



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Frank Siu-Cheong Pa

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Frank Siu-Cheong Pa (the “Respondent”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. Since August 3, 2001, the Respondent has been registered in Ontario as a mutual fund salesperson / dealing representative¹ with Portfolio Strategies Corporation (“PSC” or the “Member”). During the same period, the Respondent has also been registered in Alberta, British Columbia, Saskatchewan and Manitoba.

7. Prior to joining PSC, the Respondent was registered with two other mutual fund dealers.

8. Since October 7, 2003, the Respondent has been a branch manager at PSC. He is responsible for tier 1 supervision of approximately 10 other Approved Persons.

9. Since February 8, 2002, PSC has been a Member of the MFDA and the Respondent has been an Approved Person of PSC.

10. At all material times, the Respondent has carried on business in Markham, Ontario.

¹ In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

Background

11. In 1988, prior to becoming registered as mutual fund salesperson, the Respondent became a mortgage broker.

12. At all material times, the policies and procedures of the Member required Approved Persons to obtain prior written approval from a compliance officer of the Member before engaging in any outside business activity including any activities from which the Approved Person earns (or expects to earn) income or receive remunerations. The policy required Approved Persons to provide updates about their involvement in outside business activities at least annually and in the event of any material change in their outside business activities. In addition, the Member's policy stipulated that "Whether or not an [Approved Person] receives remuneration, being a partner, director, or officer of any company . . . or other entity is deemed to be an [Outside business Activity] and must be disclosed and approved."

13. The Respondent was aware of this policy and procedure and had previously disclosed and obtained approval from the Member to work as a mortgage broker and to serve as the principal mortgage broker and sole director of Atlantic (HS) Financial Corporation ("Atlantic Financial"). The Respondent's role with Atlantic Financial was recorded on the National Registration Database (the "NRD") and he was also registered with the Financial Services Commission of Ontario ("FSCO") to serve in that role.

14. The Respondent's engagement in other outside business activities described below came to light between January and March 2018 when the Ontario Securities Commission (the "OSC") conducted a review of mortgage investment corporations ("MICs") that had processed trades outside of a registered dealer (the "OSC Capital Raising Review").

Contravention #1 - Unapproved Outside Business Activities

15. In approximately 2009, the Respondent became one of four founding shareholders of Atlantic (HS) Capital Inc. ("Atlantic Capital"), a mortgage brokerage that was set up to fund private mortgages. The Respondent and the other shareholders of Atlantic Capital are not paid a salary by Atlantic Capital but they sometimes earn income from mortgages that they fund that are

facilitated by Atlantic Capital. Atlantic Capital also paid referral fees to Atlantic Financial for investment opportunities identified by Atlantic Financial that Atlantic Capital funded.

16. On February 24, 2014, a MIC called Atlantic Advantage Mortgage Investment Company (“AAMIC”) was incorporated in Ontario. In July 2014, the MIC commenced operations extending residential and commercial mortgages to borrowers in market segments that are underserved by large financial institutions. The Respondent was one of the founding common shareholders and an investor in preferred shares of the MIC and he agreed to serve as the President, Chief Executive Officer (“CEO”) and as a director of AAMIC. The Respondent was also a non-voting member of the AAMIC Credit Committee that evaluates which investment opportunities the MIC should fund. The Respondent did not receive remuneration for fulfilling his executive functions with AAMIC. He has consistently earned investment income from his preferred shares in the MIC. The day-to-day operations of AAMIC were handled by JW, the general manager and chief financial officer (“CFO”) of the MIC.

17. The Respondent also became the President, CEO, a director and the largest shareholder of Atlantic Advantage Management Inc. (“Atlantic Management”), a separately incorporated company that fulfills management responsibilities for AAMIC and receives management fees from the MIC. The offering memorandum indicates that Atlantic Management is entitled to receive management fees of up to 4% of the total gross proceeds under administration by AAMIC per year. However, to date, management fees paid by AAMIC have not exceeded 1% per year. Atlantic Management may also receive a performance fee of up to 12.5% of the annual net operating income of AAMIC per year if preferred shareholders have received a dividend of at least 8% in the year, however, to date, no performance fee has been paid to Atlantic Management.

18. AAMIC, Atlantic Capital and Atlantic Management operate from a separate office in the same building in which the Respondent’s mutual fund branch office is located.

19. An offering memorandum was issued by AAMIC in support of its efforts to raise capital for investment in mortgages by selling preferred shares in the MIC to prospective investors. The AAMIC offering memorandum identified the Respondent as the President and CEO and as a director of AAMIC and it referred to his experience in banking, mortgage brokering and real estate investment but it did not reference his role as an Approved Person of the Member.

20. The Respondent admits that prior to May 2018, he did not provide written disclosure to the Member or obtain written approval from the Member to engage in outside activities with:

- a) Atlantic Capital
- b) AAMIC; or
- c) Atlantic Management

contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d)² [now 1.3.2], 2.10, 2.5.1 and 1.1.2.

