



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: Patrick Pasquale Caicco

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 April 23, 2015 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 Patrick Pasquale Caicco (the “Respondent”).

DATED this 6th day of March, 2015.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-945-5143
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: Between May 12, 2009 and March 12, 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, contrary to MFDA Rules 1.1.1 and 2.1.1, and sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #2: Between May 12, 2009 and March 12, 2010, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33 clients and other individuals outside the Member, 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 12, 2009 to March 12, 2010, the Respondent was registered in Ontario as a mutual fund salesperson (now referred to as a dealing representative in the category of mutual fund dealer) with Professional Investments (Kingston) (“Professional Investments”), a Member of the MFDA.

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

2. Prior to the Respondent's registration with Professional Investments, he had been intermittently registered in the securities industry in various capacities since approximately 1992. The Respondent is not currently registered in the securities industry in any capacity

3. During the material time, the Respondent resided and carried on business in Ottawa, Ontario.

Allegation #1: Securities related business outside the Member

4. On or about February 9, 2009, the Respondent incorporated Advantage Wealth Building Strategies Inc. ("Advantage") in the province of Ontario. Advantage purportedly carried on business providing wealth coaching and wealth planning services.

5. The Respondent never sought or obtained permission from Professional Investments to engage in any outside business activities through Advantage.

a) Skyline Apartment REIT

6. The Skyline Group of Companies ("Skyline") is a real estate acquisition, management and investment company. The Skyline Apartment REIT was launched in 2006, and is one of Canada's largest multi-residential real estate owners and managers.

7. From May 12, 2009 to March 12, 2010, the Respondent recommended, sold, facilitated the sale or made referrals in respect of the sale of at least \$1,343,449 of investments in the Skyline Apartment REIT to at least 21 investors outside of Professional Investments.² Four of the investors were clients of Professional Investments and they invested a total amount of approximately \$232,016.

8. At the time of these sales or referrals, the Skyline Apartment REIT was not approved by Professional Investments for sale by its Approved Persons, including the Respondent. The

² In total from February 27, 2009 to March 15, 2010, the Respondent referred or facilitated the investment of at least \$2,400,000 of Skyline Apartment REIT to at least 30 investors.

Respondent did not seek or obtain approval from Professional Investments with respect to his involvement in the sale or referral of the Skyline Apartment REIT. None of the sales or referrals of the Skyline Apartment REIT were processed through the facilities or for the account of Professional Investments. Professional Investments did not have a referral arrangement with Skyline.

9. All of the Respondent's sales or referrals of investments in the Skyline Apartment REIT were facilitated through Advantage. The Respondent received a 1% referral fee from Skyline relating to the sales or referrals of the Skyline Apartment REIT, which amounts were paid to Advantage.

10. None of the investors in the Skyline Apartment REIT who were sold or referred to the investment by the Respondent have complained to the MFDA or to Professional Investments.

b) The Assaly Group

11. The Assaly Group of Companies (the "Assaly Group") carried on business as a diversified real estate organization engaged in the development and management of residential and commercial properties in Canada and the US. The Assaly Group included but was not limited to: Assaly Financial Corporation, Act 1 Corp., Assaly Investment Program Corporation, Millennium Springs Development & Construction Corp., Assaly Credit & Trade Inc. and Thomas C. Assaly Charitable Foundation ("Foundation"). Thomas G. Assaly ("Assaly") was the president and sole director of the various corporate entities that formed the Assaly Group other than the Foundation, where he was the Chairman of the Board.

12. Between 2009 and 2012, Assaly through various Assaly Group corporations undertook several developments, including the following two projects:

- a) Nature's Walk Gated Community ("Nature's Walk"); and
- b) Villa Montague

a. Nature's Walk

13. Nature's Walk was promoted as a development which would include a gated community of 20 condominiums and a golf course. The Nature's Walk development included a 56 acre parcel of land and an abutting 100 acre parcel of land in North Grenville, Ontario. An Offering Memorandum was issued by Assaly Investment Program Corp. in March 2009 for the Nature's Walk development.

14. The Respondent was the sole promoter of the Nature's Walk investment. During the course of Staff's investigation, he admitted that he assisted in the creation of the investment product and marketing materials for the investment product, and that he solicited investments in the project.

15. The Respondent initially told prospective investors that the investment was being structured as a mortgage investment corporation which would hold a mortgage on Assaly's farm. Prospective investors were told they would receive an annual income of approximately 10% for a period of 5 years on their investment.

16. During the time the Respondent was registered with Professional Investments³, he facilitated investments in the Nature's Walk development by a total of 21 investors in the total amount of approximately \$2,108,000. Five of the 21 investors were clients of Professional Investments.

17. Twelve of the 21 investors paid \$1,306,000 in cash for their investments, which were to be held outside their RRSP's. The other 9 investors invested a total of \$802,000 using monies in their RRSP's.

