

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Gold Investment Management Ltd.

DECISION OF THE DIRECTOR

Having reviewed and considered the agreed statement of facts, the admissions by Gold Investment Management Ltd. (the **Firm**), and the joint recommendation to the Director by the Firm and by staff of the Ontario Securities Commission (**Staff**) contained in the settlement agreement signed by the Firm on October 8, 2014 and by Staff on October 9, 2014, a copy of which is attached as Appendix A to this Decision, and on the basis of those agreed facts and those admissions, I, Debra Foubert, in my capacity as Director under the *Securities Act* (Ontario) (the **Act**), accept the joint recommendation of the parties, and make the following decision:

1. The terms and conditions imposed on the registration of the Firm on May 3, 2013, and on December 19, 2013 (as continued with the consent of the Firm), are hereby removed.
2. The Firm's registration under the Act is subject to the following terms and conditions effective October 15, 2014:
 1. The Firm shall retain the Compliance Consultant (as that term is defined in the settlement agreement between the Firm and Staff), or another compliance consultant as may be approved by Staff for a period of no less than 9 months (the **First Period**) to monitor the Firm's compliance with its know-your-client and suitability obligations as set out in sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registration Obligations*.
 2. During the First Period, the Compliance Consultant shall deliver monthly reports to Staff reporting on the following:
 - (a) For clients of the Firm as of the effective date of these terms and conditions (**Existing Clients**):
 - (i) the number of Existing Clients for whom the Firm has conducted a know-your-client (**KYC**) and suitability information update during the reporting period (a **Client Update**); and
 - (ii) on a year-to-date basis, the total number of clients for whom the Firm has conducted a Client Update.
 - (b) For clients who become clients of the Firm on or after the effective date of these terms and conditions (**New Clients**):
 - (i) the number of New Clients added during the reporting period;
 - (ii) confirmation that the Firm has conducted a KYC and suitability analysis for each New Client added during the reporting period; and
 - (iii) the number of New Clients added since the start of the First Period.
 - (c) For Existing Clients and New Clients:
 - (i) the Compliance Consultant's review and conclusions as to the adequacy of the Firm's KYC information and suitability analysis for a sample of Existing Clients and New Clients selected by the Compliance Consultant based on the reasonable exercise of its professional judgment; and
 - (d) Such other information as Staff may request.
 3. For a minimum period of three years commencing on the expiry of the First Period (the **Second Period**), the Firm shall:

- (a) submit to an annual review (an **Annual Review**) by the Compliance Consultant (or another suitable compliance consultant approved by Staff) to assess the Firm's compliance with Ontario securities law;
 - (b) submit quarterly reports to Staff identifying:
 - (i) the number of New Clients added during the reporting period and the name of the individual responsible for referring the client to the Firm (if any); and
 - (ii) the number of New Clients added since the commencement of the Second Periodunless the Firm adds 50 or more clients during a reporting period, in which case the report referred to in this paragraph 3(b) shall be delivered to Staff as soon as reasonably practicable and in any event no later than two business days after the addition of the 50th client.
4. The first Annual Review shall assess the Firm's compliance with Ontario securities law for the entirety of the calendar year in which the First Period expires, and the second and third Annual Reviews shall assess the Firm's compliance with Ontario securities law for the entirety of each of the following two calendar years, respectively.
5. Upon the completion of each Annual Review, the Compliance Consultant shall submit to Staff a report of its findings from the Annual Review.
6. After a New Client has undergone a KYC and suitability analysis by the Firm, they shall be considered an Existing Client for the purposes of performing Client Updates.
7. The Firm shall immediately submit to Staff a direction from the Firm giving consent to unrestricted access by Staff to communicate with the Compliance Consultant regarding all matters in relation to these terms and conditions.
8. The Firm will implement and enforce its amended referral agreement, which provides for the following:
- (a) the performance of annual in-person visits with each party who enters into a referral agreement with the Firm (a **Referral Agent**) during which the terms of the referral agreement will be reviewed and discussed with the Referral Agent, and the Referral Agent will be asked to sign an annual attestation form confirming that it has not contravened any of the Firm's policies and procedures in relation to client referrals; and
 - (b) a requirement for each Referral Agent to provide the Firm with prior written notice of the launch of any new website referring, directly or indirectly, to the Firm or its services, and any proposed amendments to an existing website maintained by or on behalf of a Referral Agent.

