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

Heard: June 25, 2015 in Toronto, Ontario
Reasons for Decision (Penalty): September 4, 2015

REASONS FOR DECISION
(PENALTY)

Hearing Panel of the Central Regional Council:

Paul M. Moore Q.C.	Chair
Mike Elliott	Industry Representative
Robert C. White	Industry Representative

Appearances:

David Babin	)))	For the Mutual Fund Dealers Association of Canada
Kevin Richard	)))	For the Respondent

1. We have come to a decision on penalty. As I mentioned at the beginning of this morning, we will tell you what our decision is, we will highlight the reasons, and then we will get a transcript of the reasons and we will expand them into a full written set of reasons [*this document*].

2. We determine the appropriate penalty to be a fine of $15,000, a prohibition from participating in the industry for six (6) months, and a cost award of $5,000.

3. Staff of the MFDA ("Staff") requested a fine of $100,000, costs in the amount of $10,000, and a permanent prohibition.

4. The Respondent suggested a fine of $10,000, no cost award, and no prohibition.

5. In arriving at our decision, we took into account, first and foremost, that the principal, and more serious, allegations in this matter, which related to whether or the Respondent was engaged in securities business, were not proved. We found that the activities of the Respondent did not constitute securities related business, did not involve any soliciting or sales of securities, and did not involve advising.

6. Secondly, we noticed that there was no client involvement and no evidence of harm to clients of the Respondent or his Member or anyone else, and that the Respondent was not involved in holding himself out as a representative of Quadrus or Brownstone or as a mutual fund representative.

7. His other business activities in issue did not relate to that. They related to managing and participating in the selection of investments of Private Wealth, a private company.

8. There was no evidence that the Respondent's activities, apart from his failure to report to and seek approval of his Member, involved any kind of impropriety, such as an illegal distribution of securities, or borrowing from clients, or getting clients into things that were not suitable for them. As we mentioned in our Decision and Reasons (Misconduct), the principal

allegations related to the Respondent's alleged involvement in what was a private placement of securities done by an exempt market dealer, with no evidence that anybody did anything improper.

9. We listened closely to the submission of Staff that the activities that constituted the other business activity, was related to investments (of Private Wealth), but nothing really turns on that.

10. We also took into account Staff's emphasis on the importance of supervision and disclosure by a respondent or a representative so that the employer Member can do its duty in supervising and protecting clients. It may well have been that the kind of activity that the Respondent was involved in would have been of great interest to Quadrus, and whether they would have approved it or not we do not know. They were not given that opportunity. We took this into account in determining the penalties.

11. We did not see any conflict of interest on the part of the Respondent that was improper. There was no evidence to lead us to doubt the Respondent's assertion that he told Cajubi about his involvement in his activities with Private Wealth. This was not in issue before us.

12. The failure of the Respondent to disclose to his Member his office and directorship with Private Wealth and his involvement with the investing of funds of Private Wealth was wrong. It is now admitted by the Respondent that ignorance is no excuse, and there has to be consequence from this failure.

13. We took into account the fact that the Respondent omitted to mention the directorship of, and office with, Private Wealth in responding to his Member through a questionnaire as to whether there were any other offices and directorships held by him. We have no reason to conclude that deliberate fraud was involved, but he was negligent, and had no excuse for his mis-disclosure in the questionnaire.

14. While deterrence is important, every deterrent does not have to amount to a death sentence, in the financial sense. A permanent prohibition from participation in the industry

would be equivalent to an occupational death sentence for the Respondent. Putting someone out of the business forever should not be imposed lightly.

15. Staff submitted that the Respondent might violate these kinds of rules in the future because the Respondent might be ungovernable. We were not satisfied, when we look at the nature of the other business activity, and all the circumstances of this case, that the Respondent is ungovernable.

16. We did not impose a term of strict or close supervision on the Respondent because the nature of the wrongdoing in this case was not trading or doing the kinds of things that the compliance department of a Member would monitor.

17. We did not require the Respondent to retake a course of study of the industry. The Respondent's problem in this case stemmed from negligence or lack of care in making disclosure. Requiring the Respondent to take a course would really not address that question.

18. We know that when the Respondent goes back into the industry his employer will obviously be aware of this case and will understand the necessity of making sure that the Respondent is fully aware of and agrees to comply with all of its policies and procedures, which will be similar to the policies and procedures that Quadrus had.

19. We reviewed with counsel at the hearing the various cases referred to us as precedents regarding penalty. Unlike in our case, most of them involved situations where clients were involved or there were losses by a client, or where the respondent in those cases was taking advantage of the fact he or she was with a registrant and that the persons involved went to the respondent because of, perhaps, or with the knowledge that it was important that the person involved was involved with a Member or registrant, or that securities related businesses were involved. Our case is different.

20. We deliberated over an appropriate fine, cost award, and suspension.

21. As far as a fine is concerned, we believe that the minimum suggested in the MFDA's Penalty Guidelines is $10,000 and not $15,000 as suggested by Staff.

22. We feel it is necessary to go above that minimum in the circumstances before us, and we believe a $15,000 fine is the appropriate amount.

23. With respect to costs, we have to take into account that the major allegation was not proved, and, therefore, a cost award of $5,000 in this situation is appropriate.

24. The toughest question is suspension. We easily agreed that a permanent suspension was not appropriate, and we finally decided that under all the circumstances of sending the right message, providing the right deterrence, and acknowledging that the Respondent has been out of the industry for the last three years, a six-month suspension is appropriate.

25. These Reasons for Decision (Penalty) should be read with our Decision and Reason (Misconduct) where various terms used herein are defined.

DATED this 4th day of September, 2015.

"Paul M. Moore"

Paul M. Moore Q.C.
Chair

"Mike Elliott"

Mike Elliott
Industry Representative

"Robert C. White"

Robert C. White
Industry Representative

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