



Mutual Fund Dealers Association of Canada  
Association canadienne des courtiers de fonds mutuels  
121 King Street West, Suite 1000, Toronto, Ontario, M5H 3T9  
TEL: 416-361-6332 FAX: 416-943-1218 WEBSITE: www.mfda.ca

Contact: Hugh Corbett  
Director of Litigation  
Phone: 416-943-4685  
Email: hcorbett@mfda.ca

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# MFDA Bulletin

## Enforcement

**For Distribution to Relevant Parties Within your Firm**

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### **MFDA imposes lifetime ban and \$35,000 fine on Ernest Lo**

**Nature of Proceeding** A Hearing Panel of the Ontario Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has imposed disciplinary penalties on Ernest Ming Chung Lo (“Lo”), a former Approved Person of the MFDA.

**By-Laws, Rules, Policies Violated** Following a hearing on March 3, 2006, the Hearing Panel found that:

1. Lo engaged in securities related business outside the facilities of the Member, contrary to MFDA Rule 1.1.1;
2. Lo failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b); and
3. Lo failed to provide a written report requested by the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-law No. 1.

MFDA Rule 1.1.1(a) states that:

**Members.** 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.

MFDA Rule 2.1.1(b) states that:

Each Member and each Approved Person of a Member shall:

- (b) observe high standards of ethics and conduct in the transaction of business

Section 22.1(b) of MFDA By-law No. 1 states:

For the purpose of any examination or investigation pursuant to this By-law, a Member, Approved Person of a Member or other person under the jurisdiction of the Corporation pursuant to the By-laws or the Rules may be required by the Corporation:

- (a) to submit a report in writing with regard to any matter involved in any such investigation.

**Penalty**

The Hearing Panel imposed the following penalties on Lo:

1. A permanent prohibition of the authority of Lo to conduct securities related business in any capacity;
2. A fine in the amount of \$35,000; and
3. Costs in the amount of \$2,000.

**Summary of Facts**

From November 1996 until December 2004, Lo was registered in Ontario as mutual fund salesperson with PFSL Investments Canada Ltd. (“PFSL”), a Member of the MFDA.

In December 2003, Lo met David Braganza (“Braganza”). Braganza held a Level II life insurance license with the Financial Services Commission of

Ontario (“FSCO”). Braganza told Lo that he was in the business of receiving funds for investment in “bridge financing deals that involved funding for margin calls, primarily in Europe”. The investments would be for a short term and would yield a substantial rate of interest. Braganza was not registered or otherwise qualified to sell securities in Ontario. The investments were not known to or approved for sale by PFSL.

Lo initially invested \$40,000 of his own money with Braganza. During the months of February and March 2004, Lo received “interest” payments from Braganza. Lo invested an additional \$15,000-\$20,000 of his own money with Braganza.

In March 2004, Lo brought three mutual fund clients to a pre-arranged meeting with Braganza at a restaurant. Braganza explained the investment program and answered questions from the prospective investors.

One of these clients was LC. Lo recommended the Braganza investment to LC and facilitated her investment by acting as an intermediary between Braganza and LC. Lo received \$10,000 from LC and delivered the funds to Braganza. Braganza provided Lo with a receipt, which Lo delivered to LC. LC’s initial investment of \$10,000 was supposed to mature in May 2004. Braganza defaulted. Braganza provided an additional note to “extend” the investment to August 2004. Braganza defaulted in August 2004. In October 2004, LC sued Braganza, Lo and PFSL in Small Claims Court for recovery of her \$10,000 investment plus interest and costs.

Upon receipt of the Small Claims Court proceedings in November 2004, PFSL suspended Lo and commenced an investigation. During this time, Lo obtained \$12,000 from Braganza and gave it to LC in satisfaction of her claim. PFSL terminated Lo for cause in early December 2004. Lo has not been paid back any of the amounts that he invested with Braganza.

In August 2005, the MFDA requested that Lo provide a written report concerning his activities. The request was made pursuant to the investigative powers of the MFDA as set out in s. 22.1 of MFDA By-law No. 1. Lo failed to respond to the request. In September 2005, the MFDA reminded Lo of his obligation to respond to the request and cooperate with the investigation. Again, Lo did not respond. In his Reply to the Notice of Hearing, Lo acknowledged receipt of the MFDA’s requests and admitted that he had failed to respond. However, Lo stated that had responded to inquiries from FSCO and thought that by responding to FSCO he was also responding to the MFDA.

The Hearing Panel stated that Lo had breached MFDA Rule 1.1.1(a) by facilitating LC’s participation in the Braganza investment, which was not approved for sale by PFSL and was sold outside the accounts and facilities of

PFSL. The Hearing Panel stated that it had “no difficulty” finding that Lo had committed a serious breach of the acceptable standard of conduct expected of a mutual fund salesperson by facilitating LC’s participation in the Braganza investment, contrary to MFDA Rule 2.1.1(b).

In determining that Lo failed to cooperate with an MFDA investigation, the Hearing Panel did not accept Lo’s explanation that he thought his response to FSCO was sufficient. The Hearing Panel stated “in our view, as an Approved Person or former Approved Person, there should have been no confusion”. However, the Hearing Panel stated that Lo’s apparent mistaken belief concerning his response to FSCO, together with his cooperation with the MFDA after the Notice of Hearing was issued, were mitigating factors to be considered when determining the appropriate penalty to impose on him.

In determining the appropriate penalty to impose on Lo, the Hearing Panel stated that it wanted to communicate to Lo, the mutual fund industry and the investing public that serious consequences will befall those who facilitate investments by mutual fund clients in investments that are not approved for sale by a Member and are sold outside the Member.

For more information, see the Decision and Reasons posted on the MFDA’s website under “Enforcement”.