



Ontario
Securities
Commission

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de l'Ontario

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**In the Matter of Staff's Recommendation
to Suspend the Registrations of Wealth Stewards Portfolio Management Inc. and Sushila Lucas**

**Opportunity to be Heard by the Director
under Section 31 of the *Securities Act* (Ontario)**

Decision

1. For the reasons outlined below, my decision is as follows:
 - Wealth Stewards Portfolio Management Inc. (Wealth Stewards) registration as a portfolio manager is suspended indefinitely.
 - Sushila Christine Lucas' (Ms. Lucas) registration as Ultimate Designated Person (UDP) and Chief Compliance Officer (CCO) are suspended for a period of three years. If, after the three-year period, Ms. Lucas seeks to register as a:
 - UDP, she must complete the Partners, Directors and Senior Officers Course before submitting her application; and/or
 - CCO, she must complete the Chief Compliance Officers Qualifying Exam and the Partners, Directors and Senior Officers Course before submitting her application.
 - Ms. Lucas' advising registration is suspended for a period of 6 months. Prior to re-applying for registration, Ms. Lucas must successfully complete the Conduct and Practices Handbook Course.

Overview

2. Wealth Stewards is registered under the *Securities Act* (Ontario) (Act), and in Alberta and British Columbia, in the category of portfolio manager and Ms. Lucas is registered as the advising representative, CCO and UDP, and permitted individual of Wealth Stewards in all three jurisdictions.
3. By letter dated February 24, 2014, staff (Staff) of the Ontario Securities Commission (the Commission or the OSC) advised Wealth Stewards and Ms. Lucas that Staff has recommended to the Director that her registration as an advising representative, CCO, and UDP and the registration of Wealth Stewards as a portfolio manager be suspended.
4. The basis of Staff's recommendation was the number of significant deficiencies identified during the compliance review of Wealth Stewards, conducted under section 20 of the Act. The review period was August 1, 2012, to July 31, 2013. Staff has fundamental concerns with the integrity and proficiency of Ms. Lucas and Wealth Stewards.

5. Pursuant to section 31 of the Act, Wealth Stewards and Ms. Lucas requested an in-person opportunity to be heard (OTBH). The OTBH occurred on May 1, 2014 and additional information was submitted on May 21, 2014.
6. Three primary issues were discussed at the OTBH:
 - a. Staff contends that there was improper delegation of know-your-client (KYC) and suitability obligations along with advisory activities to an unregistered person.
 - b. Staff contends that the OSC was not notified of a material change in the ownership structure of Wealth Stewards.
 - c. Staff contends that there was false certification of client identification documents and inappropriate signatures on firm documents.

Submissions

Issue 1 - Delegating KYC and suitability requirements, and advisory activity, to a person that is not registered.

7. KYC and suitability obligations are among the most fundamental obligations owed by a registrant to its clients and are cornerstones of the investor protection regime. Part 13 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) provides the regulatory requirements for these fundamental obligations and further guidance is provided in its accompanying companion policy (Companion Policy).
8. Subsection 13.2(2) of NI 31-103 provides that a “registrant must take reasonable steps to (a) establish the identity of a client ... (c) ensure that it has sufficient information regarding all of the following to enable it to meet its obligations under section 13.3 ... (i) the client’s investment needs and objectives; (ii) the client’s financial circumstances; (iii) the client’s risk tolerance ...”.
9. Subsection 13.3(1) provides that a “registrant must take reasonable steps to ensure that, before it... makes a purchase or sale of a security for a client’s managed account, the purchase or sale is suitable for the client.” Additionally, section 13.3 of the Companion Policy explicitly states that a “[r]egistrants may not: delegate their suitability obligations to anyone else ...”.
10. Staff presented information obtained from the compliance review of Wealth Stewards, and interviews with clients and Ms. Lucas, that demonstrate Ms. Lucas and Wealth Stewards delegated their KYC and suitability obligations to an unregistered individual, Mr. Bruce Deck (Mr. Deck), who is a 50% owner, permitted individual and employee of Wealth Stewards.
11. To summarize the information provided, Mr. Deck interacted with the Wealth Stewards clients by:
 - maintaining the exclusive client facing relationship
 - completing all account forms including the KYC information form with clients during in-person meetings,
 - completing annual KYC review forms for some of the accounts,
 - being listed under the generic heading of “Manager” on the KYC form,
 - being listed as either the “WSPM Adviser” or “Adviser” on other forms,
 - selecting the investments mandates and sub-adviser for the clients, and

