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Citation: Dhillon (Re), 2018 ONSEC 14
Date: 2018-04-03

IN THE MATTER OF
SITAL SINGH DHILLON

REASONS AND DECISION
(Subsections 8(2) and 8(3) of the *Securities Act*, RSO 1990, c S.5)

Hearing:	February 12, 2018	
Decision:	April 3, 2018	
Panel:	Mark J. Sandler	Chair of the Panel
	Deborah Leckman	Commissioner
	AnneMarie Ryan	Commissioner
Appearances:	Sital Singh Dhillon	For himself
	Raphael T. Eghan	For Staff of the Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] On June 14, 2016, Sital Singh Dhillon applied for registration as a mutual fund dealing representative with Shah Financial Planning Inc. (**Shah**). After interviewing Mr. Dhillon on June 24, 2016, Staff recommended to the Director of Compliance and Registrant Regulation Branch of the Commission (the **Director**) that his application be refused. Staff informed Mr. Dhillon of its recommendation in a letter dated August 9, 2016.

[2] Mr. Dhillon requested an Opportunity to be Heard (**OTBH**) regarding his application, which ultimately took place on June 23, 2017. On July 31, 2017, the Director issued her decision, with reasons, for refusing Mr. Dhillon's application for registration as a mutual fund dealing representative (the **Director's Decision**). The Director found that Mr. Dhillon lacked both the proficiency and the integrity required for registration, and that his registration would be otherwise objectionable.

[3] Mr. Dhillon applied for a hearing and review before the Ontario Securities Commission of the Director's Decision, which we conducted on February 7, 2018. At the conclusion of the parties' submissions, we reserved judgment. These are our Reasons and Decision. As explained below, we conclude that Mr. Dhillon is unsuitable for registration based on his lack of proficiency and integrity. The Director's Decision is therefore confirmed.

II. PRELIMINARY ISSUE – WITHDRAWAL OF FIRM SPONSORSHIP

[4] Mr. Dhillon's application for registration on June 14, 2016 was sponsored by Shah. Following the Director's Decision, Shah withdrew its sponsorship of Mr. Dhillon's application.

[5] An individual who seeks to engage in the business of trading in securities must be registered as a dealing representative of a registered dealer (i.e. his/her firm) and must act on behalf of that dealer.[1] As a result, the issue arose as to what jurisdiction the Commission had to review the Director's Decision.

[6] In our view, it would be fundamentally unfair if the Director could refuse an application for registration, potentially resulting in a withdrawal of sponsorship, without access on the applicant's part to hearing and review proceedings to challenge the Director's Decision. Nor is such unfairness compelled by subsections 8(2) and 8(3) of the Act, which provide for the right to a hearing and review. These subsections entitle any person or company "directly affected by a decision of the Director" to a hearing and review, and provide that the Commission may either confirm the decision under review or "make such other decision as the Commission considers proper."

[7] Despite the withdrawal of sponsorship, it is obvious that Mr. Dhillon remains a person "directly affected" by the Director's decision. Moreover, the Commission's authority to make such decision as it considers proper (other than confirming the

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[1] *Securities Act,* RSO 1990, c. S.5 (the **Act**), s 25(1)(b); *Reaney (Re)*, (2015) 38 OSCB 6412; 2015 ONSEC 23 at para 25.

Director's Decision) surely includes the authority to set aside the Director's Decision without approving the registration.

[8] We conclude that while the Commission does not have jurisdiction under subsection 8(3) of the Act to approve the registration of an unsponsored applicant, it does have jurisdiction to set aside a Director's Decision to refuse registration. The parties had no objection to proceeding on that basis.

III. LAW

A. Criteria for registration

[9] The criteria for registration under the Act are set out in subsections 27(1) and 27(2). The passages relevant to this application are highlighted in boldface:

> **27 (1) On receipt of an application by a person** or company and all information, material and fees required by the Director and the regulations, **the Director shall register the person** or company, reinstate the registration of the person or company or amend the registration of the person or company, **unless it appears to the Director**,
>
> > (a) **that, in the case of a person** or company **applying for registration**, reinstatement of registration or an amendment to a registration, **the person** or company **is not suitable for registration under this Act; or**
> >
> > (b) **that the proposed registration**, reinstatement of registration or amendment to registration **is otherwise objectionable**.
>
> **(2) In considering for the purposes of subsection (1) whether a person** or company **is not suitable for registration, the Director shall consider**,
>
> > (a) **whether the person** or company **has satisfied**,
> >
> > > (i) **the requirements prescribed in the regulations relating to proficiency**, solvency **and integrity, and**
> > >
> > > (ii) such other requirements for registration, reinstatement of registration or an amendment to a registration, as the case may be, as may be prescribed by the regulations; and
> >
> > (b) **such other factors as the Director considers relevant**.
>
> [Emphasis added.]

[10] The Director determined that Mr. Dhillon was not suitable for registration, based on his failure to meet the requirements prescribed in the regulations relating to proficiency and integrity. Those regulations are elaborated upon later in these reasons.

[11] The Director also determined that Mr. Dhillon's registration would be otherwise objectionable. In light of our disposition on the issue of unsuitability, it is unnecessary to address whether Mr. Dhillon's registration would be otherwise objectionable.

B. Hearing and Review of a Director's Decision

[12] As indicated earlier, hearing and review proceedings by the Commission are governed by subsections 8(2) and 8(3) of the Act:

> **8 (2) Any person** or company **directly affected by a decision of the Director may**, by notice in writing sent by registered mail to the Commission within thirty days after the mailing of the notice of the decision, **request and be entitled to a hearing and review** thereof **by the Commission**.
>
> **(3)** Upon a hearing and review, **the Commission may** by order **confirm the decision** under review **or make such other decision as the Commission considers proper**.
>
> [Emphasis added.]

[13] A hearing and review of a decision by the Director is a hearing *de novo*. Simply put, it involves a fresh consideration of the issue. No deference is owed to the Director's Decision.[2] This means, among other things, that Staff bears the burden of proof or persuasion in this hearing and review, as Staff did before the Director. Staff, not the applicant, must demonstrate that the applicant lacks the proficiency or integrity to be registered or that his registration would otherwise be objectionable.

C. The Applicable Burden of Proof

[14] Subsection 27(1) of the Act provides that the Director is entitled to refuse registration where it **appears to the Director** that the applicant is not suitable for registration or the registration would be otherwise objectionable. Staff submits that the highlighted wording supports the view that the applicable burden of proof before the Director (and before the Commission by extension) is not "the balance of probabilities" standard, but a lower standard based on whether "it appears" to the Director that registration is not suitable or would otherwise be objectionable.

[15] There is some support in the jurisprudence for Staff's position. For example, in *Argosy Securities Inc. and Keybase Financial Group Inc.* (***Argosy***)[3] the Commission recently considered this issue in the context of section 28, which contains similar language to section 27, and said this:

> "… the Director (and by extension the Commission) may impose terms and conditions upon a registration if 'it appears' that the registrant has failed to comply with Ontario securities law. This is not an enforcement proceeding, and we are not necessarily being asked to conclude, on a

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[2] *Bouji (Re)*, (2017) 40 OSCB 8845, 2017 ONSEC 38 at para 26; *Waverley Corporate Financial Services Ltd. (Re)*, (2017) 40 OSCB 2145, 2017 ONSEC 5 at para 25; *Sterling Grace & Co (Re)*, (2014) 37 OSCB 8298, 2014 ONSEC 24 (***Sterling Grace***) at para 24.

[3] (2016), 39 OSCB 4040, 2016 ONSEC 11 at para 47.

balance of probabilities, that the Applicants have contravened Ontario securities law. It is sufficient for us to conclude, as we do, that it appears there has been a failure to comply with Ontario securities law.[4]

[16] In *Argosy*, the Commission found it unnecessary to articulate what that lower standard of proof entailed or to engage in a detailed analysis of the issue.

[17] In our view, there may be a compelling argument that favours an alternative interpretation of the phrase "appears to the Director." It is arguable that the phrase is intended only to identify the person (in this instance, the Director) who is empowered to decide whether the applicant qualifies for registration. On this interpretation, the phrase is unrelated to the standard of proof.

[18] On this same interpretation, the conventional burden of proof applicable in administrative or regulatory proceedings should prevail.

[19] In *F.H. v McDougall* [5], the Supreme Court of Canada reaffirmed that "in civil cases there is only one standard of proof and that is proof on a balance of probabilities." The same approach has subsequently been taken in most administrative or regulatory proceedings.

[20] In *McDougall*, the Court recognized that it is open to a legislature to change the standard of proof through statutory enactment, and in *Jacobs v. Ottawa (Police Service)*,[6] the Supreme Court of Canada upheld a higher standard of proof in police disciplinary proceedings based on the wording contained in the Ontario *Police Services Act*. However, clear and unambiguous language is required to displace the conventional standard of proof. It is arguable that section 27 of the Act falls short of the kind of clear and unambiguous language sufficient to displace the conventional standard of proof.

[21] There are also policy reasons which arguably support the preservation of the balance of probabilities standard under section 27 of the Act. Although registration has been described as a privilege[7], the inability to be registered, or the loss of registration may have significant adverse consequences to an applicant, including loss of employment or livelihood. A decision which concludes that an applicant lacks integrity or is otherwise unsuitable for registration potentially impacts in a profound way on that applicant's reputation. It hardly seems an onerous requirement to insist that Staff demonstrates, on a balance of probabilities, the preconditions to denial of registration.

[22] The phrase "appears to" has been interpreted by courts in the context of other legislation. In *Royal Trustco Ltd. (Re)*,[8] a case involving the *Canada Business Corporations Act*,[9] the court held that "appears to" indicates a lower standard of proof. However, it stressed that this interpretation relied on the context in which the provision appeared.[10] In contrast, in *Beamish v Miltenberger*,[11] the wording

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[4] *Argosy* at para 179.
[5] 2008 SCC 53 (***McDougall***) at para 49.
[6] 2016 ONCA 345.
[7] *Trend Capital Services Inc. (Re)* (1992), 15 OSCB 1711 at para 111.
[8] *Royal Trustco Ltd. (Re)*, [1981] OJ No. 252 (Sup Ct) (***Royal Trustco***) at para 18.
[9] *Canada Business Corporations Act*, RSC, 1985 c C-44.
[10] *Royal Trustco* at para 4.
[11] *Beamish v Miltenberger*, [1997] NWTR 160 (Sup Ct).

"appears to" in the Northwest Territory's *Elections Act*,[12] was held to refer to the civil standard.

[23] We felt that it is important to identify this issue for future consideration. However, we choose not to resolve it in this case for two reasons. First, we have not had the benefit of full submissions on this point, including a detailed analysis of the same phrase elsewhere in the Act – for example, in subsection 70(1) – and in other legislation. Second, and more importantly, as reflected in these reasons, we have used the higher standard, which is more favourable to the applicant. Using this higher standard, we still find that he is unsuitable for registration. Accordingly, the application of a lower standard would not change the result.

IV. THE CONDUCT OF THE HEARING AND REVIEW

[24] In accordance with the *Ontario Securities Commission Practice Guideline*,[13] we were provided with the record of the proceeding below, containing, in this instance:

a. the application by which the original matter was commenced;

b. the Notice of Hearing;

c. interim orders;

d. documentary evidence filed in the original proceeding;

e. a transcript of oral submissions in the original proceeding; and

f. the decision that is the subject of the request for a hearing and review, including the reasons for the decision.

[25] Because this is a hearing *de novo*, the parties are entitled to adduce new evidence relevant to the issues. Staff, in this instance, elected only to add one fact to the existing record, namely that Shah has withdrawn its sponsorship of the applicant. Mr. Dhillon agreed to that fact without the necessity of formal proof.

[26] In addition to relying on the existing record, Mr. Dhillon presented to the Panel three decisions of hearing panels of the Mutual Fund Dealers Association of Canada (the **MFDA**):

a. Reasons for Decision, dated January 30, 2012, resulting from a settlement hearing between the MFDA and W.H. Stuart Mutuals Ltd. (**WHS**);[14]

b. Decision and Reasons (Misconduct), dated April 25, 2016, resulting from a disciplinary proceeding against WHS, Marilyn Dianne Stuart and Walter Howard Stuart;[15] and

c. Decision and Reasons (Penalty), dated May 16, 2016, resulting from the same disciplinary proceeding against WHS, Marilyn Dianne Stuart and Walter Howard Stuart.[16]

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[12] *Elections Act*, RSNWT, c E-2.
[13] *Ontario Securities Commission Practice Guideline* (2017), 40 OSCB 9009, s 6(2).
[14] MFDA File No. 201035
[15] MFDA File No. 201426
[16] MFDA File No. 201532

[27] Mr. Dhillon also advised the Commission that proceedings had taken place against Dino DeRosa, relating to his role as Chief Compliance Officer (**CCO**) at WHS. In fairness to Mr. Dhillon, we asked Staff to facilitate a search to determine whether the MFDA had indeed proceeded against Mr. DeRosa and if so, what the status of those proceedings was. We learned that the MFDA had proceeded against Mr. DeRosa on allegations described in a Notice of Hearing which we were provided.[17] We understand that those proceedings remain outstanding. We have considered all of the additional materials tendered in deciding this matter.

[28] Mr. Dhillon chose not to testify at the hearing and review. He and Staff made submissions in writing and orally in support of their respective positions.

V. THE POSITIONS OF THE PARTIES

[29] Staff contends that the evidence overwhelmingly supports the Director's Decision that Mr. Dhillon is unsuitable for registration based on a lack of requisite proficiency and integrity, and that his registration would be otherwise objectionable. Staff's position largely tracks its submissions before the Director.

[30] Mr. Dhillon argues that he meets the proficiency and integrity requirements for registration. In relation to the integrity requirement, he challenges the credibility and reliability of the information received from various firms where he was employed, asserting, among other things, that several firms have made false allegations against him out of self-interest, including false allegations against him of dishonesty and serious non-compliance with regulatory requirements. He was particularly forceful in contending that WHS and its CCO were themselves engaged in serious discreditable conduct which fatally undermines the credibility and reliability of their allegations against him.

[31] We discuss the available evidence, as well as the more detailed positions of the parties, in the analysis that follows.

VI. ANALYSIS

A. Introduction

[32] When reviewing a Director's Decision relating to registration, the Commission is required to act in the public interest. In doing so, the Commission is required to keep in mind certain fundamental principles, such as the "requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants".[18] These principles support the stated objectives of the Act: namely, (a) to provide protection to investors from unfair, improper or fraudulent practices; (b) to foster fair and efficient capital markets and confidence in capital markets; and (c) to contribute to the stability of the financial system and the reduction of systemic risk.[19]

[33] Registrants have a very important function in the capital markets and investors place their trust in registrants who advise them. This is precisely why regulating

[17] MFDA File No. 201751.
[18] Act, s. 2.1(2)(iii).
[19] Act, s. 1.1.

the conduct of registrants, and the ability of any person or entity to be registered, is a matter of public interest.[20]

[34] The Act directs us, in determining whether Mr. Dhillon is suitable for registration, to consider whether he has satisfied the requirements prescribed in the regulations relating to proficiency, solvency and integrity.[21] Solvency is not an issue in this proceeding.

[35] In determining whether an applicant for registration is suitable or not suitable for registration, the Director and the Commission are entitled to consider the applicant's past conduct.[22] To state an obvious example, proof of past dishonesty or serious non-compliance with regulatory requirements may figure prominently in whether an applicant's behaviour in the future would fail to meet the requisite standards of conduct such as fitness, honesty and integrity.

1. Does Mr. Dhillon meet the proficiency requirements for registration?

[36] Staff submits that Mr. Dhillon has not satisfied the requirements prescribed in the regulations relating to proficiency. Mr. Dhillon disputes this and submits that he is suitable in this respect.

[37] National Instrument 31-103 – *Registration Requirements* (**NI 31-103**) prescribes specific criteria – such as course requirements – that individuals must meet when applying to be registered as a mutual fund dealing representative in order to fulfill the proficiency requirement of section 27 of the Act.

[38] Paragraph 3.5(a) of NI 31-103 requires a mutual fund dealing representative to pass the Canadian Investment Funds Course Examination, the Canadian Securities Course Examination or the Investment Funds in Canada Course Examination. Subsection 3.3(1) of NI-31-103 provides that individuals are deemed not to have passed such an examination unless they have done so not more than three years before the date of their application for registration, unless an exemption contained in subsection 3.3(2) applies.

[39] Paragraph 3.3(2)(a) of NI 31-103 gives an exemption to individuals who have been registered in the same category of registration elsewhere in Canada during the three-year period prior to the application for registration. This exemption has no application here. Paragraph 3.3(2)(b) exempts individuals who have gained twelve months of relevant securities industry experience during the three-year period prior to their application for registration.

[40] Mr. Dhillon passed the Canadian Investment Funds Course Examination in November 1990. However, Staff submits that because Mr. Dhillon's application is dated June 14, 2016 and because he has not been registered since he resigned from Queensbury Strategies Inc. (**Queensbury**) on June 26, 2012 – more than three years prior to the application date – Mr. Dhillon does not meet the requirements relating to proficiency.

