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CASE SUMMARY # 200607
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MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

MFDA imposes lifetime ban and \$150,000 fine on Lip Fee Chan (also known as Phillip Chan)

Nature of Proceeding

A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has imposed disciplinary penalties on Lip Fee Chan also known as Phillip Chan (“Chan”), a former Approved Person of the MFDA.

By-Laws, Rules, Policies Violated

Following a hearing on January 17, 2007, the Hearing Panel found that:

1. Chan had engaged in securities related business outside the Member, contrary to MFDA Rule 1.1.1;
2. In the alternative to #1 above, Chan had engaged in a gainful occupation outside the Member without advising the Member and obtaining the approval of the Member, contrary to MFDA Rule 1.2.1(d); and
3. Chan had placed his own interests above those of a client and had failed to deal fairly, honestly and in good faith with that client by accepting from him and failing to invest \$50,000, contrary to MFDA Rules 2.1.4 and 2.1.1.

MFDA Rule 1.1.1 states that:

No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and

(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

(b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;

(c) the relationship between the Member and any person conducting securities related business on account of the Member is that of:

(i) an employer and employee, in compliance with Rule 1.1.4,

(ii) a principal and agent, in compliance with Rule 1.1.5, or

(iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;

(d) the business or trade or style name under which such securities related business is conducted is in accordance with Rule 1.1.7.

MFDA Rule 1.2.1(d) states:

Dual Occupations. An Approved Person may have, and continue in, another gainful occupation, provided that:

(i) *Permitted by legislation.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business specifically permits him or her to devote less than his or her full time to the business of the Member for which he or she acts on behalf of;

(ii) *Not prohibited.* The securities commission in the jurisdiction in which the Approved Person carries on or proposes to carry on business does not prohibit an Approved Person from engaging in

such gainful occupation;

(iii) *Member approval*. The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;

(iv) *Member procedures*. Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;

(v) *Conduct unbecoming*. Any such gainful occupation of the Approved Person must not be such as to bring the Corporation, its Members or the mutual fund industry into disrepute;

(vi) *Disclosure*. Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and

(vii) *Financial planning*. Any Approved Person that engages in financial planning services otherwise than through or on behalf of a Member must:

(A) Regulations - provide such services through another person that is either regulated by a governmental authority or statutory agency or subject to the rules and regulations of a widely-recognized professional association;

(B) Legislation - comply with the requirements of any applicable legislation in connection with the services;

(C) Access - ensure that, subject to any applicable legislation, the Member and the Corporation have access to financial plans prepared on behalf of the clients of the Member by its Approved Persons; and

(D) Proficiency - have satisfied any applicable proficiency requirements by securities regulatory authorities having jurisdiction.

MFDA Rule 2.1.4 states:

Conflicts of Interest

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is

addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

MFDA Rule 2.1.1(a) states that:

Each Member and each Approved Person of a Member shall:

(a) deal fairly, honestly and in good faith with its clients;

Penalty

The Hearing Panel imposed the following penalties on Chan:

1. A permanent prohibition of the authority of Chan to conduct securities related business in any capacity while in the employ of or sponsored by any Member;
2. A fine in the amount of \$50,000 for engaging in securities related business outside the Member;
3. A fine in the amount of \$100,000 for failing to invest and account for client funds; and
4. Costs in the amount of \$7,500.

Summary of Facts

Commencing January 1996, Chan was registered in Ontario as a mutual fund salesperson. From September 1999 to February 2005, Chan was a mutual fund salesperson for Investia Financial Services Inc. (“Investia”), a Member of the MFDA.

Between June 2000 and October 2002, Chan recommended that a client invest a total of \$477,000 in investment products that were not mutual funds approved for sale in Ontario and were not otherwise known to or approved for sale by Investia. Chan facilitated these transactions outside of the accounts, books and records of Investia. The Hearing Panel noted that it was not clear whether these transactions involved securities and found that to the extent that

the transactions did involve securities, Chan had engaged in securities related business outside Investia, contrary to MFDA Rule 1.1.1. To the extent that the transactions did not involve securities, the Hearing Panel found that Chan had engaged in a gainful occupation outside Investia without advising Investia and obtaining its approval, contrary to MFDA Rule 1.2.1(d).

In May 2001, Chan received from the same client \$100,000 to invest on his behalf. Chan invested \$52,000, with \$48,000 unaccounted for. In May 2002, Chan received a further \$150,000 from the same client, but only invested \$100,000, with \$50,000 unaccounted for. Chan admitted owing the client \$98,000. Although both of the transactions were initiated before June 7, 2002, the date on which Investia became a Member of the MFDA, the Panel found that the May 2002 transaction constituted a failure by Chan to invest \$50,000 of client funds, contrary to MFDA Rules 2.1.4 and 2.1.1. However, the Panel found that the May 2001 transaction occurred over a year before Investia became a Member and as such, Chan's failure to invest those client funds constituted a misappropriation completed prior to the MFDA assuming jurisdiction over Chan. In assessing the appropriate penalty to impose on Chan, however, the Hearing Panel considered both the May 2001 and May 2002 transactions.

For greater detail, see the Decision and Reasons posted on the MFDA's website in the "Completed Cases" section under "Enforcement".