October 15, 2014
Date

"Debra Foubert"
Debra Foubert
Director

Appendix A

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
THE REGISTRATION OF
GOLD INVESTMENT MANAGEMENT LTD.

SETTLEMENT AGREEMENT

I. **INTRODUCTION**

1. This settlement agreement (the **Settlement Agreement**) relates to an opportunity to be heard (an **OTBH**) pursuant to section 31 of the *Securities Act* (Ontario) (the **Act**) requested by Gold Investment Management Ltd. (**Gold**) regarding a recommendation to the Director by staff of the Ontario Securities Commission (**Staff**) made on December 11, 2013 that certain terms and conditions be imposed on Gold's registration (the **Proposed Terms and Conditions**). A copy of the Proposed Terms and Conditions is attached as Schedule "A" to this Settlement Agreement.
2. Gold is registered under the Act as a portfolio manager, and it manages client accounts on a discretionary basis.
3. As more particularly described herein, Gold has established a business model that is primarily reliant on third parties, most of whom are not registered under the Act and who hold themselves out as "financial planners", to refer clients to Gold (the **Referral Agents**).
4. When Gold began its Referral Agent model, the firm relied on its Referral Agents to communicate directly with the referred clients for the purpose of completing Gold's investment management agreement, conducting a know-your-client (**KYC**) process and suitability analysis, and obtaining regular updates to KYC information. This arrangement constituted an improper delegation of Gold's KYC and suitability obligations under National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**NI 31-103**) and as such was not in compliance with Ontario securities law.
5. The Proposed Terms and Conditions were recommended by Staff to the Director in response to Gold's non-compliance with Ontario securities law. Since December 20, 2013, the Proposed Terms and Conditions have been imposed on Gold's registration on an interim basis with the consent of Gold.
6. Gold has demonstrated improved compliance with its obligations under Ontario securities law. As a result, Staff and Gold have agreed to settle the OTBH on the basis that the Proposed Terms and Conditions currently in place on an interim basis will be removed, the Proposed Terms and Conditions will not be imposed further, and instead agreed upon terms and conditions will be imposed (the **Agreed Terms and Conditions**). A copy of the Agreed Terms and Conditions is attached as Schedule "B" to this Settlement Agreement.

II. **AGREED STATEMENT OF FACTS**

7. Staff of the Ontario Securities Commission (the **OSC**) and Gold agree to the facts as stated herein.
- A. Gold's Registration**
8. Gold is registered under the Act as a portfolio manager. Gold became registered as an investment counsel and portfolio manager on April 18, 2008, and its registration was transitioned to portfolio manager effective September 28, 2009 with the introduction of NI 31-103.
 9. Gold is also registered as a portfolio manager under the securities laws of Alberta, British Columbia, Manitoba, Quebec, and Saskatchewan. In Alberta, Gold is also registered as an investment fund manager.
 10. Gold's head office is located in Edmonton, Alberta, and its principal regulator for the purposes of securities law is the Alberta Securities Commission (the **ASC**).

11. Jonathan Goldenstein (**Goldenstein**) is the founder and president of Gold. Goldenstein is Gold's ultimate designated person (**UDP**), and from the firm's inception until January 2, 2013, he was also its chief compliance officer (**CCO**). Goldenstein is registered as an advising representative with Gold.
12. Since January 2, 2013, George Wu (**Wu**) has been registered as Gold's CCO and as an advising representative with the firm.
13. Until Wu became registered with Gold, the only other person at the firm registered under the Act was Goldenstein. Prior to Wu's arrival, Gold briefly had had two advising representatives registered under the securities laws of Alberta and British Columbia.
14. At present, Gold has three registered advising representatives and two registered associate advising representatives.