[41] Mr. Dhillon submits that he satisfies the proficiency requirements pursuant to the second exemption stated above. In support of this position, he provided the

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[20] *Michalik (Re)*, (2007) 28 OSCB 7657, 2007 ONSEC 10 at para 48.
[21] Act, s 27(2)(a)(i).
[22] *Sterling Grace* at para 159.

Director and the Commission multiple certificates from seminars he attended during the period of his non-registration.

[42] In relation to this issue, the Director concluded as follows:

> I was provided with a number of certificates related to training courses attended by Dhillon in the three-year period prior to the application date. After review of these certificates, my decision is that these training courses in their totality do not constitute 12 months of relevant securities industry experience during the three years prior to the application date.
>
> (Director's Decision at para 12)

[43] We share the view that Mr. Dhillon's attendance at seminars does not amount to 12 months of relevant securities industry experience. Securities industry experience is fundamentally different than attendance at seminars. Even if this were not so, his attendances cumulatively have not been shown to be the functional equivalent of 12 months of required securities industry experience.

[44] Although our conclusion that Staff has demonstrated that Mr. Dhillon does not meet the proficiency requirement for registration would suffice to confirm the Director's Decision, it is important to address the issue of integrity. If Mr. Dhillon's only deficiency related to timeliness of past examinations, then he might become eligible for registration by satisfactory completion of one of the specified courses.

2. Does Mr. Dhillon meet the integrity requirements for registration?

[45] In considering whether Mr. Dhillon meets the requirements for suitability, we are required to consider whether the applicant has satisfied the requirements prescribed in the regulations relating to integrity. OSC Rule 31-505 – *Conditions of Registration*, requires a registered representative to deal with his/her clients "fairly, honestly and in good faith."[23]

[46] *Wall (Re)*,[24] a Director's decision that has frequently been cited by the Commission, explains the appropriate approach by Staff in assessing integrity:

> OSC Staff look at the honesty and the character of the applicant when analyzing integrity. In particular, Staff examines the applicant's dealings with clients, compliance with Ontario securities law and other applicable laws, and the use of prudent business practices.

[47] We take the same approach in assessing Mr. Dhillon's integrity.

(a) Issues at PFSL Investments Canada Ltd. (1991-1998)

[48] Mr. Dhillon was registered in January 1991 with PFSL Investments Canada Ltd. **(PFSL)** (formerly Primerica Financial Services) as a mutual fund salesperson, until November 1998 when he resigned.

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[23] Act, s.1(1) "regulations" means the regulations under this Act and, unless the context otherwise indicates, includes the rules.

[24] (2007), 30 OSCB 7521.

[49] In July 1998, one of Mr. Dhillon's clients, RS, complained to PFSL that in 1997 he had given Mr. Dhillon $9,000 for an investment in a European company, and that Mr. Dhillon promised him a "15%-20% return, that could be renewed on a 3 month basis." RS had asked Mr. Dhillon to redeem his investment; Mr. Dhillon returned $2,000 in December 1997, but despite repeated requests from RS, Mr. Dhillon did not return the balance of $7,000.

[50] PFSL had no record of such funds being received or invested. While Mr. Dhillon claimed RS was a long-time friend who loaned Mr. Dhillon the funds because Mr. Dhillon was in financial difficulty, RS adamantly denied they were friends.

[51] PFSL suspended Mr. Dhillon, pending the outcome of its investigation. At the time of Mr. Dhillon's resignation, a recommendation to terminate PFSL's sponsorship was pending.

[52] During a two-day interview with Staff in February 2013 (**the 2013 Interview**), Mr. Dhillon stated that the complaint was "absolutely wrong" and speculated that his divorced wife and sons put pressure on RS to make the complaint. Mr. Dhillon claimed that he had paid back the full amount; however there was no documentary evidence that he had paid back more than $2,000.

[53] In August 2001, approximately three years after Mr. Dhillon's departure from PFSL, a client, JB, complained to PFSL that in 1997, Dhillon took $15,000 from him for an investment which JB understood was to be made through PFSL. JB provided a copy of the cancelled cheque made out to Mr. Dhillon personally. Both JB and Mr. Dhillon indicated that they knew each other through family. PFSL had no record of the funds being received or invested through the firm, nor did JB provide any evidence the $15,000 was intended for investment at PFSL.

[54] During the 2013 Interview, Mr. Dhillon claimed that he never received the money from JB, despite the evidence of the cancelled cheque, and suggested PFSL may have forged the letter because PFSL was "jealous" about losing commission revenue once Mr. Dhillon left the firm.

(b) Issues at W.H. Stuart Mutuals Ltd. (1999-2010)

[55] Mr. Dhillon was registered with WHS in March 1999 as a mutual fund and limited market dealing salesperson until August 2010. Mr. Dhillon's registration was subject to terms and conditions requiring WHS to submit quarterly supervision reports to the Commission for two years. In September 2002, following a compliance audit, Mr. Dhillon was sent a warning letter outlining six compliance deficiencies, including the use of pre-signed client forms. The letter stated that this was Mr. Dhillon's "final warning regarding the practice of asking clients to sign forms that are not filled out completely". Further occurrences would result in WHS's termination of its sponsorship of Mr. Dhillon's mutual fund licence.

[56] During the 2013 Interview, Mr. Dhillon disputed that he had used pre-signed client forms, and further denied receiving any previous warnings.

[57] A subsequent compliance audit in October 2004 found five compliance deficiencies, including investment unsuitability concerns. In January 2005, Mr. Dhillon was placed on internal suspension and strict supervision because he had not taken the corrective actions WHS required to resolve the compliance deficiencies.

[58] Mr. Dhillon's response during the 2013 Interview was that the internal suspension was a "bogus thing" and "doesn't mean anything" and stated that the CCO was robbing representatives, including Mr. Dhillon, by fining them or withholding commissions when they made errors.