The Respondent's Request For Approval Of His Role With AAMIC

21. On May 9, 2018, after AAMIC was questioned by the OSC about the Respondent's role in AAMIC during the OSC Capital Raising Review, the Respondent submitted an Outside Activity Approval Request to the Member disclosing and seeking approval from the Member of his roles as President, CEO and a director of AAMIC. The Member granted its approval permitting him to continue to act in those roles.

Contravention #2 - Securities Related Business That Was Not Processed Through The Member

22. Prior to March 2018, approximately 68 individuals purchased Class A preferred shares of AAMIC. The shares were sold at a price of \$10 per share subject to a minimum initial subscription amount of \$25,000. The Respondent states that prior to March 2018, preferred shares of AAMIC were sold exclusively to family, close friends and business associates of the founders of AAMIC.

23. Prior to March 2018, the Respondent personally solicited investments totaling \$1,815,610 in Class A preferred shares of AAMIC from 12 individuals. Each of the 12 individuals that the Respondent solicited to purchase shares were family members or close personal friends of the Respondent.

²Effective December 3, 2010, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c). Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.

24. The Respondent did not offer or sell investments in preferred shares of AAMIC to any clients of the Member except for his wife (who was a Member client and an investor in the MIC).

25. Prior to March 2018, transactions for the purchase of preferred shares of AAMIC were not carried on for the account of the Member or processed through the facilities of the Member.

26. The Respondent introduced each of the 12 individuals to the opportunity to purchase shares in the MIC. He described the nature of the business as a company that offered residential and commercial mortgages to borrowers. He informed prospective investors that they could expect to receive annual dividends paid to preferred shareholders that would provide an annual rate of return of approximately 8%. In some cases, in response to requests from the individuals, he would send electronic copies of the offering memorandum. If individuals expressed interest in proceeding to purchase shares in AAMIC, the Respondent arranged for them to meet with JW, the general manager and CFO of AAMIC, to fill out necessary paperwork and pay for the shares that they wished to purchase.

27. JW would arrange for investors in preferred shares of AAMIC to sign a subscription agreement and a form confirming their eligibility to qualify to purchase an investment pursuant to a prospectus exemption. Investors were also provided with a copy of the offering memorandum, the most recent AAMIC annual report and a copy of AAMIC's most recent financial statements.

28. In his capacity as President and CEO of AAMIC, the Respondent signed letters to shareholders that were included in AAMIC's annual reports to investors and he signed share certificates that were issued to investors to evidence their investment in the MIC.

Changes That Occurred After The OSC Capital Raising Review

29. In April 2018, after AAMIC submitted responses to questioning from the OSC during the OSC Capital Raising Review, the Respondent and JW became aware that AAMIC was not permitted to sell shares in a MIC in Ontario unless the MIC was registered as an exempt market dealer or the shares were sold through a registered dealer. The Respondent and JW immediately arranged for AAMIC to voluntarily cease trading its preferred shares until arrangements could be made to sell the shares through the facilities of a registered exempt market dealer. The Respondent

also personally completed the proficiency requirements to become licensed to sell exempt products through an exempt market dealer.

30. In approximately November 2018, the preferred shares of AAMIC were officially added to the Member's product shelf and sales of preferred shares of AAMIC could then be processed through the facilities of the Member.

31. Since January 2019, the Respondent has been personally responsible for processing transactions in the preferred shares of AAMIC through the facilities of the Member.

32. Prior to March 2018, by soliciting 12 investors to purchase preferred shares of AAMIC that were not processed through the facilities of the Member, the Respondent engaged in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member, contrary to MFDA Rule 1.1.1(a).

Contravention #3 – Inaccurate Responses To Member Questionnaires

33. In December of each calendar year, Approved Persons of the Member were required to complete and submit an annual compliance certification questionnaire. The questionnaire listed various types of information that Approved Persons were required to report to the dealer including outside business activities, referral arrangements and client complaints and in their response, Approved Persons were required to certify that they had informed the Member of all material information or changes to information listed on the questionnaire including the outside business activities that the Approved Person was engaged in.

34. Between December 2014 and December 2017, the Respondent submitted 4 Annual Compliance Certification questionnaires in which he stated that he had previously notified the Member of all outside business activities that he was engaged in and he specified in his own handwriting on each form that he was engaged in mortgage brokering.

35. On an Annual Compliance Certification questionnaire dated December 6, 2017 (as a result of a small modification to the form), the Respondent also affirmed that he had disclosed to the Member all cases in which he had been an officer, director or shareholder of a company.

36. The Respondent had not disclosed to or obtained approval from the Member to engage in his roles with AAMIC, Atlantic Management or Atlantic Capital. Consequently, the annual compliance certification questionnaire responses that the Respondent submitted to the Member between 2014 and 2017 were inaccurate, contrary to MFDA Rule 2.1.1.

