



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: Penny Diann Deming

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Pacific Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at the MFDA offices at 650 West Georgia Street, Suite 1220, Vancouver, British Columbia on January 21, 2014 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 Penny Diann Deming (the “Respondent”). The Hearing on the Merits will take place in Vancouver, British Columbia at a time and venue to be announced.

DATED this 26th day of November, 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@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 May and August 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling 240 shares in a company she owned to AW and MM at a total price of \$100,000, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2: Between May and August 2010, the Respondent had and continued in another gainful occupation which she did not disclose to the Member by selling 240 shares in a company she owned to AW and MM at a total price of \$100,000, contrary to MFDA Rules 1.2.1(d)¹ and 2.1.1.

Allegation #3: Between August 2010 and November 2011, the Respondent engaged in personal financial dealings with client MM by selling MM 120 shares in the Respondent's company at a price of \$50,000 contemporaneously with MM becoming a client of the Member, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client MM, contrary to MFDA Rules 2.1.4 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 British Columbia as a mutual fund salesperson with Worldsource Financial Management Inc. ("WFM"), a Member of the MFDA, from September 24, 2009 to June 5, 2012.
2. At all material times, the Respondent carried on business in White Rock, British

¹ MFDA Rule 1.2.1(d) has since been re-numbered as MFDA Rule 1.2.1(c).

Columbia.

3. Prior to WFM, the Respondent was registered in British Columbia:
 - a. from August 2006 to Sept 2009, at Portfolio Strategies Corporation, also a Member of the MFDA, as a branch manager and mutual fund sales person; and
 - b. from October 2003 to February 2006, at Royal Mutual Funds Inc., also a Member of the MFDA, as a mutual fund sales person.
4. The Respondent also held a license to sell insurance in British Columbia which was terminated on June 1, 2012.
5. The Respondent is currently not registered or licensed in any capacities in the Canadian securities or insurance industries.

Allegation #1 – Securities related business outside the Member

SHE Financial and the Proposal

6. In or about 2006, the Respondent incorporated SHE Financial Group Inc. (“SHE Financial”) in British Columbia.
7. At all material times, the Respondent was the President of SHE Financial and used SHE Financial as a trade name for her insurance business. As described in greater detail below, until August 6, 2010, the Respondent was the sole owner of SHE Financial. At all material times, SHE Financial was a privately held company whose shares did not trade publicly on an exchange.
8. On or about October 13, 2009, in accordance with a letter of understanding entered into between Worldsource Wealth Management Inc., a related company to WFM, and SHE Financial, Worldsource Wealth Management Inc. agreed to lend SHE Financial \$50,000 for the purposes of enabling SHE Financial to recruit and manage advisors in the areas in which Worldsource

Wealth Management Inc. and its affiliates carried on business: mutual funds, securities and insurance.

9. On October 16, 2009, the Respondent signed a Promissory Note on behalf of SHE Financial in respect of the loan, as well as a Personal Guarantee. Under the terms of the loan arrangement, if the loan was not repaid within three years, then Worldsource Wealth Management Inc. was entitled to withhold 50% of the ongoing commissions payable to the advisors recruited by the Respondent.

10. In or around April 2010, the Respondent prepared a document entitled “Shefinancial group inc. proposal” [sic] (“the Proposal”). In the Proposal, the Respondent stated that she founded SHE Financial “in response to a growing demand for women-focused business”. The Proposal stated that its purpose was to secure funding for the expansion of SHE Financial. It also described the business objectives for SHE Financial and set out a business plan and revenue projections for the company.

11. According to the Proposal, the Respondent planned to recruit female advisors currently working in larger firms to work for SHE Financial, to open SHE Financial branches in British Columbia and other provinces, and to eventually have SHE Financial advisors across Canada.

12. The Respondent did not seek or obtain permission from WFM to distribute the Proposal or to sell shares in SHE Financial.

13. At all material times, WFM’s policies and procedures prohibited its Approved Persons from selling securities outside the Member.

Investor AW

14. In May 2010, AW met the Respondent through a mutual friend. The Respondent told AW that she was seeking investors for her company, SHE Financial and the Respondent also expressed interest in AW’s experience with internet technology.

15. Shortly thereafter, the Respondent provided AW with a copy of the Proposal.

16. The Respondent offered AW a 10% investment in SHE Financial for \$50,000, as well as an employment contract with SHE Financial to provide internet technology services over a three month period in exchange for \$10,000, with the potential for the contract to become a salaried position.

17. On June 4, 2010, AW provided three certified cheques totaling \$50,000 to the Respondent for the purposes of becoming a shareholder in SHE Financial. AW also agreed to the terms of the employment contract and commenced employment with SHE Financial.

18. On August 6, 2010, the Respondent executed an agreement for the sale of 120 Common Shares of SHE Financial to AW for a purchase price of \$50,000, and an Application for Transfer from the Respondent to AW in respect of those 120 common shares. The sale of the shares in SHE Financial to AW was not processed for the account or through the facilities of WFM.