- informing Ms. Lucas, the only advising representative of Wealth Stewards, what investment mandates were appropriate for the clients.
12. Additionally, when Staff interviewed clients, all but one stated that Mr. Deck was their portfolio manager at Wealth Stewards.
 13. In a voluntary interview and at the OTBH, Ms. Lucas stated that during the relevant period she had not met with the clients, in-person or by any other means, that Mr. Deck selected the investment mandates and sub-adviser for the clients, and that she had not changed any of the investment mandates selected on the account forms. As required by securities law, Ms. Lucas as the sole advising representative, failed to take reasonable steps to complete the KYC and suitability obligations for Wealth Stewards' clients.
 14. Additionally, the vast majority of the Wealth Stewards clients are receiving financial planning services from Mr. Deck through a separate entity, Wealth Stewards Planning and Management Corp. (Wealth Stewards Planning). Mr. Deck has a long standing relationship with most of the clients and it is clear from the information presented that the clients do not know what services they are receiving from Mr. Deck (through Wealth Stewards Planning) as a financial planner and those services as an employee of Wealth Stewards.
 15. The confusion may arise because the financial planning services and portfolio management services are not clearly distinguished by Mr. Deck and Wealth Stewards. For example, at the OTBH, the Director notified Mr. Deck that on the Financial Planning Standards Council website Mr. Deck had listed Wealth Stewards Portfolio Management Inc., as the entity from which he provides financial planning services, not Wealth Stewards Planning. This is also the case for the Institute of Advanced Financial Planners website. Also, the names of the two companies are very similar and the client account documents use the same logo and acronym (WSPM) which further exacerbates the confusion.
 16. Another factor that contributes to client confusion is that Mr. Deck was previously registered as a dealing representative. This is more fully explained in Issue 2 below. While Mr. Deck was registered as a dealing representative, he provided similar services to clients at various other registrants. However, in 2007 his registration was suspended for a period of time. After becoming an unregistered employee of Wealth Stewards, he continued to service clients in a manner that appears not to have changed after his registration was suspended. This point is evident from a statement made by one of the clients to Staff. The client stated that he had been a client of Mr. Deck's since 1993 or 1994 and that Mr. Deck bounced around from X dealer to Y dealer and then to Wealth Stewards. This shows, from a client's perspective, that Mr. Deck continued to provide the same type of services that he had provided before his registration was suspended.
 17. The information presented by Staff was sufficient evidence to support a finding that Wealth Stewards and Ms. Lucas failed to comply with the regulatory obligations under Part 13 of NI 31-103 by allowing an unregistered person to perform KYC and suitability obligations which are among the most fundamental obligations a registrant owes to its clients.

Issue 2 – The OSC was not notified of a material change in the ownership structure of Wealth Stewards.

18. Section 11.10 of NI 31-103 provides in part that a registered firm must give the regulator written notice if it knows, or has reason to believe, that any person or company is about to acquire, or has acquired, beneficial ownership of, or direct or indirect control or direction over, 10% or more of any class or series of voting securities of the registered firm.
19. Wealth Stewards filed a Form 33-109 (F4) at the time that Mr. Deck acquired a 50% ownership interest and became a permitted individual, but failed to file a Section 11.10 notice. Section 11.10 of the Companion Policy states that a section 11.10 notice provides the “regulator an opportunity to consider ownership issues that may affect a firm’s fitness for registration.”
20. Subsection 27(2) of the Act provides the foundation of the registration regime which is that a person or company must meet the proficiency, solvency and integrity requirements prescribed in the regulations.
21. In this instance, Staff contends that the integrity of Wealth Stewards is objectionable because of Mr. Deck’s 50% ownership. In 2007, Mr. Deck was the subject of a disciplinary action by the Investment Dealers Association of Canada (IDA) (now known as Investment Industry Regulatory Organization of Canada) in which a settlement agreement was entered into by Mr. Deck and the IDA.
22. In this action, Mr. Deck’s registration as a registered representative was suspended for a period of two years, a fine of \$138,212 was levied and he was ordered to pay \$15,000 towards the costs of the investigation and prosecution. Also, he was required to complete educational courses before re-applying as a registered representative with a dealer member. Mr. Deck stated that he completed the educational course as required, but made no attempt to pay the fine and administrative costs in full or through a payment arrangement. Staff provided confirmation that the settlement agreement has not been fulfilled because Mr. Deck has failed to pay the fine and administrative costs.
23. The meaning of integrity as provided in *Re Sawh* (2012), 35 OSCB 7431 (Sawh), a recent Commission-level decision that was later upheld by the Divisional Court in *Sawh v. Ontario Securities Commission*, 2013 ONSC 4018. At paragraph 264 of Sawh, the Commission wrote:

In determining the integrity of the Applicants, however, we are guided by the principle that the Commission shall consider in pursuing the purposes of the Act which, as set out in [*Re Istanbul* (2008), 31 OSCB 3799] at para. 68 and subparagraph 2(iii) of section 2.1 of the Act, excerpted at paragraph [152] above, is “the maintenance of *high standards of fitness and business conduct* to ensure *honest and responsible conduct* by market participants” [Emphasis in the original].”
24. Based upon the principle reiterated in Sawh, integrity encompasses honest and responsible conduct.
25. As previously stated, Mr. Deck provides financial planning services to clients for which he holds two financial planning designations. He also holds the Certified Investment Management designation. In order to maintain the financial planning designations, Mr. Deck is subject to standards of professional responsibility including codes of ethics. Even while being subject to the standards of professional responsibility, Mr. Deck failed to fully comply with the terms of the IDA settlement agreement. This, in my opinion, is not honest and responsible conduct and

therefore, if Mr. Deck would apply for registration or make a submission as a permitted individual, I have concerns about his integrity.

26. Also, as provided in a voluntary interview, Ms. Lucas stated that after entering into the business arrangement with Mr. Deck, she became aware that Mr. Deck had not fully satisfied the terms of the IDA settlement agreement.
27. The integrity of Wealth Stewards is impugned by continuing to conduct business with the knowledge that a 50% owner lacks integrity. Also, as the UDP, CCO and advising representative of Wealth Stewards, it was not responsible conduct for Ms. Lucas to continue to permit Mr. Deck to conduct registerable activity without being registered.

Issue 3 - False certification of client identification documents and inappropriate signatures on firm documents.

28. Staff presented documentation to show that Ms. Lucas had signed photocopies of client identification documents as “certified true copies” in order to fulfill the client identification procedures of Wealth Stewards’ custodian. Ms. Lucas confirmed that she certified the documents without meeting any of the clients in-person or seeing the original documents.
29. During the OTBH there was debate about whether the custodian was aware that Ms. Lucas was providing the certification without seeing the original documents. However, this debate does not bear on my decision, because taking the words “certified true copy” at their plain meaning, it means that the person signing has reviewed the original document and made a copy. Ms. Lucas failed to exercise responsible conduct when she certified the documents as true and forwarded them to the custodian.
30. Additionally, Staff presented other evidence where the actual practice conducted by Wealth Stewards was not what was evidenced by written documents. The Wealth Stewards KYC form contains boilerplate language that states:

“Acknowledgment and Agreement – I (we) have read, discussed and understood the foregoing information with the Wealth Steward whose signature appears below. I (we) are satisfied with the long term investment objectives as outlined in this document. I (we) understand that these objectives are to be reviewed every three years or sooner, as dictated by myself (ourselves the clients(s)).”

31. Ms. Lucas’ signature is on these forms. Ms. Lucas stated that she did not meet with clients in-person or through any other means and that Mr. Deck was the person who completed the KYC forms. Mr. Deck’s signature does not appear on the forms.
32. Finally, another issue identified is the requirement that Wealth Stewards’ clients sign a “No Advice Waiver” Form which states among other things:

“Please note that only our licensed portfolio managers are able to provide direction and instructions with respect to specific portfolio holdings.”

“We ask that you read and sign this document to acknowledge that non-licensed advisers that may refer you to our firms and/or our non-advising employees are not able to provide advice on specific securities holdings nor act in a way that would induce you to participate in any securities transactions.”

“Should you have any questions regarding specific securities that may be held in our portfolios, we require that you be directed to one of our licensed portfolio managers. Bruce Deck, who is a non-advising employee of our firm, is unable to provide advice with respect to securities matters. Any such questions in this regard will be noted in the input section of this document and be acknowledged by your signature below. By doing so, you and Bruce Deck agree to refer all securities-related questions to our attention should they arise.”

However, based upon the information provided throughout this OTBH, the statements agreed to in the “No Advice Wavier” contradict what actually occurs in practice.