[59] In October 2004 and June 2005, Mr. Dhillon's client, RB, complained to WHS and the MFDA respectively about Mr. Dhillon's recommendation that RB borrow in order to invest – that is, that RB use Mr. Dhillon's leveraged investment strategy. On April 30, 2004, Dhillon offered to lend RB "a few thousand dollars" in order to maintain the monthly interest payments on the investment account (the **WHS Account**). On June 28, 2005, the MFDA cautioned Mr. Dhillon, in writing, that personal lending to a client violated MFDA rules and regulations.

[60] When asked about the RB complaint in the 2013 Interview, Mr. Dhillon first claimed that RB forced him to open the WHS Account. Mr. Dhillon subsequently stated that RB's wife and brother-in-law accused Mr. Dhillon of forcing RB to open the WHS Account. Mr. Dhillon admitted that he offered RB a loan to maintain the monthly payments required by the leveraged strategy, but that RB did not take him up on that offering. Mr. Dhillon further admitted he knew that offering to loan money to clients contravened MFDA rules.

[61] A 2009 compliance review by WHS found continued use of pre-signed forms and the processing of off-book transactions which did not follow the WHS approval process. During the 2013 Interview, Mr. Dhillon disputed that he used pre-signed forms and denied any off-book trading. He complained that the CCO was holding up his loan applications so he sent them directly to B2B Bank for approval. He suggested that WHS should "praise" him instead of asking questions because he was bringing it so much business.

[62] In August 2010, Mr. Dhillon resigned from WHS.

[63] In a September 1, 2010 letter to the OSC, WHS indicated that Mr. Dhillon had continued using pre-signed forms and that many accounts were not compliant with MFDA leverage guidelines. The CCO also referred to the difficulties compliance staff encountered when dealing with Mr. Dhillon, including his demanding immediate service, questioning compliance staff requests for information and calling them incompetent. The situation escalated when his trades were not approved. Mr. Dhillon blamed WHS staff for not understanding his strategies and the way he conducted his business.

[64] By letter dated September 15, 2010, Mr. Dhillon responded to WHS's complaint to the OSC. He stated that "in all these years of my working as a financial Consultant, I have not been subjected to any complaints against me." This was demonstrably untrue as there were repeated complaints involving multiple clients and firms over a period of several years. Mr. Dhillon's position before us was that he was referring only to complaints that he felt had merit.

[65] In Mr. Dhillon's response, he also stated that WHS compliance staff unnecessarily delayed approving his transactions and did not understand the "financial complications" of his leveraged strategies. He referred to "[t]his repeated delay and their constant harassment" and that "they [WHS] plotted against me and filed a complaint, which holds no merit". He reiterated that the "allegations are baseless".

[66] The Notice of Termination filed by WHS with the Commission outlined further issues with Mr. Dhillon's unsuitable leveraged strategies and off-book trading. Mr. Dhillon's off-book trading became the subject of an MFDA investigation in 2011, which subsequently was escalated to its enforcement branch in 2013, and then the subject of an MFDA hearing commencing in 2014. Mr. Dhillon was represented by counsel at the hearing.

[67] On August 19, 2015, the MFDA's hearing panel found that Mr. Dhillon had breached MFDA Rules 1.1.2, 2.5.1 and 2.1.1, when he made leveraged investments in two client accounts without the knowledge or approval of WHS. In its Reasons and Decision, the Panel found that Mr. Dhillon's "testimony was at times contradictory, tangential and frequently self-serving" and that his evidence was not credible. On December 31, 2015, the Panel ordered Mr. Dhillon to pay a fine of $15,000 and costs of $5,000, and prohibited him from conducting securities-related business for six months. The Panel found that Mr. Dhillon's actions were "blatant" and that this was "a case of deliberate misconduct by an experienced and seasoned Approved Person".

[68] Following Mr. Dhillon's departure from WHS, the CCO reached out to a number of Mr. Dhillon's clients, some of whom described severe hardship as a result of market losses exacerbated by the leveraged strategies. These hardships included having to take out a mortgage, using a credit card to make monthly interest payments, or selling their home to meet margin calls. A number of them stated that Mr. Dhillon had not explained what a margin call was. A number of them claimed that Mr. Dhillon coerced them into continuing to increase their loans even though they were experiencing financial hardship. A number of clients stated that Mr. Dhillon asked them to sign blank forms.

[69] During his 2013 Interview, Mr. Dhillon stated that he spent four to five hours fully educating each client about all the components of an investment, including deferred sales charges.

(c) Issues at Queensbury Strategies Inc. (2010-2012)

[70] On November 4, 2010, Mr. Dhillon became registered as a mutual fund dealing representative with Queensbury. According to the affidavit of Betty Jo Royce, (President of Queensbury and CCO from September 2011), sworn May 28, 2013, Mr. Dhillon had 60 clients, many of whom were excessively leveraged.

[71] Within four months of his arrival, on March 16, 2011, the CCO sent Mr. Dhillon a letter warning him of his inappropriate behavior towards Queensbury staff (the **March 2011 Letter**). This letter described behavior similar to that described by the WHS CCO in his September 1, 2010 letter.

[72] The March 2011 Letter also questioned the documentation prepared for Mr. Dhillon's leveraged clients, all of whom were described as having "good or excellent investment knowledge", a high risk tolerance, a growth objective and an investment horizon of 20 years or more.

[73] During the 2013 Interview, Mr. Dhillon confirmed that all of his clients had these characteristics, despite the fact that he admitted that many of his clients were retired, with little income.

[74] In a series of emails dated between July 4, 2011 and July 7, 2011, the Queensbury CCO disputed the legitimacy of documentation pertaining to the

income and assets of Mr. Dhillon's client JS, a self-employed taxi driver. While JS's loan application stated that he had total income of $88,400, his tax return, prepared by Mr. Dhillon, showed his net income at $24,606.94. The CCO stated that Queensbury would not support a loan application for clients who under-reported income to the Canada Revenue Agency.

