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Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Notice of Hearing

File No. 202317

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
Aziz Fatehali Khamisa and Antony Kin San Chau**

NOTICE OF HEARING

NOTICE is hereby given that a disciplinary proceeding has been commenced by the Canadian Investment Regulatory Organization (“CIRO”) against Aziz Fatehali Khamisa (“Khamisa”) and Antony Kin San Chau (“Chau”) (collectively, the “Respondents”). The first appearance will take place electronically by videoconference before a hearing panel of the Ontario District Hearing Committee of CIRO (the “Hearing Panel”) on September 14, 2023, at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held. The Hearing on the Merits will take place at a time and venue to be announced. Members of the public who would like to attend the first appearance by videoconference as an observer should contact hearings@mfd.ca to obtain particulars.

DATED this 17th day of July, 2023.

“Michelle Pong”

Michelle Pong
Director, District Hearing Committees,
Mutual Fund Dealer Division

Canadian Investment Regulatory Organization
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
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NOTICE is further given that CIRO alleges the following violations of the Mutual Fund Dealer Rules:

Allegation #1: Between December 14, 2020 and January 28, 2021, Khamisa failed to disclose an agreement that was material to a proposed transaction to effect a change of control of a Member of the MFDA, thereby:

- (a) failing to provide full disclosure of the material terms of the proposed transaction, contrary to Mutual Fund Dealer Rules 2.1.1, 2.5.2, and 1.1.2(b) (as it relates to section 3.10 of CIRO By-law No. 1) (formerly MFDA Rules 2.1.1, 2.5.2, and 1.1.2 (as it relates to section 13.7 of MFDA By-law No. 1));
- (b) failing to provide information to the MFDA that it required or considered necessary or desirable, contrary to section 3.10 of CIRO By-law No. 1 (formerly, section 13.7 of MFDA By-law No. 1) and Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); or
- (c) misleading the MFDA concerning the full terms of the proposed change of control, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).¹

Allegation #2: Between December 14, 2020 and January 28, 2021, Chau failed to disclose an agreement that was material to a proposed transaction to effect a change of control of a Member of the MFDA, thereby:

- (a) failing to provide full disclosure of the material terms of the proposed transaction, contrary to Mutual Fund Dealer Rules 2.1.1 and 1.1.2(b) (as it relates to section 3.10 of CIRO By-law No. 1) (formerly MFDA Rules 2.1.1 and 1.1.2 (as it relates to section 13.7 of MFDA By-law No. 1));

¹ Staff alleges that, at the time of the misconduct, the Respondents contravened section 13.7 of MFDA By-law No. 1 and MFDA Rules 1.1.2 (as it relates to section 13.7 of MFDA By-law No. 1), 2.5.2, and 2.1.1, which are now incorporated into section 3.10 of CIRO By-law No. 1 and Mutual Fund Dealers Rules 1.1.2 (as it relates to section 3.10 of CIRO By-law No. 1), 2.5.2, and 2.1.1 referred to in this proceeding.

- (b) failing to provide information to the MFDA that it required or considered necessary or desirable, contrary to section 3.10 of CIRO By-law No. 1 (formerly, section 13.7 of MFDA By-law No. 1) and Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); or
- (c) misleading the MFDA concerning the full terms of the proposed change of control, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 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 CIRO at the hearing:

Registration History

Chau

1. Between approximately 1995 and March 2021, Chau was registered in the securities industry.
2. Between September 2009 and January 29, 2021, Chau was the controlling shareholder, officer, and sole director of TeamMax Investment Corp. (the “**Member**”), a former Member of the MFDA.
3. Between September 2009 and March 1, 2021, Chau was registered in Ontario and British Columbia as a dealing representative with the Member.
4. Between January 4, 2010 and January 10, 2020, Chau was registered as the Ultimate Designated Person (“**UDP**”) of the Member.
5. Chau is no longer registered in the securities industry in any capacity.
6. At all material times, Chau conducted business in the Richmond Hill, Ontario area.

