



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-and-

**IN THE MATTER OF THE REGISTRATION IN AN ADDITIONAL JURISDICTION OF
HUGH SMILESTONE**

1. This decision relates to an application for reinstatement of registration and registration in an additional jurisdiction as a mutual fund dealing representative under the *Securities Act* (Ontario) (the “**Act**”) by Hugh Smilestone (“**Smilestone**”) with Keybase Financial Group Inc. (“**Keybase**”)(the “**Application**”). The Application was filed in the form of an application for registration in an additional jurisdiction as Smilestone was already registered in Nova Scotia, his principal jurisdiction.
2. Smilestone had previously been registered as a mutual fund dealing representative in Nova Scotia for a period of approximately 14 years ending on March 10, 2010, at which time certain of his conduct became the subject of an investigation of the Mutual Fund Dealers Association of Canada (“**MFDA**”).
3. On August 8, 2013, a Hearing Panel of the MFDA released its Reasons for Decision for its Order dated July 8, 2013 confirming a Settlement Agreement (the “**Settlement Agreement**”) entered into with Smilestone related to conduct that had occurred between June 1, 2004 and March 10, 2010 while Smilestone was registered as a mutual fund dealing representative with an MFDA member firm.
4. In the Settlement Agreement, Smilestone admitted that he had engaged in the following activities in violation of MFDA Rules:
 - (a) he falsified client signatures and initials on account documents and falsified the content of other documents;
 - (b) he engaged in authorized and unauthorized discretionary trading;
 - (c) he provided false signature guarantees on trade tickets after falsifying the signature of the client on trade tickets;
 - (d) he failed to comply with conditions imposed on him by his sponsoring firm to provide each customer of his outside business activity with a disclosure and acknowledgement form and to maintain documentation from the outside business activity separate and apart from his mutual fund files; and

- (e) he provided false responses to his sponsoring firm's compliance staff when being interviewed about his business practices.
5. In the Settlement Agreement, Smilestone agreed to the following sanctions:
- (a) that he be prohibited for a period of two years from conducting securities related business on behalf of an MFDA firm;
 - (b) that he pay a fine of \$10,000; and
 - (c) that he pay costs of \$5,000.
6. In the Settlement Agreement, Smilestone also consented to the following conditions to be sponsored by an MFDA firm in the future:
- (a) that he successfully complete an ethics course satisfactory to the MFDA;
 - (b) that he be subject to close supervision by his sponsoring MFDA firm for the first 12 months during which he conducts securities related business; and
 - (c) that he comply in the future with relevant MFDA rules and requirements.
7. On March 30, 2015, following satisfaction of the sanctions imposed by the MFDA, the Nova Scotia Securities Commission approved Smilestone's application for registration in Nova Scotia subject to certain customized supervisory terms and conditions which are set out in Schedule "A" (the "**Nova Scotia Terms and Conditions**").
8. Staff reviewed the Application and the Nova Scotia Terms and Conditions and sent a letter to Smilestone (the "**Letter**") informing him that Staff had recommended to the Director that the Application be granted subject to the terms and conditions found in Schedule "B" (the "**Terms and Conditions**").
9. The Letter stated that Staff's recommendation was based on the following considerations:
- (a) Staff was of the view that the Nova Scotia Terms and Conditions reflected the very serious misconduct which Smilestone admitted to in the Settlement Agreement.
 - (b) Staff had similar substantive regulatory concerns as that of the Nova Scotia Securities Commission.
 - (c) Staff was of the view that registration in Ontario would be objectionable if Smilestone were subject to any less rigorous supervision than that which governed his registration with his principal regulator.
 - (d) The Terms and Conditions were designed to be consistent with the Nova Scotia Terms and Conditions while also being consistent with terms and conditions imposed on other Ontario registrants where similar suitability concerns were present.
 - (e) Staff was of the view that the Terms and Conditions were necessary to fulfil its mandate under the Act to ensure transparency and investor protection.

- (f) The Terms and Conditions were intended to address the risk that Smilestone might engage in similar misconduct in the future, emphasize that the conduct described in the Settlement Agreement was not acceptable for a securities professional and to enhance this sponsoring firm's oversight of his business practices.
10. The Letter advised Smilestone that he would have the ability to apply to remove the Terms and Conditions after the later of:
- (a) one year; or
 - (b) the Nova Scotia Securities Commission removing the terms and conditions applicable to his registration in Nova Scotia.
11. The Letter also informed Smilestone of his right to request an opportunity to be heard ("**OTBH**") before terms and conditions were imposed pursuant to section 31 of the Act.
12. Smilestone did not request an OTBH and Keybase provided notification on October 10, 2017 that both Keybase and Smilestone accepted the Terms and Conditions. Accordingly, Smilestone's registration in Ontario was reinstated effective October 12, 2017, subject to the Terms and Conditions.

November 10, 2017

Date

"Debra Foubert"

Debra Foubert
Director
Compliance and Registrant Regulation

SCHEDULE “A”

Terms and Conditions for the Registration of Hugh Smilestone in Nova Scotia

1. Any document that is required to be signed or initialed by a client must be approved by the assigned supervisor prior to any actions taking place. Copies of all signed or initial client documents will be delivered electronically to the Nova Scotia Securities Commission.
2. Every trade must be sufficiently recorded in a manner that clearly states the following:
 - When the trade was placed
 - Who gave the instructions to place the trade
 - When the client’s KYC information was last updated
3. Monthly close supervision reports will be delivered to the Nova Scotia Securities Commission.
4. Monthly copies of all trading activity will be delivered to the Nova Scotia Securities Commission.
5. Any client complaint will be delivered to the Nova Scotia Securities Commission within 3 days that it is received by the firm.
6. The individual may not recommend leverage to any client.
7. The individual may not have any trading authority or power of attorney over any client accounts.
8. The firm to conduct quarterly in person audits for the first 24 months and semi-annually thereafter with a written copy of the audit report being delivered to the NSSC within 90 days of the audit.