B. Gold's Business

15. In carrying on business as a portfolio manager, Gold manages its clients' assets on a discretionary basis.
16. Gold's client base generally consists of "retail" investors with a low to moderate level of assets.
17. Gold's business seeks to deliver discretionary account management services to clients whose modest level of assets could otherwise make such services uneconomical. To achieve this objective, Gold delivers its discretionary account management services through the use of model portfolios, which generally invest in exchange-traded funds.
18. Gold attracts its clients by entering into agreements with Referral Agents. These Referral Agents refer their clients to Gold in exchange for a percentage of the management fee Gold charges its clients, which is based on the value of the client's assets managed by Gold.
19. When Gold first established its Referral Agent-based business model, it relied on the Referral Agents to meet with the referred clients for the purposes of signing a Gold investment management agreement, completing a Gold KYC form, updating KYC information on an ongoing basis, and communicating with the client generally about their investment portfolios.
20. As more particularly described below, Gold's initial improper reliance on Referral Agents to discharge the firm's own KYC obligations contributed significantly to the regulatory issues the firm has experienced, and the resulting regulatory action that has been taken against it by both the OSC and the ASC.

C. ASC Imposes Terms and Conditions

21. In 2011, staff of the ASC (**ASC Staff**) conducted a review of Gold to assess the firm's compliance with Alberta securities law.
22. In February 2012, ASC Staff delivered to Gold a report setting out the findings of its compliance review. This report identified, among other things, that Gold had been improperly relying on its Referral Agents to perform registerable activities such as meeting with clients for the purpose of obtaining KYC information.
23. In March 2012, Gold consented to the ASC imposing terms and conditions on the firm's registration that required the firm to retain a compliance monitor (the **2012 Terms and Conditions**). The 2012 Terms and Conditions were effective in all jurisdictions other than Ontario in which Gold was registered.

D. OSC Imposes Terms and Conditions

24. In October 2012, Staff initiated a compliance review of Gold pursuant to section 20 of the Act.
25. On May 2, 2013, Staff sent Gold a report setting out the findings from its compliance review (the **Report**). The Report identified the following deficiencies in Gold's compliance with Ontario securities law:
 - (a) Gold had an inadequate compliance system, and its UDP and CCO were not adequately performing their responsibilities;
 - (b) Gold had improperly delegated its advisory obligations to the Referral Agents;
 - (c) Gold had not adequately collected and documented KYC information;

- (d) Gold did not have an adequate process in place to monitor and review the suitability of trades made for clients and to ensure that clients' portfolio holdings complied with the clients' investment mandate;
 - (e) investment management agreements were missing information;
 - (f) the investment management agreement improperly included a clause purporting to allow Gold to assign the agreement without the client's written consent;
 - (g) Gold's marketing material made inaccurate claims regarding the firm's services, skills, and performance;
 - (h) Gold did not deliver adequate relationship disclosure information to each of its clients; and
 - (i) Gold had an incomplete policies and procedures manual.
26. As a result of the findings in the Report, Staff informed Gold that it was recommending that terms and conditions be imposed on its registration requiring the firm to retain a compliance consultant, and these terms and conditions were accepted by Gold on May 3, 2013 (the **May 2013 Terms and Conditions**).
27. Terms and conditions substantially in the form of the May 2013 Terms and Conditions were also imposed in the other jurisdictions in which Gold was registered, which had the effect of replacing the 2012 Terms and Conditions.
28. Pursuant to the May 2013 Terms and Conditions, the compliance consultant was to develop a plan (the **Plan**) to assist Gold in rectifying the compliance deficiencies that had been identified in the Report. These terms and conditions also required the compliance consultant to deliver monthly reports (the **Monthly Reports**) to Staff describing Gold's process towards implementing the Plan.
29. Pursuant to the May 2013 Terms and Conditions, Gold retained a firm acceptable to Staff to act as the compliance consultant (the **"Compliance Consultant"**).

