



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: Paolo Abate

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 MFDA hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on June 2, 2014 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Paolo Abate (the “Respondent”).

DATED this 10th day of April, 2014.

“Rohit Kumar”

Rohit Kumar,
Director of Regional Councils

Mutual Fund Dealers Association of Canada
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Toronto, Ontario
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NOTICE is further given that the MFDA alleges the following violation of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between March 12, 2008 and May 1, 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 \$2 million of shares of a private company owned or controlled in part by the Respondent to a foreign pension fund, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2: Between March 12, 2008 and May 1, 2012, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by selling, recommending, referring or facilitating the sale of \$2 million of shares of a private company owned or controlled in part by the Respondent to a foreign pension fund, 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. From May 15, 2008 to May 1, 2012, the Respondent was registered in Ontario as a mutual fund salesperson (now called a “dealing representative”) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA. The Respondent resigned from Quadrus on May 1, 2012 as a result of the events described herein.

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

2. From August 25, 2006 to May 2, 2008, the Respondent had previously been registered in Ontario as a mutual fund salesperson with Brownstone Investment Planning Inc. (“Brownstone”), a former Member of the MFDA.²

Background

3. On February 24, 2012, Staff of the MFDA (“Staff”) first became aware of the Respondent’s involvement in the events described below following receipt of a report submitted by Quadrus through the MFDA’s Member Events Tracking System (“METS”), in accordance with MFDA Policy No. 6. Quadrus informed Staff that they had been contacted by the Ontario Securities Commission (“OSC”) regarding a civil action commenced by the Caja Paraguaya de Jubilacioness Y Pensiones Del Personal De Itaipu Binacional (“Cajubi”) against 33 defendants, including the Respondent.

4. The plaintiff in the civil action, Cajubi, is a pension fund providing benefits for the Paraguayan employees of Itaipu Binacional, the world’s largest hydroelectric power plant, an entity jointly owned by the governments of Paraguay and Brazil.

5. According to the Statement of Claim, Cajubi was seeking damages in relation to, among other things, \$2,000,000 it had provided to First Canadian Financial Private Wealth Group (“FC Financial Private Wealth Group”) to invest on its behalf. In the Statement of Claim, Cajubi alleged that FC Financial Private Wealth Group was supposed to invest the \$2,000,000 in conservative investments in Canada in a manner consistent with the long term objectives and limited risk tolerance of a pension fund. Cajubi alleged that FC Financial Private Wealth Group had instead invested the monies in speculative and other unsuitable, higher risk investments. Cajubi further alleged that the Respondent had misrepresented intentionally or negligently the nature and quality of the investments that FC Financial Private Wealth Group had made on behalf of Cajubi and had provided negligent investment advice.

² Brownstone ceased to be a Member of the MFDA on May 4, 2010 when it amalgamated with Wellington West Financial Services Inc., another Member of the MFDA.

Allegation #1 – Securities Related Business Outside the Member

6. On March 12, 2008, the Respondent, along with two other individuals, NT and JM (both non-Approved Persons) established FC Financial Private Wealth Group. At all material times, the Respondent was a director of FC Financial Private Wealth Group and held himself out as the President, Vice-President or as a senior executive of the company. The Respondent, NT and JM each owned one-third of the outstanding shares of FC Financial Private Wealth Group.

7. The Respondent, NT and JM purportedly established FC Financial Private Wealth Group to serve as a special purpose vehicle to facilitate investments by Cajubi in Canadian investments.

8. In March 2008, NT wrote to Cajubi proposing an investment in FC Financial Private Wealth Group as a means of providing Cajubi with the opportunity to invest in Canadian companies. NT represented to Cajubi that an investment in FC Financial Private Wealth Group would provide Cajubi with capital preservation and a maturity guarantee, as well as the opportunity to participate in the upside potential of the underlying investments.

9. On March 17, 2008, Cajubi signed a subscription agreement to purchase 2,000,000 shares of FC Financial Private Wealth Group for \$2,000,000. Under the terms of the investment, Cajubi was to receive 11.75% per annum on its investment and the return of its principal in March 2013.

10. On May 7, 2008, the Respondent signed a share certificate issuing 2,000,000 shares of FC Financial Private Wealth Group to Cajubi.

11. The \$2,000,000 FC Financial Private Wealth Group received from Cajubi was held in a bank account opened by FC Financial Private Wealth Group specifically for those monies. The Respondent, NT and JM had access to and control over the bank account.

12. The Respondent, NT and JM determined the investments that FC Financial Private Wealth Group would make on behalf of Cajubi. As set out in paragraph 18 below, a significant portion of the \$2,000,000 received from Cajubi was invested in or loaned to companies or

investments owned or controlled by the Respondent, NT and JM, or in which they had a direct or indirect interest.

13. The Respondent did not seek or obtain permission from Brownstone, or later from Quadrus, to establish and operate FC Financial Private Wealth Group or to provide products or services, including engaging in securities related business, to Cajubi or any other parties.

14. Neither the shares of FC Financial Private Wealth Group nor any of the investments made by FC Financial Private Wealth Group for Cajubi were investments known to or approved by Brownstone, or later Quadrus, for sale by their Approved Persons, including the Respondent. None of the investments or transactions carried out by FC Financial Private Wealth Group were carried on for the account or through the facilities of Brownstone or later Quadrus.