SCHEDULE "B"

Terms and Conditions for the Registration of Hugh Smilestone in Ontario

The registration of Hugh Smilestone (the **Registrant**) as a dealing representative in the category of mutual fund dealer is subject to the terms and conditions set out below. These terms and conditions were imposed by the Director pursuant to section 27 of the *Securities Act* (Ontario) (the **Act**)

1. The registration of the Registrant shall be subject to strict supervision by his sponsoring firm.
2. The Registrant's sponsoring firm must submit written monthly supervision reports (in the form specified in Appendix "A") to the OSC at registrations@osc.gov.on.ca. These reports must be submitted within 15 calendar days after the end of each month.
3. The Registrant must not use limited trading authorization for any of his clients.
4. The Registrant may not recommend leverage to any client.
5. Any document submitted by the Registrant to his sponsoring firm that bears a client's signature or initial must be the original document and client signatures must be verified by a supervisor at the sponsoring firm prior to any actions taking place.
6. The Registrant firm shall conduct in person audits of the Registrant and his business location at least semi-annually.
7. An outside business activity (OBA) disclosure form clearly identifying the Registrant's outside business activities must be provided to and signed by all of the Registrant's mutual fund clients. The OBA disclosure form shall provide clients with the option to contact the sponsoring firm's Chief Compliance Officer (CCO) or Branch Manager in order to discuss the OBA disclosure form or to request that they be transferred to another dealing representative

These terms and conditions of registration constitute Ontario securities law and a failure by the Registrant to comply with these terms and conditions may result in further regulatory action against him, including a suspension of his registration.

APPENDIX "A"

Strict Supervision Report

This strict supervision report must be completed by the firm's chief compliance officer or his or her designate.

The undersigned certifies that all supervisory activities required by this strict supervision report have been properly performed, and that reasonable steps have been taken to confirm the accuracy of the information provided in this report.

Print name: _____

Sign name: _____

Position: _____

Date: _____

Instructions

1. This is a strict supervision report and is required by the terms and conditions (the "**Terms and Conditions**") on the registration of the individual to which it relates (the "**Registered Individual**").
2. While the Registered Individual is subject to the Terms and Conditions:
 - (a) each trade made by the Registered Individual must be pre-approved by their sponsoring firm (excluding trades made through pre-authorized contribution plans implemented prior to the imposition of the Terms and Conditions); and
 - (b) on a monthly basis, this report must be completed and a copy must be sent to staff of the [applicable securities regulator] ("**Staff**").
3. For the purpose of this report, "trade" means the purchase, sale, or any other form of transfer of securities.
4. The review of trades undertaken by the firm pursuant to the Terms and Conditions must check for the following:
 - (a) no trades have been made in any client account until the full and correct documentation is in place;
 - (b) the Registered Individual has not been granted any power of attorney over any client accounts;
 - (c) all payments for the purchase of securities were made payable to the dealer or the fund company, and there were no cash payments accepted by the Registered Individual;
 - (d) all applicable fees have been appropriately disclosed to the client in writing;
 - (e) investment suitability (including the suitability of leveraging, if any);
 - (f) the use of pre-signed, forged, or otherwise irregular documents;

- (g) excess trading or switching;
- (h) any additional issues specifically identified in the Terms and Conditions as being subject to trade reviews for the purpose of this strict supervision report; and
- (i) any other issues identified by the firm during the review;

(collectively, the “**Review Issues**”).

- 5. If a Review Issue has been identified with respect to a proposed trade, the firm must not approve the trade until the Review Issue has been resolved to the firm’s satisfaction.
- 6. The firm must maintain a copy of this report in its records, including following the removal of the Terms and Conditions or the termination of the Registered Individual’s employment with the firm.
- 7. This report and all related documents that the firm is required to deliver to Staff pursuant to the Terms and Conditions shall be delivered using the Electronic Filing portal on the website of the [*applicable securities regulator*]. [For securities regulators that do not have an Electronic Filing portal, replace this paragraph 7 with the following: “This report and all related documents that the firm is required to deliver to Staff pursuant to the Terms and Conditions shall be delivered to: [*insert recipient*].”]
- 8. If the firm identifies that it has failed to comply with anything in these Instructions, the firm shall immediately deliver to Staff written notice of its non-compliance and its explanation for the non-compliance.

Part A – Trading Information

- 1. The name of the Registered Individual is: _____.
- 2. The Registered Individual’s sponsoring firm is _____.
- 3. The Terms and Conditions were imposed on _____.
- 4. The period covered by this report is _____.
- 5. During the reporting period, the Registered Individual made _____ trades in _____ different client accounts, of which _____ were leveraged trades. These numbers do not include trades made through pre-authorized contribution plans implemented prior to the imposition of the Terms and Conditions.

Part B – Supervision Information

- 1. Describe the process that was used to review all trades identified in Part A for the existence of the Review Issues:
