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Discipline

Discipline Penalties Imposed on Xavier Cheng Kuo Li; Violations of By-law 29.1

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Xavier Cheng Kuo Li (Li), at all material times a registered representative who was employed by Edward Jones, a Member of the IDA.

By-laws,
Regulations,
Policies Violated On July 13, 2007, a Hearing Panel considered, reviewed, and accepted a Settlement Agreement negotiated between Li and Staff of the Enforcement Department of the IDA (Staff).

Pursuant to the Settlement Agreement Li admitted to the following contraventions of Association By-law 29.1:

- i. in December 2005, without the knowledge and consent of HFC and CKL, Li caused the instructions on the Authorization to Transfer: Non-Registered Account Form that had been signed on or about November 28, 2005 by HFC and CKL, to be altered from transfer “all in kind (as is)” to transfer “all in cash”, and thereby failed in his duty to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct unbecoming or detrimental to the public interest;
- ii. in January 2006, without the knowledge and consent of HFC and CKL, Li purchased units of mutual funds for HFC and CKL, and thereby failed in his duty to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct unbecoming or detrimental to the public interest; and

- iii. in January 2006, without the knowledge and consent of his employer, Li attempted to settle HFC's and CKL's complaint, and thereby failed in his duty to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct unbecoming or detrimental to the public interest.

Penalty Assessed The following penalties were assessed against Li:

- a suspension from approval in any registered capacity with the Association for a period of six weeks;
- payment of a fine in the amount of \$45,000;
- close supervision for a period of 12 months upon any subsequent registration with a Member firm; and
- payment towards the Association's costs of the investigation and the prosecution of this matter in the amount of \$4,000.

Summary of Facts The Settlement Agreement relates to events which occurred between November 2005 and January 2006.

Contravention #1: Altering of Authorization to Transfer: Non-Registered Account Form

HFC and her husband CKL had a joint investment account with CIBC Investor Services Inc. (the CIBC Account), which held units of five different mutual funds.

In November 2005, Li caused his assistant to substantially complete and then mail to HFC an:

- Account Authorization and Acknowledgement Form; and
- Authorization to Transfer: Non-Registered Account Form (collectively, the Forms).

On or about November 28, 2005, HFC and CKL both signed the Forms and then mailed them to Li.

After receiving the signed Forms, Li spoke by telephone with HFC.

The Authorization to Transfer: Non-Registered Account Form that HFC and CKL signed, among other things, indicated that the assets that were held in the CIBC Account would be transferred to Edward Jones "all in kind (as is)". After receiving the signed Authorization to Transfer: Non-Registered Account Form, Li, without the knowledge and consent of HFC and CKL, instructed his assistant to alter the form so that it authorized the transfer to be made "all in cash". Li caused the Authorization to Transfer: Non-Registered Account Form to be altered in order to generate additional commissions.

On or about December 20, 2005, Li caused the altered Authorization to Transfer: Non-Registered Account Form to be submitted to the Transfer Department of Edward Jones. As a result, on January 4,

2006 CIBC Investor Services Inc. sold all of the assets that were held in the CIBC Account (the CIBC Account Liquidation).

HFC and CKL paid approximately \$625 in deferred sales charges (DSCs) due to the CIBC Account Liquidation.

At all material times, Li mistakenly believed that all of the mutual funds that were held in the CIBC Account were no longer subject to any DSCs.

Contravention #2: Unauthorized Transactions

On or about January 5, 2006, the proceeds from the CIBC Account Liquidation were deposited into the Edward Jones Account. Without the knowledge or consent of HFC and CKL, Li used all of the proceeds of the sale to purchase units of five mutual funds for the Edward Jones Account (the Edward Jones Account Purchases).

The Edward Jones Account Purchases generated approximately \$3,191 in commissions, of which Li received approximately \$1,117. These commissions were paid by the mutual fund companies that managed the five mutual funds that were purchased for the Edward Jones Account.

