



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: Lodovico Angelo Cavan

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) 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 August 8, 2013 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Lodovico Angelo Cavan (the “Respondent”).

DATED this 5th day of June, 2013.

“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
Email: corporatesecretary@mfd.ca

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

Allegation #1: From October 25, 2001 to March 2006 and from January 2008 to May 2010, the Respondent had and continued in other gainful occupations that were not disclosed to and approved by the Member by setting up three businesses in respect of which he subsequently received, directly or indirectly, payments and benefits totaling at least approximately \$117,973.03, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

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. The Respondent was registered in Ontario as a mutual fund salesperson with Royal Mutual Funds Inc. (“RMFI”) from January 29, 1989 to October 23, 1994 and from January 4, 1995 to June 30, 2011. The Respondent resided in Caledon, Ontario worked at various RMFI branches, the most recent being a RMFI branch in Brampton, Ontario.

2. On June 30, 2011, the Respondent was terminated by RMFI as a result of the events described herein and is not currently registered in the securities industry in any capacity.

3. RMFI became a Member of the MFDA October 25, 2001, at which time the Respondent became subject to the jurisdiction of the Respondent.

Allegation #1: Dual Occupations/Outside Business Activities

4. DB was an associate of the Respondent. DB was employed as the Director of Information Technology & Communication Services at JBMH. JBMH is a full-service community health

¹ Effective February 22, 2011, the MFDA’s Rules were amended. As a consequence, some of Rules were re-numbered. MFDA Rule 1.2.1(d) was re-numbered as MFDA Rule 1.2.1(c) but the wording of the section was not changed.

care facility located in Burlington, Ontario. While employed at JBMH, DB was authorized to approve payment of invoices received from vendors who supplied services and/or products and equipment to the IT Department at JBMH.

5. During the material time, the Respondent registered the following three business names, in each instance identifying himself as the sole proprietor of the business and listing the Respondent's residential address as the address for the business:

- (a) Apple-Gate Computers ("Apple-Gate"), registered May 11, 2000;
- (b) Custom Computer Solutions ("Custom Computer"), registered January 15, 2002; and
- (c) Clarkson Group (the "Clarkson Group"), registered January 18, 2008.

6. The Respondent did not seek or obtain approval from RMFI with respect to his involvement in any of the businesses. RMFI was not aware of and did not approve any of the Respondent's outside business activities.

7. The Respondent set up bank accounts for each of Apple-Gate, Custom Computer and the Clarkson Group with himself as the sole signing officer for the accounts.

8. The Respondent also set up separate postal boxes for the delivery of mail to Apple-Gate and Custom Computer.

9. From April 2000 to May 2010, these three businesses invoiced JBMH approximately \$1,790,177, which DB approved for payment.

10. On March 7, 2011, JBMH commenced a legal proceeding in the Ontario Superior Court of Justice (the "Statement of Claim") against the Respondent, his spouse, DB and others alleging, among other things, fraud, fraudulent misrepresentation, breach of trust, breach of fiduciary duty, misappropriation of property, unjust enrichment and conspiracy. The Statement of Claim made the following specific allegations:

- (a) Between April 14, 2000 and approximately January 3, 2002, JBMH received and paid 67 invoices in the total amount of \$310,813.22 which were purportedly

rendered to JBMH by Apple-Gate;

- (b) Between January 3, 2002 and approximately March 3, 2006, JBMH received and paid 241 invoices in the total amount of \$1,112,217.97 which were purportedly rendered to JBMH by Custom Computer;
- (c) Between January 14, 2008 and approximately May 21, 2010, JBMH received and paid 75 invoices in the total amount of \$367,145.81 which were purportedly rendered to JBMH by the Clarkson Group;
- (d) All of the payments were authorized by DB; and
- (e) Apple-Gate, Custom Computer and the Clarkson Group provided no services, products or equipment to JBMH.

11. As a result of the proceeding commenced against the Respondent by JBMH, MFDA Staff commenced an investigation of the Respondent's activities.

12. On February 14, 2012, the Respondent attended an interview requested by MFDA Staff. At the interview, the Respondent admitted, among other things, that he had registered the business names identifying himself as the sole proprietor of the three businesses and listing his residential address as the address of each business, opened the bank accounts in the name of the businesses with himself as the sole signing officer for the accounts and set up the postal boxes for the businesses. The Respondent stated that after carrying out the foregoing steps, he would provide DB with the bank card for the bank accounts, blank signed cheques for the bank accounts, and access to the postal boxes. The Respondent stated that he undertook all of the foregoing steps at the request of DB, who was a childhood friend. According to the Respondent, he had no further involvement with Apple-Gate, Custom Computer and the Clarkson Group, apart from receiving the payments and benefits described in greater detail below.

13. The Respondent stated that he was not responsible for determining or directing the affairs of the three companies and stated that at all material times he was operating under the direction, or at the request, of DB. The Respondent stated that he was not aware of the amounts that the businesses had invoiced JBMH.

14. The Respondent admitted that he received at least \$5,000 from DB during the time Apple-Gate was in operation.

15. The Respondent also admitted that while Custom Computer was in operation, he received, directly or indirectly, payments or benefits from DB or Custom Computer in the following manner:

- (a) DB deposited monies in the Respondent's credit card account;
- (b) DB deposited monies in the Respondent's Sears account;
- (c) DB paid the Respondent's water account for his residence;
- (d) DB paid the Respondent's gas account for his residence;
- (e) DB paid the Respondent's hydro account for his residence;
- (f) the Respondent wrote cheques to himself from Custom Computer's bank account;
- (g) the Respondent wrote cheques to his spouse from Custom Computer's bank account;
and
- (h) the Respondent wrote cheques to "cash" from Custom Computer's bank account.

16. From March 22, 2004 to April 29, 2006, the Respondent received payments and benefits, directly or indirectly, from DB or Custom Computer totaling at least \$54,930.58.

17. The Respondent has admitted that while the Clarkson Group was in operation, he received payments and benefits from DB in the following manner:

- (a) DB deposited monies in the Respondent's credit card account;
- (b) DB deposited monies in the Respondent's Sears account;
- (c) DB deposited monies in the Respondent's Ford account; and
- (d) DB deposited monies in the Respondent's 407 ETR account.

18. From April 17, 2008 to June 25, 2010, the Respondent received payments and benefits, directly or indirectly, from DB or the Clarkson Group totaling at least \$58,042.45.

19. In summary, during the material time, the Respondent received payments and benefits, directly or indirectly, totaling at least \$117,973.03 from DB, Apple-Gate, Custom Computers, and the Clarkson Group. The Respondent admitted that he used the monies he received directly (as opposed to the monies paid by DB to third parties for the Respondent's benefit or on his

account) to pay personal expenses.

RMFI's Policies and Procedures

20. At all material times, RMFI's policies and procedures, consistent with MFDA requirements, required all Approved Persons to disclose and report new outside activities, and/or changes, including terminations, to existing outside activities. Approved Persons were required to sign an annual Acknowledgement and Consent form confirming they understood and agreed to comply fully with all securities laws, rules, regulations and all of RMFI's policies and procedures.

21. The Respondent executed RMFI's annual Acknowledgment and Consent forms confirming that he had disclosed all outside activities to RMFI, without advising RMFI of his involvement in Apple-Gate, Custom Computer or the Clarkson Group.

22. By engaging in the conduct described above, the Respondent had and continued in other gainful occupations that were not disclosed to and approved by RMFI, contrary to MFDA Rules 1.2.1(d) and 2.1.1

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:

- has failed to carry out any agreement with the MFDA;
- 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;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- 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) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) 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
Fax: 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:

The 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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