFDA Investigations for further review.	Regular & registered mail (Registered mail was returned to the MFDA on October 25, 2010 as “unclaimed by recipient”)	No response was required.
April 7, 2011	Respondent was requested to attend for an interview. Deadline: 10 business days from the date of the letter.	Regular & Registered mail (Registered mail was claimed by the Respondent on April 12, 2011)	Respondent did not respond.
June 30, 2011	Respondent was again requested to attend for an interview with Staff; correspondence outlined the numerous telephone attempts (June 8, 10, 21 & 29, 2011) to schedule the interview. Deadline: 5 business days from the receipt of the correspondence.	Regular & Registered mail. (Registered mail was accepted July 6, 2011)	Respondent did not respond.
July 20, 2011	MFDA Staff attempted to confirm with Respondent that he had not provided any response in relation to Staff’s previous attempts to arrange	Personal service via process server was frustrated due to the Respondent not being at	Respondent did not respond.

	an interview and that if no interview was arranged, a failure to cooperate action may be commenced. Deadline: 5 business days from the receipt of the correspondence.	his residence or avoiding service.	
September 13, 2011	Respondent requested to attend for an interview	Telephone call	Respondent did not respond.
September 15, 2011	Letter to Respondent reiterating that MFDA Staff had not received any communication from him and requested that the Respondent respond in writing regarding the complaints; attend for an interview; and the possibility of pursuing a failure to cooperate action.	Regular and registered mail. (Registered mail was claimed on September 22, 2011)	Respondent did not respond.

36. To date, with the exception of the July 12, 2010 email sent to MFDA Staff in partial response to Staff's June 28, 2010 correspondence, the Respondent has not communicated with MFDA Staff, provided a statement or attended for an interview in relation to the matters under investigation

37. Due to the Respondent's failure to cooperate with MFDA Staff's investigation, the full nature, extent and frequency of the Respondent's conduct in relation to:

- (a) the Respondent's failure to follow the Member's short-term re-investment policy in the accounts of client SW and possibly other clients;
- (b) recommending unsuitable investments, specifically DSC funds, to clients HMC and JF and possibly other clients; and
- (c) the Respondent's practice of using blank pre-signed cheques and possibly other forms or documents to facilitate investments in the accounts of clients HMC, JF, VG & CG and possibly other clients.

38. Commencing April 7, 2011, the Respondent has failed or refused to attend an interview requested by the MFDA during the course of an investigation, contrary to section 22 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
Prairie Regional Office
800 – 6th Avenue SW, Suite 850
Calgary, Alberta
T2P 3G3
Attention: Shari Boyd, Enforcement Counsel
Facsimile: 403-266-8858
Email: sboyd@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.

Doc 303816