As of January 4, 2006 the CIBC Account, among other things, held approximately:

- \$29,519 worth of units of two mutual funds that are administered by Mackenzie Financial Corporation (the Existing Mackenzie Units); and
- \$5,887 worth of units of a mutual fund that is administered by AGF Funds (the Existing AGF Units).

For the Edward Jones Account, Li purchased approximately:

- \$30,000 worth of units of two mutual funds that are administered by Mackenzie Financial Corporation (the New Mackenzie Units); and
- \$19,209 worth of units of two mutual funds administered by AGF Funds (the New AGF Units).

Had the CIBC Account been transferred “all in kind (as is)” into the Edward Jones Account, then at no cost to HFC and CKL, Li could have switched the:

- Existing Mackenzie Units for the vast majority of the New Mackenzie Units; and
- Existing AGF Units for some of the New AGF Units.

By selling the Existing Mackenzie Units and the Existing AGF Units, and then buying the New Mackenzie Units and the New AGF Units, Li generated approximately \$619 in additional commissions for himself.

Contravention #3: Offer to Settle Complaint

In January 2006, HFC and CKL learned for the first time that all of the assets that had been held in the CIBC Account had been sold.

On January 24, 2006, HFC and CKL met with Li in order to complain about his conduct. However, there was insufficient time to discuss matters and they agreed to meet on the following day.

On January 25, 2006, HFC and CKL met with Li again. During the meeting, Li offered to settle their complaint on the following terms:

- i) HFC and CKL would maintain the Edward Jones Account Purchases for a three month period;
 - ii) upon completion of the three month period, the Edward Jones Account Purchases would be sold and the same mutual funds that were held in the CIBC Account would be purchased;
 - iii) Edward Jones would bear any costs related to the sale of the Edward Jones Account Purchases and the purchase of the same mutual funds that were held in the CIBC Account; and
 - iv) Edward Jones would bear any tax losses related to the sale of the Edward Jones Account Purchases.
- (collectively, the Settlement Offer).

HFC and CKL did not accept the Settlement Offer.

The *Conduct and Practices Handbook* stipulates that all complaints from clients must be routed to a registrant's branch manager and must not be dealt with by the registrant alone. Further, Association Policy No. 8, "*Reporting and Recordkeeping Requirements*", stipulates that no registrant shall, without the prior written consent of their Member employer, enter into any settlement with a client. Edward Jones was not aware of, and did not authorize the Settlement Offer.

On January 26, 2006, Li informed the Compliance Department of Edward Jones that HFC and CKL had complained to him about the manner in which he had handled their investment account.

By way of a January 27, 2006 letter, HFC and CKL complained to Edward Jones about Li's conduct.

By way of a January 31, 2006 email, Li informed the Compliance Department of Edward Jones that in order to settle their complaint, he had told HFC and CKL that he could reverse the Edward Jones Account Purchases and give them a cheque for \$64,212, or he could sell the Edward Jones Account Purchases and then purchase the mutual funds that were held in the CIBC Account.

In actual fact, Li had not offered to reverse the Edward Jones Account Purchases and give them a cheque for \$64,212. Rather,

pursuant to the Settlement Offer, Li had told HFC and CKL they would have to wait three months to sell the Edward Jones Account Purchases and then purchase the mutual funds that were held in the CIBC Account.

On September 6, 2006, Edward Jones terminated Li's employment due to HFC and CKL's complaint.

In determining the terms of settlement, Staff took into account the following factors:

- (i) on or about March 26, 2007, Li gave Edward Jones approximately \$1,117, which represents the amount that he earned in commissions from the Edward Jones Account Purchases, without being obligated to do so;
- (ii) on or about January 11, 2007 Li successfully completed the examination based on the *Conduct and Practices Handbook*, without being obligated to do so; and
- (iii) Li co-operated with Staff throughout the course of the investigation of this matter.

Kenneth A. Nason
Association Secretary