Khamisa

7. Between December 5, 2006 and March 30, 2022, Khamisa was registered in the securities industry.

8. Between August 7, 2019 and March 30, 2022, Khamisa was registered in Ontario and British Columbia as a dealing representative with the Member.
9. Between August 7, 2019 and March 30, 2022, Khamisa was registered as the Chief Compliance Officer (“**CCO**”) of the Member.
10. Between January 28, 2020 and March 30, 2022, Khamisa was registered as the UDP of the Member.
11. Khamisa is no longer registered in the securities industry in any capacity.
12. At all material times, Khamisa conducted business in the Richmond Hill, Ontario area.
13. Effective August 12, 2022, the Member resigned from Membership in the MFDA.

Allegations #1 & #2 – The Respondents Failed to Disclose a Material Agreement Related to a Change of Control of the Member

14. At all material times, pursuant to section 13.7 of MFDA By-law No. 1 (now section 3.10 of CIRO By-law No. 1), MFDA approval was required for, among other things, any change of control of a Member. In particular, section 13.7 stated that:
 - (a) the Member must give written notice to the MFDA of any proposed change of control;
 - (b) upon receiving notice, the MFDA shall review the proposed transaction and may request from the Member, its auditors, or any other person involved in the transaction, such information as the MFDA may require or consider necessary or desirable; and
 - (c) the MFDA may (i) approve the transaction (which approval may be subject to terms and conditions) or (ii) direct that the transaction not be completed if the MFDA determines in its sole discretion that the obligations of the Member to its clients cannot be satisfied or the By-laws and Rules will not be complied with by the Member.

15. On or around December 11, 2020, Khamisa and Chau entered into a Share Purchase Agreement pursuant to which Khamisa purchased from Chau all of the shares of the Member.
16. At the time of the Share Purchase Agreement, Khamisa was the UDP of the Member, and Chau was the sole owner, controlling shareholder, and director of the Member.
17. On or around the same date, Khamisa and Chau entered into an additional agreement titled: “Strictly Private and Confidential (NDA) (Re: Ultimate Spirit of Agreement TeamMax Investment Corp)” (the “**Spirit Agreement**”).
18. The Spirit Agreement provided that:
 - (a) Chau would retain control of the “Advisors Network” at the time of the closing of the Share Purchase Agreement as well as any advisors recruited by Chau;
 - (b) Chau would have “rights” with respect to the “Advisor’s Grid”;
 - (c) Chau would have signing authority over the “TD Bank Operating Account”; and
 - (d) Chau’s prior approval was required for any further sale of the shares of the Member.
19. The Spirit Agreement also provided that all of the above terms take priority over the terms of the Share Purchase Agreement.
20. The Spirit Agreement purported to give Chau control over material aspects of the Member’s operation and business.
21. Chau has asserted that the Spirit Agreement gave him control over, among other things, the termination of advisors, compensation from commissions paid to advisors and to Chau, and the Member’s bank account.
22. On December 14, 2020, Khamisa left a voicemail with MFDA Staff (“**Staff**”), advising of the proposed change of control of the Member.

23. On the same date, Khamisa emailed Staff, copying Chau, and provided Staff with a copy of the Share Purchase Agreement.

24. Although Chau and Khamisa had already entered into the Spirit Agreement at the time, neither of them provided a copy of the Spirit Agreement or disclosed its terms or existence to the MFDA.

25. On December 15, 2020, Staff emailed Khamisa, copying Chau, requesting additional information concerning the proposed change of control of the Member. In particular, Staff requested information about any anticipated changes to the Member's operations following the closing of the proposed change of control, contemplated by the Share Purchase Agreement.

26. On December 15, 2020, Khamisa emailed Staff, copying Chau, advising, among other things, that the Member did not anticipate any changes to its operations following the closing of the proposed change of control.

27. Neither of the Respondents provided a copy of the Spirit Agreement or disclosed its existence in response to Staff's inquiries.