[75] Mr. Dhillon responded by email on the same day saying: "If he is under reporting then it is his problem. Our duty is to give our clients best advice and to work for their prosperity." The loan was not approved.

[76] During the 2013 Interview, Mr. Dhillon testified that JS was "forcing" him to under-report income.

[77] On October 13, 2011, Ms. Royce conducted a normal course audit of Mr. Dhillon's mutual fund practice. Ms. Royce asked Mr. Dhillon if there were any client complaints against him. Mr. Dhillon responded that there had been one complaint while at WHS, but that the MFDA had closed the file. The MFDA subsequently informed Ms. Royce on November 16, 2011, that it had not closed its file but had escalated the complaint to its Investigations Department. As described above, this became an enforcement proceeding and Mr. Dhillon was found to have contravened MFDA rules concerning off-book transactions.

[78] On November 14, 2011, the audit report was provided to Mr. Dhillon, listing six deficiencies, including further concerns regarding leverage unsuitability. As a result of the ongoing MFDA investigation, Queensbury suspended Mr. Dhillon's ability to initiate any new investment loans for non-registered accounts. On November 24, 2011, Mr. Dhillon called Ms. Royce to tell her he had spoken with the MFDA regarding the complaint against him, and that the MFDA told him "everything was ok". When Ms. Royce reached out to the MFDA, they denied this and stated that the file was still open.

[79] As a result of the audit, Mr. Dhillon was asked to complete a Leverage Review Worksheet (**Worksheet**) for each of his leveraged clients, updating their information. Given that virtually his entire client base was leveraged, Mr. Dhillon was required to complete 15 Worksheets per month, which meant that the review would be completed by mid-March 2012.

[80] Following this audit, there was frequent communication between Queensbury staff and Mr. Dhillon on various compliance issues: failure to complete the leverage reviews, failure to observe the reporting structure, and the continued use of pre-signed forms.

[81] On December 19, 2011, the WHS's Ultimate Designated Person (**UDP**) emailed Mr. Dhillon, with Ms. Royce copied on the email, reminding him to submit the first 15 Worksheets and of the seriousness of failing to do so. Mr. Dhillon responded later on the same day, saying there "is some reason why I did not comply with our staff…..these clients won't qualify now with the new hard rules…" On December 21, 2011, the UDP responded that there was no acceptable reason not to comply with compliance staff and, to avoid further disciplinary action, Mr. Dhillon should respect these requests.

[82] On January 25, 2012, Ms. Royce emailed Mr. Dhillon that she should have received 45 Worksheets, but had received only 10. She again emailed him on February 9, 2012, to remind him to complete the Worksheets. Mr. Dhillon replied: "I am not delinquent in providing you with the reports…I am very busy

to find my life partner and may be [sic] I have to go to India for few days for this purpose and I cannot put that aside to do the other jobs." From March through May 2012, Ms. Royce repeatedly emailed Mr. Dhillon, but received no response.

[83] Ms. Royce also found that Mr. Dhillon used pre-signed forms for his client KN. In January 2012 she brought this to his attention. Mr. Dhillon denied using pre-signed forms and claimed "I have never done this mistake before in my 22 years of this [sic] business and have good reputation with my previous dealers."

[84] In an email to Ms. Royce dated January 5, 2012, Mr. Dhillon wrote: "You can put any one in the problem any time…just by simply destroying original copies and keeping photocopies with you to say that you received only photocopies."

[85] In his 2013 Interview, Mr. Dhillon suggested that Queensbury had intentionally destroyed papers because of a commission dispute.

[86] In her affidavit, Ms. Royce described Mr. Dhillon's repeated failure to observe the internal reporting structure. Mr. Dhillon would frequently go directly to the UDP rather than to Ms. Royce, as CCO. Despite repeated requests by the UDP to engage directly with Ms. Royce, Mr. Dhillon continued to raise issues with the UDP directly.

[87] On February 16, 2012, the UDP responded to Mr. Dhillon:

> "Your efforts to demean Betty Jo….are unbecoming and will not be tolerated….Failure to comply with [the Code of Conduct] and with requests for information from a corporate officer, or from compliance personnel, will bring your suitability for registration into question."

[88] In April 2012, because of Mr. Dhillon's lack of response, Queensbury began contacting some of his clients directly by way of a standard letter. The purpose of the letter was to determine if the correct financial information for the client had been provided to the firm, to advise the client that the account was off-side MFDA leverage guidelines, to obtain current Know Your Client (**KYC**) information and to provide appropriate leverage disclosure. The letter also gave clients options for dealing with their accounts. By June 23, 2012, Queensbury had sent approximately 23 letters to Mr. Dhillon's clients.

[89] On June 22, 2012, Ms. Royce emailed Mr. Dhillon to advise him that if Queensbury did not receive a response from him in relation to all outstanding emails by July 2, 2012, the firm would withhold all commissions payable to him. The following day Mr. Dhillon responded. He stated his clients had advised him that they had received a letter from Queensbury regarding their leveraged investments.

[90] On June 23, 2012, Ms. Royce emailed Mr. Dhillon to advise him that the restrictions on his ability to increase leverage by writing new loans now extended to registered, as well as non-registered accounts. Mr. Dhillon resigned three days later, effective June 26, 2012.

[91] In the termination notice filed by Queensbury, one of the four reasons for terminating Mr. Dhillon's registration was that Mr. Dhillon made unsuitable leverage recommendations. In the 2013 Interview, Mr. Dhillon testified that none of these recommendations was unsuitable.

[92] In his 2016 Interview with Staff, described more fully below, when asked if he thought he cooperated with Queensbury staff, Mr. Dhillon replied" "Fully, a hundred percent."

(d) Attempt to register with Teammax Investment Corp. (2012)

[93] On September 13, 2012, Mr. Dhillon applied for registration as a mutual fund dealing representative with Teammax Investment Corp. (**Teammax**). This prompted Mr. Dhillon's 2013 Interview with Staff. Aspects of that interview have been summarized earlier, although for convenience, a more comprehensive summary follows.

