



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF**  
**DANIEL SHEEHAN**

**STATEMENT OF ALLEGATIONS**

(Subsections 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

**A. OVERVIEW**

1. During the 10-year period from 2009 to 2019, Daniel Sheehan (**Sheehan**) acted as an unregistered investment fund manager, raising over \$40 million from approximately 50 Ontario investors, investing that money in public equities and fixed income securities through an investment fund he established, and receiving approximately \$21 million in fees for these investment services. At no time, was Sheehan registered under the *Securities Act*, RSO 1990, c. S.5 (the **Act**) to act as an investment fund manager, or to engage in the business of trading or advising in securities despite engaging in all three activities.
2. Registration is a cornerstone of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only suitable persons are permitted to act as an investment fund manager or to engage in the business of trading or advising in securities.
3. Registrants under the Act are subject to a robust regulatory regime that requires applicants to submit to a detailed application process for registration as well as to ongoing oversight by the Commission and other important safeguards designed to protect investors.

**B. FACTS**

Staff of the Enforcement Branch of the Ontario Securities Commission (**Staff**) make the following allegations of fact:

**A. Background**

4. Sheehan Associates Limited Partnership (**SALP**) is an Ontario limited partnership with its registered office in Mississauga, Ontario. From 2009 to 2019, Sheehan operated SALP as an investment fund for its partners by buying and selling securities.
5. Sheehan is a resident of Mississauga, Ontario. During the period 2009 to 2019, Sheehan was the general partner of SALP and had full power and authority to operate and make all decisions regarding the business of the limited partnership, including all investment decisions.
6. Neither Sheehan nor SALP have ever been registered under the Act in any capacity.

**B. SALP'S Structure**

7. SALP's investors became limited partners of SALP by acquiring an interest in the partnership in the form of a partnership unit (**Unit**) in exchange for the investment capital they contributed to the fund.
8. Units granted investors the right to participate in any returns earned from SALP's portfolio of securities and were redeemable at the limited partner's written request.
9. Each Unit was a "security" as that term is defined in s. 1(1) of the Act.
10. SALP's partnership agreement (the **Partnership Agreement**) designates Sheehan as the general partner and all other investors as limited partners.
11. SALP's stated business in the Partnership Agreement is to "buy, purchase, invest in, acquire, hold, trade, sell, transfer and otherwise deal in and with, directly or indirectly, Securities".

12. The Partnership Agreement grants Sheehan the “full, complete and exclusive right, power and authority to manage, control, administer and operate the business and affairs” of SALP and to make all decisions regarding the partnership.
13. SALP’s partnership outline, which provides further detail about the structure and operation of the partnership, notes that SALP may invest in private companies and take positions of control in such companies. However, SALP did not take control positions, or even invest, in any private companies during the Material Time (as that term is defined below).
14. From September 28, 2009 to April 30, 2019 (the **Material Time**), Sheehan invested SALP’s investor capital primarily in publicly traded equities but also in fixed income assets and exchange-traded derivatives. These instruments were all “securities” within the meaning of that term in s. 1(1) of the Act.
15. During the Material Time, Sheehan operated SALP as an investment fund, giving its investors exposure to Sheehan’s securities investment ideas and trading activity. During this time, SALP carried on no business other than pooling investor assets to be invested in a portfolio of publicly-traded securities, which Sheehan managed exclusively, and for which he was compensated.
16. The Partnership Agreement entitled Sheehan to be paid a “performance based, annual fee” equal to 25% of all returns on partnership capital over 6%.
17. If Sheehan did not achieve a minimum 6% compounded annual return over a rolling five-year period, the terms of the Partnership Agreement required Sheehan to return the amount of his “performance based profits” necessary to bring the limited partners’ return up to a net 6% compounded annual return. During the Material Time, SALP always earned in excess of a minimum 6% compounded annual return over any given five-year period and therefore, Sheehan was never required to repay any of his performance-based profits to SALP’s limited partners.

**C. Distribution of SALP's Proceeds**

18. On or about April 30, 2019, Sheehan paid each of SALP's limited partners the full amount of their invested capital plus the limited partners' proportional share of investment returns, net of Sheehan's performance-based annual fees.

**D. Unregistered Trading**

19. Throughout the Material Time, Sheehan engaged in, or held himself out as engaging in, the business of trading in securities (i.e., the Units) without being registered under s. 25(1) of the Act as a dealing representative.
20. Sheehan acted with repetition, regularity, and continuity over the Material Time, raising approximately \$40 million from approximately 50 investors in exchange for Units.
21. SALP had no active non-securities business, and the investor funds Sheehan raised during the Material Time were raised for the sole purpose of funding SALP's investments in securities.

**E. Unregistered Advising**

22. Throughout the Material Time, Sheehan engaged in, or held himself out as engaging in, the business of advising others with respect to investing in, buying or selling securities without being registered under s. 25(3) of the Act as an advising representative.
23. Sheehan operated SALP as a vehicle to give investors access to Sheehan's securities investment management. In order to achieve this objective, Sheehan had complete discretionary authority over how to invest the capital contributed to SALP by the limited partners. Moreover, the Partnership Agreement precluded limited partners from having the right to play a role in Sheehan's investment decisions.
24. Sheehan assumed the role granted to him by the Partnership Agreement and managed SALP's investment portfolio through the purchase and sale of publicly-traded securities.

25. Sheehan was directly compensated for managing SALP's investment portfolio through the annual performance fee. During the Material Time, Sheehan received approximately \$21 million in performance fees for advising SALP with respect to its investments.

**F. Acting as an Investment Fund Manager without Registration**

26. During the Material Time, SALP was a "mutual fund" as that term is defined in s. 1(1) of the Act. SALP's primary purpose was to invest money provided by its security holders, and limited partners were entitled to redeem their Units, based on the value of a proportionate interest of the partnership's net assets, within a specified period after making a demand for redemption. As such, SALP was also an "investment fund" within the meaning of that term in s. 1(1) of the Act.
27. Throughout the Material Time, Sheehan acted as an investment fund manager without being registered under s. 25(4) of the Act as an investment fund manager.
28. Sheehan directed the business, operations and affairs of SALP. Specifically, Sheehan formed SALP and Sheehan alone managed all aspects of SALP's business.

**C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

29. Sheehan engaged in, or held himself out as engaging in, the business of trading in securities, without the required dealer registration, and where there were no exemptions to the requirement to be registered as dealer available to him, contrary to s. 25(1) of the Act.
30. Sheehan engaged in, or held himself out as engaging in, the business of advising with respect to investing in, buying, or selling securities, without the required adviser registration, and where there were no exemptions to the requirement to be registered as an adviser available to him, contrary to s. 25(3) of the Act.

31. Sheehan acted as an investment fund manager without the required investment fund manager registration, and where there were no exemptions to the requirement to be registered as an investment fund manager available to him, contrary to s. 25(4) of the Act.
32. Sheehan's conduct was contrary to the public interest.
33. Staff reserve the right to amend these allegations and make such further allegations as Staff may advise and the Commission may permit.

#### **D. ORDER SOUGHT**

Staff request that the Commission make the following orders:

- (a) that trading in any securities by Sheehan cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of s. 127(1) of the Act;
- (b) that Sheehan be prohibited from the acquisition of any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of s. 127(1) of the Act;
- (c) that any exemption contained in Ontario securities law not apply to Sheehan, permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of s. 127(1) of the Act;
- (d) that Sheehan be reprimanded, pursuant to paragraph 6 of s. 127(1) of the Act;
- (e) that Sheehan resign all positions he holds as a director or officer of an issuer, pursuant to paragraph 7 of s. 127(1) of the Act;
- (f) that Sheehan is prohibited from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of s. 127(1) of the Act;
- (g) that Sheehan resign from all positions he holds as a director or officer of any registrant, pursuant to paragraph 8.1 of s. 127(1) of the Act;

- (h) that Sheehan is prohibited from becoming or acting as a director or officer of any registrant, pursuant to paragraph 8.2 of s. 127(1) of the Act;
- (i) that Sheehan be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of s. 127(1) of the Act;
- (j) that Sheehan pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of s. 127(1) of the Act;
- (k) that Sheehan disgorge to the Commission any amounts obtained as a result of his non-compliance with Ontario securities law, pursuant to paragraph 10 of s. 127(1) of the Act;
- (l) that Sheehan pay Staff's costs of the investigation and the hearing, pursuant to s. 127.1 of the Act; and
- (m) such other order as the Commission considers appropriate in the public interest.

**DATED** at Toronto this 3<sup>rd</sup> day of November, 2020.

**Staff of the Ontario Securities Commission**

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