33. The combination of these issues along with the deficiencies detailed in the Compliance Review Report demonstrates a lack of a compliance system. The responsibilities of a UDP and CCO, as provided in sections 5.1 and 5.2 of NI 31-103, carry great importance and must be fully appreciated and fulfilled by persons registered in those capacities. Additionally, section 11.1 of NI 31-103 provides the requirements for a compliance system. Ms. Lucas indicated that a compliance consultant and external legal counsel were hired previously when the firm was first established which is reasonable, but in the end the registrant is responsible for establishing and executing a compliance system.

Decision

34. My decision is based on the submissions of Michael Denyszyn (Senior Legal Counsel, CRR); the affidavit, supplemental affidavits, and testimony of Chris Caruso (Accountant, CRR); submissions by Kevin Cohen (President and CEO) and Richard Roskies (Legal Counsel) of AUM Law Professional Corporation on behalf of Ms. Lucas, Wealth Stewards and Mr. Deck; and testimony of Ms. Lucas and Mr. Deck.
35. Section 28 of the Act provides that the registration of a person or company may be suspended or terms and conditions placed on the registration if it is determined that the person or company is not suitable for registration or has failed to comply with Ontario securities law, or that their registration is otherwise objectionable.
36. Based upon the authority provided in section 28 of the Act, my decision is to suspend the registration of Wealth Stewards indefinitely and to suspend Ms. Lucas’ registration as UDP and CCO for a period of three years. If, after the three-year period, Ms. Lucas seeks to register as a:
 - UDP, she must complete the Partners, Directors and Senior Officers Course before submitting her application, and/or
 - CCO, she must complete the Chief Compliance Officer Qualifying Exam and the Partners, Directors and Senior Officers Course before submitting her application.
37. Ms. Lucas’ advising registration is suspended for a period of 6 months. Prior to re-applying for registration as an advising representative, Ms. Lucas must successfully complete the Conduct and Practices Handbook Course.
38. All courses provided above are administered by Moody’s Analytics Global Education (Canada) Inc., operating as Canadian Securities Institute.
39. Prior to reaching this decision, I fully considered whether terms and conditions could be drafted to address the regulatory breaches of failing to comply with Part 5 and sections 11.1, 13.2 and 13.3 of NI 31-103 and remediate the integrity and proficiency concerns.

40. Ultimately, I concluded that terms and conditions were not sufficient in this instance due to the following factors:
- a. In a prior matter, *Re Jaynes* (2000), 23 OSCB 1543, the Director stated in part that “[w]hile terms and conditions restricting registration may be appropriate in a wide variety of circumstances; they should not be used to “shore up” a fundamentally objectionable registration.”
 - b. Wealth Stewards previously engaged a compliance consultant to establish its compliance system which on paper appeared to have elements of a compliant structure. However, it was the execution of the compliance system that failed in this instance so a term and condition requiring a compliance consultant to enhance the compliance system will not address the failures of the UDP and CCO.
 - c. Ms. Lucas is the sole registrant carrying the full regulatory responsibilities of the firm. It may have been possible to develop a term and condition requiring Wealth Stewards to hire a new CCO, but if Ms. Lucas remained as UDP then having a CCO report to an ineffective UDP is not reasonable.
 - d. The UDP must be the chief executive officer, sole proprietor or person acting in a similar capacity. Wealth Stewards ownership structure is split 50/50 between Ms. Lucas and Mr. Deck. Mr. Deck, in my opinion, lacks the integrity required of a registrant and Ms. Lucas is ineffective as the current UDP so there is no one else that could fulfill the requirements of the UDP.
 - e. As the sole advising representative of Wealth Stewards, Ms. Lucas bears the responsibility to conduct KYC and suitability obligations for Wealth Stewards clients. Her conduct, in my opinion, was not reasonable.
 - f. The time periods for the suspension of the UDP, CCO and advising representative registrations are varied from that recommended by Staff due to the fact that Ms. Lucas did fully cooperate and provided candid responses to Staff’s inquiries, there was no evidence presented that the KYC forms were falsified, and no client complaints were brought to my attention during the OTBH.
41. In my opinion, there are no other effective options available to address the breaches of securities law and address the integrity issues identified in this matter. Considering that registration is a privilege not a right, I believe it is in the public interest to suspend the registrations as indicated above.
42. Furthermore, a copy of this Director’s Decision will be forwarded to the Financial Planning Standards Council, the Institute of Advanced Financial Planners, and any other professional organizations that are relevant.



Debra Foubert, J.D.
Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission
Dated: June 13, 2014