19. Shares in SHE Financial were not an investment product approved by WFM for sale by its Approved Persons, including the Respondent. At all material times, WFM was not aware that the Respondent was selling shares in SHE Financial to AW or any other individuals or clients.

Investor (and client) MM

20. MM first met the Respondent on June 3, 2010; MM was a guest speaker at a breast cancer fundraiser in British Columbia held by SHE Financial.

21. The Respondent discussed the business of SHE Financial with MM and suggested they speak further about it at a later date. Over the next few weeks, the Respondent and MM had several discussions about SHE Financial and the potential for MM to become a 10% shareholder in SHE Financial for \$50,000. The Respondent also gave MM a copy of the Proposal.

22. On August 5, 2010, MM gave the Respondent \$50,000 for the purposes of becoming a shareholder in SHE Financial.

23. On August 6, 2010, the Respondent executed an agreement for the sale of 120 Common

Shares of SHE Financial to MM for a purchase price of \$50,000, and an Application for Transfer in respect of the transfer of those 120 common shares from the Respondent to MM. The sale of the shares in SHE Financial to MM was not processed for the account or through the facilities of WFM.

24. As stated above, shares in SHE Financial were not an investment product approved by WFM for sale by its Approved Persons, including the Respondent and at all material times, WFM was not aware that the Respondent was selling shares in SHE Financial to MM, AW or any other individuals.

25. On or about August 19, 2010, MM opened an account at WFM. The Respondent was the mutual fund salesperson responsible for servicing her account.

After the sale of shares in SHE Financial

26. Over the next year, AW and client MM became frustrated in their business dealings with the Respondent.

27. From June to September 2010, AW fulfilled the employment contract but did not receive full payment from SHE Financial or the Respondent for her services.

28. Despite AW's and client MM's repeated requests, the Respondent failed to provide financial statements for SHE Financial to them or to provide a specific accounting of the use, if any, to which the proceeds from AW's and client MM's investments had been put in furtherance of the objectives set out in the Proposal.

29. Client MM and AW also believed the Respondent was taking numerous trips to Mexico and were concerned about how the Respondent was paying for her trips.

30. In 2011, client MM complained to the Respondent about the Respondent's business dealings with her. The Respondent failed to bring these complaints to the attention of WFM.

31. On or about September 13, 2011, client MM, AW and the Respondent met to discuss the

future of SHE Financial. The Respondent suggested that AW and client MM invest further amounts in SHE Financial to finance the marketing and sale of shares in SHE Financial to other investors. Both AW and client MM rejected this proposal and did not invest further amounts in SHE Financial. Client MM and AW asked the Respondent for their investments to be returned to them.

32. On November 14, 2011, client MM and AW sent SHE Financial and the Respondent a demand letter requesting the return of their investments.

33. On or about November 15, 2011, due to her dissatisfaction arising out of her business dealings with the Respondent, client MM ceased to be a client of WFM.

34. On or about November 17, 2011, the Respondent sent an e-mail to (now former) client MM stating that she intended to secure an investor to purchase MM's shares in SHE Financial.

35. The Respondent did not secure an investor to buy client MM's or AW's shares in SHE Financial, nor did she return client MM's or AW's investments to them.

36. On May 31, 2012, the Respondent filed for personal bankruptcy. At the time of the filing, SHE Financial had not repaid the \$50,000 loan to Worldsource Wealth Management Inc. Worldsource Wealth Management Inc. subsequently filed a proof of claim in the Respondent's bankruptcy in respect of the loan.

37. On June 5, 2012, WFM terminated the Respondent. In or about June 2012, the website and e-mail address for SHE Financial ceased to be operational.

38. The Respondent has since relocated to Mexico, where she now works and resides.

39. There is no reasonable prospect of AW and client MM recovering the principal amount of their respective investments in SHE Financial.

40. By selling 240 shares of her company, SHE Financial, to AW and client MM at a total price of \$100,000 as described above, the Respondent engaged in securities related business that

was not carried on for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2 – Undisclosed dual occupation

41. In the event the activities described in Allegation #1 above did not constitute securities related business, then the activities constituted another gainful occupation which the Respondent did not disclose to WFG, contrary to MFDA Rules 1.2.1(d)² and 2.1.1.

Allegation #3 – Personal financial dealings with client MM

42. As described above, on or about August 19, 2010, approximately two weeks after the Respondent had sold shares in SHE Financial to MM on August 6, 2010, MM became a client of WFM. The Respondent was the mutual fund salesperson responsible for servicing MM's account.

43. By selling shares in SHE Financial to MM contemporaneously with MM becoming a client of WFM in the manner described above, the Respondent engaged in personal financial dealings with client MM which gave rise to a conflict or potential conflict of interest between the interests of the Respondent and the interests of client MM, which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client MM, contrary to MFDA Rules 2.1.4 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;

² See Note 1 above.

- 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
Pacific Regional Office
650 West Georgia Street, Suite 1220
Vancouver, British Columbia
V6B 4N9
Attention: Faye Emmanuel
Fax: 604-683-6577
Email: femmanuel@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.

DM 361339 v2