15. On May 15, 2008, the Respondent transferred his registration from Brownstone to Quadrus. On May 12, 2008, in advance of his transfer, the Respondent completed a Quadrus Compliance Checklist form on which he disclosed six companies with which he was involved, and one company, an exempt market dealer, with which he was no longer affiliated.³ The Respondent did not disclose his interest and involvement in FC Financial Private Wealth Group, or his dealings with Cajubi, on Quadrus's Compliance Checklist form.

16. At all material times, MFDA Rule 1.1.1(a) and Quadrus's policies and procedures prohibited the Respondent from selling or advising on investments through any entity other than Quadrus. Chapter 11 of Quadrus' Policies and Procedures manual stated that "investment representatives are prohibited from personally engaging in the sale of any investments that would be considered securities under applicable legislation or selling or advising on such investments through any entity other than Quadrus."

³ The Respondent had earlier applied to transfer his registration to Quadrus but Quadrus had declined his application due to his involvement with the exempt market dealer.

17. In addition, on April 23, 2008, in advance of his transfer to Quadrus, the Respondent signed an Exclusive Sales Agreement with Quadrus pursuant to which the Respondent agreed to the following conditions:

Subject to the Dealer Policies and in compliance with Applicable Laws, I will not engage in any other business or employment or in any financial planning activities, other than such business or employment and financial planning activities as are related to my insurance sales activities, without the prior approval of the Dealer. Any such prior approval may include conditions relating to the method by which I carry on such activities, and I agree to abide by such conditions.

18. FC Financial Private Wealth Group invested the monies it received from Cajubi in at least the following investments:

Investment / Advance	Value
Advances to 2310039 Ontario Limited (35 Tangiers Roads) *	\$836,760.00
Advances to 1839314 Ontario: Joint Venture (30% of Wismer 3 Development) *	\$418,910.00
Advances to Global Sport Technologies Corp	\$257,000.00
Mortgage Investment: 3 Peel Street, Toronto	\$200,000.00
Joint Ownership Investment (50% of 10565 Islington Avenue) +	\$141,500.00
Pre-IPO Private Placement: Commonwealth Silver and Gold	\$50,000.00
Advances for working capital to Mortgage Cents Inc. *	\$38,251.00
Advances to FC Financial Group *	\$28,803.00
Pre-IPO Private Placement: Discovery Harbour Resources	\$10,000.00
Total	\$1,981,224

* = investments in which the Respondent had a direct or indirect interest

+ = investment in which NT and JM had a direct or indirect interest

19. Of the nine investments listed in the chart above known to have been made by FC Financial Private Wealth Group for Cajubi, the Respondent admitted during the course of Staff's

investigation that he personally had a direct or indirect interest in four of the investments and that his partners, NT and JM, had a direct or indirect interest in a fifth investment (as noted in the chart above).

20. During the course of Staff's investigation, the Respondent admitted that he participated in the selection of investments made by FC Financial Private Wealth Group on behalf of Cajubi, that he met with a representative(s) of Cajubi to discuss the investments, and that during the course of his dealings with Cajubi, he held himself out as the President, Vice-President or a senior executive of FC Financial Private Wealth Group.

21. During the course of Staff's investigation, the Respondent stated that FC Financial Private Wealth Group did not earn any fees or commissions on the investments it made on behalf of Cajubi. The Respondent stated that they (the Respondent, NT and JM) intended to benefit from their activities with Cajubi by eventually taking FC Financial Private Wealth Group public and/or by retaining any of the investment returns FC Financial Private Wealth Group earned in excess of the 11.75% per annum promised to Cajubi.

22. Neither the Respondent nor FC Financial Private Wealth Group disclosed to Cajubi that its monies were being invested in investments in which the Respondent, NT and JM had direct or indirect interests.

23. Neither the shares of FC Financial Private Wealth Group nor any of the investments made by FC Financial Private Wealth Group for Cajubi were investments approved by Brownstone or Quadrus for sale by its Approved Persons, including the Respondent. None of the investments or transactions made by FC Financial Private Wealth Group or the Respondent were carried on for the account or through the facilities of Brownstone or Quadrus.

24. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of Brownstone or Quadrus, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

Allegation #2: Undisclosed Dual Occupation

25. At all material times, MFDA Rule 1.2.1(d)⁴ and Quadrus's policies and procedures prohibited the Respondent from engaging in an outside business activity unless, among other things, Quadrus was advised of the proposed activity and approved of it.

26. Chapter 11 of Quadrus' Policies and Procedures manual provided as follows with respect to outside business activities:

There are instances where the investment representatives may wish to become involved in secondary or part-time business pursuits outside of Quadrus or its related life insurance companies. There are strict requirements that govern involvement in such activities. Chief among these are:

- (i) The investment representative makes Quadrus aware of the activity;
- (ii) The applicable securities commissions do not prohibit the activity;
- (iii) Quadrus is advised of the proposed activity and approves it;
- (iv) All potential conflicts of interest that could arise are considered;
- (v) The activity does not bring the MFDA, Quadrus or the mutual fund industry into disrepute and;
- (vi) Clear disclosure is provided to clients explaining that any such activities are not Quadrus business and are not the responsibility of Quadrus.

27. The Respondent did not seek or obtain permission from Brownstone or Quadrus to engage in any outside business activities in relation to FC Financial Private Wealth Group Inc.

28. To the extent any or all of the conduct described in Allegation #1 may not have constituted securities related business, then it constituted another gainful occupation engaged in by the Respondent which was not disclosed to and approved by either Brownstone or Quadrus, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

⁴ See note 1 above.

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: David Babin, Enforcement Counsel
Fax: (403) 266-8858
Email: dbabin@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@mfda.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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