E. The Proposed Terms and Conditions are Imposed on an Interim Basis

30. On July 31, 2013, the Compliance Consultant delivered a Plan to Staff for approval. Staff reviewed the Plan and approved of the Plan in due course.
31. The Plan set out specific measures that Gold would implement to address each deficiency identified in the Report. With respect to Gold's delegation of its advisory obligations to the Referral Agents, the Plan stated that: "Gold will contact each of its referred clients and directly collect and/or update KYC information and assess or reassess the suitability of investments by December 2013."
32. Each remedial measure set out in the Plan has now been implemented. However, prior to November 2013, Gold's progress in contacting its referred clients directly to collect KYC information did not meet Staff's expectations, and Staff became concerned that Gold would not complete the process by the end of December 2013 as required by the Plan.
33. As a result of its concerns, on December 11, 2013, Staff informed Gold that a recommendation had been made to the Director that the Proposed Terms and Conditions be imposed on the firm's registration.
34. The Proposed Terms and Conditions were to be in addition to the May 2013 Terms and Conditions, and would prohibit Gold from doing the following:
- (a) accepting any new clients or opening any new client accounts;
 - (b) accepting any new funds into a client's account if the client had not been initially contacted by Gold and adequate KYC documentation had not been completed; and
 - (c) accepting any new funds into a client's account until such time as the proposed deposit of funds had been reviewed by the Compliance Consultant for compliance with condition (b) above.
35. On December 12, 2013, Gold requested an OTBH in relation to Staff's recommendation that the Proposed Terms and Conditions be imposed.
36. On December 20, 2013, Gold consented to the Proposed Terms and Conditions being imposed until February 5, 2014 to allow Staff and Gold an opportunity to seek a negotiated resolution to the OTBH.

37. On January 13, 2014, Gold consented to a further extension of the Proposed Terms and Conditions to March 13, 2014, as Staff and Gold continued discussions in furtherance of a negotiated resolution of the OTBH.

38. On March 10, 2014, Gold consented to a further extension of the Proposed Terms and Conditions to the fifth day after the OTBH was held, as Staff and Gold continued discussions in furtherance of a negotiated resolution of the OTBH.

F. Gold Demonstrates Improvements in its Compliance with Ontario Securities Law

39. Following the imposition of the Proposed Terms and Conditions on an interim basis the Compliance Consultant continued to deliver Monthly Reports, and also delivered shorter reports on a more frequent basis (the **Additional Reports**).

40. The Monthly Reports and the Additional Reports showed that Gold eventually completed initial KYC and suitability reviews for substantially all of the clients with whom it had not previously met, and that it was making reasonable progress towards contacting its clients for an annual KYC and suitability update review for the year 2014.

41. Pursuant to the Proposed Terms and Conditions that had been imposed on an interim basis, Gold stopped accepting funds from clients where the Compliance Consultant determined that Gold had not collected adequate KYC information from the clients, and Gold did not resume accepting funds from the clients until the Compliance Consultant determined that adequate KYC information had been obtained.

42. In addition to the measures called for by the Plan, Gold has confirmed to Staff that it has made, or will make, the following changes to its policies and practices:

- (a) only individuals registered with Gold as an associate advising representative or an advising representative will speak with clients for the purpose of completing an investment management agreement or KYC form;
- (b) a client's KYC information will be updated as soon as reasonably practicable under three circumstances: (i) when the firm is advised by a client that there has been a material change to the client's KYC information (ii) whenever the client makes a relatively significant contribution to, or withdrawal from, their account, and (iii) when Gold otherwise becomes aware of a material change to the client's KYC information. Absent the update of a client's KYC information under these circumstances, every client's KYC information would be updated no less frequently than annually;
- (c) each KYC information update will be conducted by way of a comprehensive face-to-face meeting or telephone conversation by a registered individual using a KYC information form;
- (d) Gold has increased its number of individual registrants from two to five (three advising representatives and two associate advising representatives);
- (e) Gold has clearly identified in its policies and procedures manual that Referral Agents are prohibited from engaging in the following activities:
 - (i) forwarding an investment management agreement or an investment policy statement to a client or providing advice in relation to those documents;
 - (ii) advising the client on the suitability of model portfolios;
 - (iii) advising the client on the effect of lifestyle and financial changes to a client's investment objectives or risk tolerance; and
 - (iv) holding themselves out as guiding or influencing investment-related decisions;
- (f) Gold's agreement with its Referral Agents complies with Division 3 of Part 13 of NI 31-103, and also states that a Referral Agent that advises or deals in securities with Gold's clients shall be deemed to be in breach of the agreement, and Gold shall have the right to terminate the agreement. Gold will enhance the oversight of its Referral Agents by taking the following steps:
 - (i) conducting a monthly review of Referral Agent websites to ensure that the Referral Agent is not advertising or engaging in services that require registration;
 - (ii) conducting annual in-person visits with each Referral Agent during which the terms of the Referral Agent's agreement with Gold will be reviewed and discussed with the Referral Agent, and the