28. Staff reviewed the proposed change of control for, among other things, its impact on the Member's operations, finances, and compliance with the MFDA By-laws and Rules based on the representations and information received from Khamisa and Chau.

29. On December 18, 2020, the MFDA approved the proposed change of control of the Member set out in the Share Purchase Agreement, subject to two conditions,² which were satisfied on January 28, 2021.

30. Khamisa, as the purchaser and UDP of the Member, failed to disclose the Spirit Agreement to Staff.

² The two conditions were: (1) evidence that the Member would continue to be compliant with MFDA Rule 4, namely the requirement that it hold an appropriate financial institution bond; and (2) evidence of approval (or non-objection) of the proposed change of control of the Member by the provincial securities regulator(s).

31. Chau, as the seller and the owner, controlling shareholder, and sole director of the Member, failed to disclose the Spirit Agreement to Staff.

32. By failing to disclose the Spirit Agreement to Staff when seeking approval of the change of control of the Member, Khamisa:

- (a) failed to provide full disclosure of the material terms of the proposed transaction, contrary to Mutual Fund Dealer Rules 2.1.1, 2.5.2, and 1.1.2(b) (as it relates to section 3.10 of CIRO By-law No. 1) (formerly MFDA Rules 2.1.1, 2.5.2, and 1.1.2 (as it relates to section 13.7 of MFDA By-law No. 1));
- (b) failed to provide information to the MFDA that it required or considered necessary or desirable, contrary to section 3.10 of CIRO By-law No. 1 (formerly, section 13.7 of MFDA By-law No. 1) and Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); or
- (c) mislead the MFDA concerning the full terms of the proposed change of control, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

33. By failing to disclose the Spirit Agreement to Staff when seeking approval of the change of control of the Member, Chau:

- (a) failed to provide full disclosure of the material terms of the proposed transaction, contrary to Mutual Fund Dealer Rules 2.1.1 and 1.1.2(b) (as it relates to section 3.10 of CIRO By-law No. 1) (formerly MFDA Rules 2.1.1 and 1.1.2 (as it relates to section 13.7 of MFDA By-law No. 1));
- (b) failed to provide information to the MFDA that it required or considered necessary or desirable, contrary to section 3.10 of CIRO By-law No. 1 (formerly, section 13.7 of MFDA By-law No. 1) and Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1); or
- (c) mislead the MFDA concerning the full terms of the proposed change of control, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 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 pursuant to Mutual Fund Dealer Rule 1A that any person subject to the jurisdiction of the Mutual Fund Dealers Association of Canada prior to January 1, 2023 remains subject to the jurisdiction of CIRO in respect of any action or matter that occurred while that person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada at the time of such action or matter.

NOTICE is further given that the Mutual Fund Dealer Rules provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with CIRO;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Dealer Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of the Mutual Fund Dealer Rules of CIRO;
- has engaged in any business conduct or practice which such Hearing Panel 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

- (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 Office of the Corporate Secretary, Mutual Fund Dealer Division within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Canadian Investment Regulatory Organization

121 King Street West, Suite 1000

Toronto, ON M5H 3T9

Attention: Alan Melamud

Email: amelamud@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Office of the Corporate Secretary, Mutual Fund Dealer Division by personal delivery, mail or courier to:

Canadian Investment Regulatory Organization

121 King Street West, Suite 1000

Toronto, ON M5H 3T9

Attention: Office of the Corporate Secretary, Mutual Fund Dealer Division; or

- (b) transmitting 1 electronic copy of the **Reply** to the Office of the Corporate Secretary, Mutual Fund Dealer Division 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 CIRO in the Notice of Hearing; or

- (ii) admit the facts alleged and conclusions drawn by CIRO 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 CIRO 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 CIRO in the Notice of Hearing as having been proven and may impose any of the penalties described in the Mutual Fund Dealer Rules.

End.

DM 906205

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s.14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.