[94] In his registration application and during the 2013 Interview, Mr. Dhillon made a number of questionable statements. First, he represented that up to August 20, 2010, there had been no complaint filed with the MFDA and no investigation launched by the MFDA on the use of leveraged strategies. This statement was untrue, given the RB complaint referred to above and the MFDA warning letter of June 28, 2005. By the time of the application and interview, Mr. Dhillon was also aware that the MFDA had escalated the complaint of unsuitable leverage recommendations to its Investigations Department.

[95] Second, Mr. Dhillon stated he had been 100% compliant for his 22 years in the investment industry and that he spent four to five hours with each client explaining in detail all documents and strategies until the client was fully comfortable. Mr. Dhillon stated: "I hereby confirm again all my forms and subsequence [sic] transactions were executed in front of my clients and there never happened any pre-signed form in my practice." Both Queensbury and WHS had found serious compliance deficiencies, including pre-signed forms. Moreover, Mr. Dhillon's clients told the WHS CCO that Mr. Dhillon did not explain margin calls or the risk of leverage to them.

[96] Third, Mr. Dhillon stated that, during his 13 years with WHS, he received no client complaints; nor was he subject to restrictions concerning unsuitable recommendations. He further stated that he was unaware of having made any unsuitable recommendation during his tenure with WHS. This statement was untrue, given the RB complaint and the fact that he was placed on internal suspension and strict supervision based on deficiencies, including investment unsuitability, identified during an audit.

[97] Mr. Dhillon stated in his application for registration that he believes an unsuitable recommendation is "to put client at risk and lost money [sic]. 95% my clients are making profit, all my accounts are in positive position." Of course, suitability is not dependent on whether the recommended investments make or lose money. All investments have some degree of risk, but suitability is determined by the appropriateness of particular investments for the clients, given their financial circumstances, their time horizon for the investment and their risk profile. In any event, a number of his clients described market losses they experienced.

[98] Last, Mr. Dhillon stated he had no restriction on his leveraged strategies while at WHS and was only told orally not to use this strategy at Queensbury due to new MFDA guidelines. In fact, Queensbury suspended Mr. Dhillon, in writing, from adding new loans or increasing existing ones because of the outstanding MFDA

investigation and because of his continual and prolonged delay in submitting Worksheets.

[99] Based on Mr. Dhillon's history, Staff recommended that Mr. Dhillon's application for registration be denied.

[100] In a letter to Mr. Dhillon dated April 9, 2013 (the **2013 Recommendation Letter**), Staff outlined potential corrective actions on Mr. Dhillon's part, including a period of employment involving a non-registerable activity which would demonstrate a track record of compliance and cooperation with his employer; addressing any tax falsification issues with the Canada Revenue Agency; and the successful completion of the Conduct and Practices Handbook Course, or an equivalent course. Staff stated that these actions might demonstrate Mr. Dhillon's requisite integrity for registration in the future. Staff informed Mr. Dhillon that he could request an opportunity to be heard (**OTBH**). His Teammax-related application was ultimately abandoned on February 18, 2014.

(e) Application with Shah Financial Planning Inc.

[101] On June 14, 2016, Mr. Dhillon applied for registration as a mutual fund dealing representative with Shah.

[102] On June 24, 2016, Staff interviewed Mr. Dhillon. Staff submits that Mr. Dhillon had not gained any meaningful insight into his prior misconduct and had taken little in the way of corrective measures to address Staff's concerns about his suitability for registration.

[103] During the interview, Mr. Dhillon stated that he fully complied when at Queensbury, stating he cooperated, "[f]ully, a hundred percent" and that at WHS "I did a hundred percent right." He further claimed that WHS's allegations against him were prompted by his refusal to pay the WHS CCO "under the table."

[104] Mr. Dhillon indicated that the subsequent findings against WHS, Marilyn Dianne Stuart and Walter Howard Stuart tainted the MFDA's finding against him. He said that there would have been no case against him if the timing of the decisions had been reversed.

[105] On August 6, 2016, Staff sent Mr. Dhillon a letter informing him that Staff had recommended to the Director that his application be refused. The grounds for refusal were: (1) Mr. Dhillon did not meet the statutory course requirement for registration because he had not been registered in Canada during the 36-month period prior to his application, or gained 12 months relevant securities experience during that 36-month period; (2) his prior conduct as described in the 2013 Recommendation Letter; (3) his failure to take any corrective action; and (4) his continued lack of appreciation for, or acceptance of, any responsibility for his misconduct.

[106] On June 23, 2017, an OTBH was held at Mr. Dhillon's request. Mr. Dhillon maintained the position that he had done nothing wrong, and that others had conspired against him because they were jealous of him or wanted to rob him of his business.

(f) Analysis of Mr. Dhillon's Integrity

[107] At the hearing and review before the Commission, Mr. Dhillon repeated the same general themes he developed during the Staff interviews, the MFDA hearing and at the OTBH before the Director. He submitted that the CCO at WHS was "greedy" and "ripped off 34 agents badly". He stated that the CCO made false allegations regarding off-book trading so that WHS could keep his clients from transferring their accounts to Queensbury when Mr. Dhillon started working there.

[108] He claimed that PFSL made up the complaint from JB because they were "robbing" him. He stated there was no proof JB had given him a cheque for $15,000, even though JB provided a copy of the cancelled cheque.

[109] He submitted that individuals at Queensbury lied, cheated him and wanted to "rob me and snatch my business". He claimed that the CCO prevented him from seeing his clients, which was the reason he did not update KYC forms or Worksheets. Yet previously, during the 2013 Interview, Mr. Dhillon had told Staff that he was too busy to complete the Worksheets because he had to go to India to find his life partner and/or that the new MFDA rules put his clients offside because they were retired.