Referral Agent will be asked to sign an annual attestation form confirming that it has not contravened any of Gold's policies and procedures in relation to Referral Agents; and

- (iii) requiring each Referral Agent to provide Gold with prior written notice of the launch of any new website and any proposed amendments to an existing website.
- (g) Gold has amended its referral agreements to provide for the activities described in paragraphs 42(f)(ii) and 42(f)(iii), above. These amendments have been made in a form acceptable to Staff, and Gold will deliver these amended referral agreements to its Referral Agents for execution.

III. ADMISSIONS BY GOLD

43. On the basis of the Agreed Statement of Facts, Gold admits as follows:

- (a) the firm did not establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complied with securities legislation, and to manage the risks associated with its business in accordance with prudent business practices, contrary to section 11.1 of NI 31-103;
- (b) the firm did not discharge all of its obligations in subsection 13.2(2) of NI 31-103 (KYC); and
- (c) the firm did not discharge all of its obligations in subsection 13.3(1) of NI 31-103 (suitability).

IV. JOINT RECOMMENDATION TO THE DIRECTOR

44. In order to resolve the OTBH that has been requested by Gold, and on the basis of the Agreed Statement of Facts and the Admissions by Gold set out in this Settlement Agreement, Staff and Gold make the following joint recommendation to the Director:

- (a) all terms and conditions to which the registration of Gold is currently subject be removed; and
- (b) the Agreed Terms and Conditions be imposed on the registration of Gold pursuant to section 28 of the Act.

45. The Parties submit that their joint recommendation is reasonable, having regard to the following factors:

- (a) Gold has now fully implemented the Plan and rectified all deficiencies contained in the Report;
- (b) Gold has demonstrated good progress towards completing its annual KYC review of all of its clients for 2014;
- (c) Gold acknowledges that its partnership with Referral Agents is a regulatory risk for the firm and it has implemented, or will implement, specific measures to manage this risk, as described above;
- (d) Gold has made written submissions dated February 28, 2014, April 25, 2014, and June 11, 2014 describing the steps it had taken, and would take, to rectify the regulatory concerns identified by Staff, and has incurred substantial legal and consulting costs to satisfy the terms and conditions on its registration and to take additional measures to improve its compliance with Ontario securities law, as described above;
- (e) the Agreed Terms and Conditions will facilitate Staff's monitoring of the growth of Gold's client base to assess whether it risks exceeding the firm's compliance resources again;
- (f) the Compliance Consultant's role under the Agreed Terms and Conditions will be converted to a transitional role to provide continued oversight of Gold's compliance with Ontario securities law as the firm resumes its ability to take on new clients;
- (g) Gold has been co-operative with Staff; and
- (h) by agreeing to this Settlement Agreement, Gold has saved the Director the time and resources that would have been required for an OTBH.

46. Staff and Gold acknowledge that if the Director does not accept this joint recommendation:

- (a) this joint recommendation and all discussions and negotiations between Staff and Gold in relation to this matter shall be without prejudice to the parties; and

(b) Gold will be entitled to an OTBH in accordance with section 31 of the Act in respect of any recommendation that may be made by Staff regarding their registration status.

47. The parties agree that this Settlement Agreement, and any Director's decision approving of it, will be published on the OSC's website and in the OSC Bulletin.

"Mark Skuce"

Mark Skuce
Legal Counsel
Compliance and Registrant Regulation

October 9, 2014

Date

"Jonathan Goldenstein"

Jonathan Goldenstein
for Gold Investment Management Ltd.
"I have authority to bind the corporation"

October 8, 2014

Date

Schedule "A"

Proposed Terms and Conditions

The registration of Gold Investment Management Ltd. (the Firm) under the *Securities Act* (Ontario) is subject to the following terms and conditions, which are in addition to the terms and conditions imposed on May 3, 2013.