Additional Factors

37. The Respondent has accumulated more than 30 years of experience in the financial services industry including more than 20 years as a registrant in the securities industry and has no prior disciplinary history.

38. The Respondent states that prior to the founding of AAMIC, the Respondent informed a senior executive of the Member that he was planning to start a MIC and thereby demonstrated that he did not intend to hide his role with AAMIC from the Member but he admits that he did not comply with the requirement to submit an Outside Activity Approval Request to the Member's compliance department prior to assuming his roles with AAMIC.

39. Since May 2018 when the Respondent informed the Member about his activities with AAMIC, it has become apparent that if the Respondent had requested prior written approval from the Member of his undisclosed outside business activities, the Member's approval would have been granted and if asked, the Member would likely have agreed to permit the Respondent to process transactions in the preferred shares of the MIC through the facilities of the Member.

40. There is no evidence that any client suffered financial harm as a consequence of the Respondent's conduct and the Respondent has not been the subject of any client complaints.

41. The Respondent fully cooperated with Staff's investigation of his conduct.

42. By entering into this Settlement Agreement and admitting to the misconduct described above, the Respondent has accepted responsibility for his misconduct, demonstrated remorse and avoided the additional time and expense of a contested disciplinary proceeding.

V. CONTRAVENTIONS

43. The Respondent admits that between 2009 and March 2018, the Respondent engaged in outside business activities, including serving as President, Chief Executive Officer and director of a mortgage investment corporation without prior written approval from the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d)³ [now Rule 1.3.2], 2.10, 2.5.1 and 1.1.2.

44. The Respondent admits that between September 2014 and March 2018, the Respondent engaged in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member by selling, recommending, referring or otherwise facilitating investments in preferred shares of a mortgage investment corporation by 12 individuals including 1 client of the Member, contrary to MFDA Rule 1.1.1(a).

45. The Respondent admits that between 2014 and 2017, the Respondent provided inaccurate responses to the Member on four annual compliance questionnaires by inaccurately denying that he was engaged in any unapproved outside activities, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

46. The Respondent agrees to the following terms of settlement:

- a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of five months commencing from the date of a Hearing Panel's Order accepting this Settlement Agreement, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$25,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:
 - i. \$5,000 payable on the date that this Settlement Agreement is accepted by a Hearing Panel; and

³³In this Settlement Agreement, Staff is relying on MFDA Rule 1.2.1(d) that was in effect at the time when the Respondent became engaged with Atlantic Capital in 2009. As noted above, on December 3, 2010, former MFDA Rule 1.2.1(d) was renumbered as Rule 1.2.1(c). Effective, March 17, 2016, former Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

- ii. \$1,667 payable on the first day of each month from August 1, 2020 to July 1, 2021;
- c) the Respondent shall pay costs to the MFDA in the amount of \$5,000 on the date that the Hearing Panel issues an Order accepting this Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.3, 1.1.1(a) and 2.1.1 and the policies and procedures of any Member with whom he is registered in the future; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

47. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contravention described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not referenced in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether such facts are known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

48. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

49. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted

respecting the Respondent in this matter, and the Respondent agrees to waive her rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

50. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

51. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

52. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

53. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

54. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XI. DISCLOSURE OF AGREEMENT

55. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law.

56. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XII. EXECUTION OF SETTLEMENT AGREEMENT

57. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

58. A facsimile copy of any signature shall be effective as an original signature.

DATED this 22nd day of June, 2020.

“Frank Siu-Cheong Pa”

Frank Siu-Cheong Pa

LH

Witness – Signature

LH

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

Schedule “A”

Order

File No. 202029



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Frank Siu-Cheong Pa

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Frank Siu-Cheong Pa (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS based upon the admissions of the Respondent, the Hearing Panel is of the opinion that:

- i. between 2009 and March 2018, the Respondent engaged in outside business activities, including serving as President, Chief Executive Officer and director of a mortgage investment corporation without prior written approval from the Member,

contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d) [now Rule 1.3.2]⁴, 2.10, 2.5.1 and 1.1.2;

- ii. between September 2014 and March 2018, the Respondent engaged in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member by selling, recommending, referring or otherwise facilitating investments in preferred shares of a mortgage investment corporation by 12 individuals including 1 client of the Member, contrary to MFDA Rule 1.1.1(a); and
- iii. between 2014 and 2017, the Respondent provided inaccurate responses to the Member on four annual compliance questionnaires by inaccurately denying that he was engaged in any unapproved outside activities, contrary to MFDA Rule 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of five months commencing from the date of this Order, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$25,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 which shall be payable in instalments as follows:
 - a) \$5,000 payable on the date that this Settlement Agreement is accepted by a Hearing Panel; and
 - b) \$1,667 payable on the first day of each month from August 1, 2020 to July 1, 2021;
3. The Respondent shall pay costs to the MFDA in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1; and

⁴Effective December 3, 2010, MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1 (c). Effective, March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from the requested documents any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 752250