³ The Respondent facilitated investments in Nature's Walk in the months prior to being registered at Professional Investments. The MFDA does not have jurisdiction over the activity engaged in by the Respondent prior to becoming an Approved Person. The Respondent did not disclose his involvement in that activity to Professional Investments at the time of his registration or thereafter.

18. Shortly after the investors advanced their monies for their investments in Nature's Walk, Assaly directed that the investment be restructured. The 21 investors who paid cash for their investments became Preferred A shareholders of Millennium Springs Development & Construction Corp. ("Millennium"), a company owned and controlled by Assaly. Millennium was purportedly the developer of the Nature's Walk project.

19. For the investors who held their investments in Nature's Walk in their RRSP's, their investments were restructured as a syndicated mortgage. The syndicated mortgage was not secured by the lands forming the Nature's Walk project but by an adjacent parcel of land consisting of wetlands which was valued at significantly less (approximately \$40,000) than the total amount that had been paid by these investors for their investments (\$802,000).

20. The investors in the Nature's Walk project received monthly dividends and interest payments respectively until approximately February 2011, when the payments stopped.

b. Villa Montague

21. Villa Montague was structured as a Real Estate Investment Pool ("REIP"). The project purportedly involved the redevelopment of an existing retirement residence in Smiths Falls, Ontario through renovations and expansion. An investor who purchased a unit in the REIP was supposed to receive regular payments of income, with a guarantee by Assaly Credit & Trade Inc. to buy back units from the investors in the year 2020.

22. During the time the Respondent was registered with Professional Investments, the Respondent recommended, sold, facilitated the sale or made referrals in respect of an investment in the amount of at least \$171,000 in Villa Montague to one individual outside of Professional Investments. (The individual was not a client of Professional Investments.)

23. At the time of these sales or referrals of investments in Nature's Walk and Villa Montague, Assaly Group investment products were not approved by Professional Investments for sale by its Approved Persons, including the Respondent. The Respondent did not seek or

obtain approval from Professional Investments with respect to his involvement in the sale or referral of the Assaly Group investment products. None of the sales of the Assaly Group investment products were processed through the facilities or for the account of Professional Investments. Professional Investments did not have a referral arrangement with the Assaly Group.

24. All of the Respondent's sales or referrals of investments in Nature's Walk and Villa Montague were made or facilitated through Advantage. The Respondent received a 3% referral fee from the Assaly Group relating to the sales or referrals of investments in Nature's Walk and Villa Montague, which amounts were paid to Advantage.

Legal proceedings by investors in the Assaly Group investment products

25. After the investors in the Assaly Group projects stopped receiving payments on their investments in February 2011, they eventually sued the Assaly Group in an attempt to recover their initial investment and any remaining amounts owing to them. The investors allege, among other things, that the Assaly Group investments were fraudulent in nature and that Assaly used investment proceeds for his personal benefit.

26. On or about April 27, 2013, the Ottawa Citizen published an article in which the Respondent was named as the financial advisor who had, between 2009 and 2010, facilitated the investment of approximately \$3.3 million into two real estate development projects promoted by the Assaly Group. Professional Investments saw the article and reported the matter to the MFDA. Shortly thereafter, Staff began its investigation into the Respondent's activities.

27. A Court appointed inspector in the legal proceedings determined that the Nature's Walk and Villa Montague projects "are hopelessly insolvent and in stages of abandonment". There is no reasonable prospect that the investors will recover the full amount of their investments.

Professional Investments' Policies and Procedures

28. At all material times, Professional Investments' policies and procedures, consistent with MFDA requirements, required all Approved Persons to report in writing all outside business activities to Professional Investments and to obtain their prior approval before commencing any outside business activities. Professional Investments required all of its Approved Persons, including the Respondent, to complete a Standard Associate Agreement and an Advisor Update Form listing any dual occupations or outside business activities.

29. On January 26, 2009, the Respondent completed the Standard Associate Form without disclosing his involvement with Skyline or the Assaly Group. The Respondent completed two (2) additional Advisor Update Forms without disclosing his involvement with Skyline or the Assaly Group.

Summary of Allegation #1

30. In summary, during the time the Respondent was registered at Professional Investments, he sold, recommended, referred or facilitated the sale of approximately \$3,352,449 of investments in the Skyline Apartment REIT, Nature's Walk and Villa Montague to 33 clients and other individuals, for which he received sales commissions, referral fees or other compensation in the amount of approximately \$73,704, all of which was paid to Advantage.

31. 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 Professional Investments, contrary to MFDA Rules 1.1.1 and 2.1.1 and sections 13.7 and 13.8 of National Instrument 31-103.

Allegation #2 – Undisclosed dual occupations

32. To the extent any of the activity described in Allegation #1 above did not constitute securities related business, then the Respondent had and continued in another gainful occupation

that was not disclosed to and approved by Professional Investments, contrary to MFDA Rules 1.2.1(d)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;
- 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

⁴ See Note 1 above.

- (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, ON 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:

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

- (b) transmitting one (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 one (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 416957 v2