As of the effective date of these terms and conditions, the Firm shall not:

- a. accept any new clients or open any new client accounts;
- b. accept any new funds into a client's account if the client has not been initially contacted by the Firm and adequate know-your-client documentation has been completed ; and
- c. accept any new funds into a client's account until such time as the proposed deposit has been reviewed by the Trinity Compliance Partners (the Consultant) for compliance with clause (b) of these terms and conditions, and the Consultant has confirmed in writing to the Firm that the proposed deposit complies with clause (b).

Schedule "B"

Agreed Terms and Conditions

The registration of Gold Investment Management Ltd. (the **Firm**) under the *Securities Act* (Ontario) is subject to the following terms and conditions effective [date of Director approval of joint recommendation]:

1. The Firm shall retain the Compliance Consultant (as that term is defined in the settlement agreement between the Firm and staff of the Ontario Securities Commission (**Staff**)), or another compliance consultant as may be approved by Staff for a period of no less than 9 months (the **First Period**) to monitor the Firm's compliance with its know-your-client and suitability obligations as set out in sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registration Obligations*.
2. During the First Period, the Compliance Consultant shall deliver monthly reports to Staff reporting on the following:
 - (a) For clients of the Firm as of the effective date of these terms and conditions (**Existing Clients**):
 - (i) the number of Existing Clients for whom the Firm has conducted a know-your-client (**KYC**) and suitability information update during the reporting period (a **Client Update**); and
 - (ii) on a year-to-date basis, the total number of clients for whom the Firm has conducted a Client Update.
 - (b) For clients who become clients of the Firm on or after the effective date of these terms and conditions (**New Clients**):
 - (i) the number of New Clients added during the reporting period;
 - (ii) confirmation that the Firm has conducted a KYC and suitability analysis for each New Client added during the reporting period; and
 - (iii) the number of New Clients added since the start of the First Period.
 - (c) For Existing Clients and New Clients:
 - (i) the Compliance Consultant's review and conclusions as to the adequacy of the Firm's KYC information and suitability analysis for a sample of Existing Clients and New Clients selected by the Compliance Consultant based on the reasonable exercise of its professional judgment; and
 - (d) Such other information as Staff may request.
3. For a minimum period of three years commencing on the expiry of the First Period (the **Second Period**), the Firm shall:
 - (a) submit to an annual review (an **Annual Review**) by the Compliance Consultant (or another suitable compliance consultant approved by Staff) to assess the Firm's compliance with Ontario securities law;
 - (b) submit quarterly reports to Staff identifying:
 - (i) the number of New Clients added during the reporting period and the name of the individual responsible for referring the client to the Firm (if any); and
 - (ii) the number of New Clients added since the commencement of the Second Period

unless the Firm adds 50 or more clients during a reporting period, in which case the report referred to in this paragraph 3(b) shall be delivered to Staff as soon as reasonably practicable and in any event no later than two business days after the addition of the 50th client.
4. The first Annual Review shall assess the Firm's compliance with Ontario securities law for the entirety of the calendar year in which the First Period expires, and the second and third Annual Reviews shall assess the Firm's compliance with Ontario securities law for the entirety of each of the following two calendar years, respectively.

Reasons: Decisions, Orders and Rulings

5. Upon the completion of each Annual Review, the Compliance Consultant shall submit to Staff a report of its findings from the Annual Review.
6. After a New Client has undergone a KYC and suitability analysis by the Firm, they shall be considered an Existing Client for the purposes of performing Client Updates.
7. The Firm shall immediately submit to Staff a direction from the Firm giving consent to unrestricted access by Staff to communicate with the Compliance Consultant regarding all matters in relation to these terms and conditions.
8. The Firm will implement and enforce its amended referral agreement, which provides for the following:
 - (a) the performance of annual in-person visits with each party who enters into a referral agreement with the Firm (a **Referral Agent**) during which the terms of the referral agreement will be reviewed and discussed with the Referral Agent, and the Referral Agent will be asked to sign an annual attestation form confirming that it has not contravened any of the Firm's policies and procedures in relation to client referrals; and
 - (b) a requirement for each Referral Agent to provide the Firm with prior written notice of the launch of any new website referring, directly or indirectly, to the Firm or its services, and any proposed amendments to an existing website maintained by or on behalf of a Referral Agent.