[110] Mr. Dhillon continued to insist that there had not been any complaints against him because if the complaint had no merit in his opinion, then he did not consider it a complaint.

[111] Mr. Dhillon maintained that the 2016 MFDA decision against WHS, Marilyn Dianne Stuart and Walter Howard Stuart made the complaints against him baseless. We observe that the WHS decisions (see paragraph [26]) provided to us are unrelated to the allegations against Mr. Dhillon, though we took the findings made against WHS and its principals into consideration in evaluating whether their representations as to Mr. Dhillon's conduct could safely be relied upon.

[112] In relation to the preparation and filing by Mr. Dhillon of a false tax return on behalf of his client, Mr. Dhillon provided two explanations. These bear repetition here. One explanation was as follows: "If he is under-reporting then it is his problem." Later, in his 2013 Interview with Staff he claimed JS "forced" him to under-report income. Mr. Dhillon's dishonest conduct can be considered relevant to his lack of integrity and therefore unsuitability for registration even if that prior dishonesty does not relate to his activities as a registrant in the securities industry.

[113] Based on the totality of evidence presented to us, we are satisfied that the allegations made against Mr. Dhillon are true. The core allegations bear obvious similarities even though they emanate from multiple independent sources. It defies coincidence to suggest that all of the allegations are false and ill-motivated. Based on the evidence, it is obvious that Mr. Dhillon repeatedly used pre-signed forms, recommended unsuitable leverage strategies to clients and engaged in off-book trading activities. It is also obvious that he mistreated compliance staff at multiple firms, and failed to comply with their directions. His comments show little respect for the compliance function in the industry and demonstrate that he has a disregard for the importance of the regulations which applied to his position.

[114] Mr. Dhillon's testimony before the MFDA's hearing panel was characterized as contradictory, tangential and self-serving. These words describe Mr. Dhillon's representations to us as well.

[115] Leaving aside his unsupportable claims that multiple firms falsely implicated him in serious misconduct, his own explanations provided evidence of his lack of integrity. Examples include:

- He claimed that he had paid back the full amount owed to his client RS. The documentary evidence did not support that claim;
- He claimed that he had never received $15,000 from JB, despite the evidence of the cancelled cheque;
- He admitted that he had offered to loan RB money to maintain monthly payments owing, despite knowing that such an offer contravened MFDA rules;
- In September 2010, he stated that there had never been any complaints about him in the 13 years he worked at WHS. This was demonstrably untrue. His explanation that he was referring only to complaints that he felt had merit was patently misleading and false;
- His representations to the MFDA's hearing panel were demonstrably false. The MFDA's hearing panel found that his actions amounted to a case of deliberate, blatant misconduct by an experienced and seasoned Approved Person;
- In response to a letter from the Queensbury CCO, he represented that all of his leveraged clients had "good or excellent investment knowledge", had a high risk tolerance, a growth objective and an investment horizon of 20 years or more. He took that position despite his 2013 admission that many of his leveraged clients were retired, with little income. His representations were demonstrably false;
- He was a knowing party to under-reporting in a tax return he prepared. His explanations that under-reporting was the client's problem and that the client was "forcing" him to under-report were not only inconsistent, but evidence of complicity in dishonesty;
- He falsely represented to Ms. Royce that the MFDA had closed a complaint file against him, and later, that the MFDA had advised him that "everything was ok";
- In January 2012, he stated to Ms. Royce that he had never used pre-signed forms in his employment history and repeated this claim in his 2013 Interview, despite having signed a WHS Compliance Audit in 2002 that stated it had discovered the use of blank pre-signed forms by Mr. Dhillon;
- He provided a completely unacceptable explanation to the Queensbury CCO and UDP as to why he was non-compliant with the direction by compliance staff;
- In his application for registration with Teammax and during his 2013 Interview, he made multiple false statements. These are described earlier in our Reasons;

- He stated that, during his 13 years with WHS, he did not receive any complaints; nor was he subject to restrictions as a result of unsuitable recommendations. He further stated that he was unaware of any unsuitable recommendations during his tenure with WHS. This statement was untrue, given the RB complaint and the fact that he was placed on internal suspension and strict supervision based on deficiencies, including investment unsuitability, identified during an audit; and
- He demonstrated in his application for registration that, at best, he misunderstood what an unsuitable recommendation entails.

[116] Mr. Dhillon refuses to be answerable for his actions, falsely insisting that any or most complaints, deficiencies or allegations are the result of others plotting to snatch his business away from him. He asserts that they are either jealous of him or do not understand his leveraged strategies. In his estimation, he has done nothing wrong, is not accountable or responsible.

[117] The evidence is truly overwhelming that Mr. Dhillon is effectively ungovernable and completely lacking in personal integrity.

3. Would Mr. Dhillon's registration be otherwise objectionable?

[118] As indicated earlier, it is unnecessary for us to determine whether Mr. Dhillon's registration would be otherwise objectionable in light of the compelling – indeed overwhelming – evidence that he is unsuitable for registration. In so concluding, we appreciate that the evidence of Mr. Dhillon's repeated non-compliance with the requirements pertaining to a registrant would be relevant to whether he is otherwise objectionable. However, the manner in which he responded to his employers, and to his regulators when his non-compliance was raised with him, also constituted important evidence of his lack of integrity.

VII. CONCLUSION

[119] For the reasons given, we are satisfied on a balance of probabilities that Mr. Dhillon is not suitable for registration based both on a lack of the requisite proficiency and lack of integrity. Accordingly, the Commission dismisses Mr. Dhillon's application and confirms the Director's Decision that Mr. Dhillon is unsuitable for registration.

Dated at Toronto this 3rd day of April, 2018.

"*Mark J. Sandler*"
Mark J. Sandler

"*Deborah Leckman*"
Deborah Leckman

"*AnneMarie Ryan*"
AnneMarie Ryan