



Ontario  
Securities  
Commission

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de l'Ontario

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**In the Matter of Staff's Recommendation  
To Impose Terms and Conditions on the Registration  
of Donald Mason**

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

**Decision**

1. For the reasons outlined below, my decision is to accept the recommendation of staff (**Staff**) of the Ontario Securities Commission (**OSC**) to impose restricted client terms and conditions on Donald Mason (**Mason** or the **Applicant**), a dealing representative in the category of mutual fund dealer, sponsored by Quadrus Investment Services Ltd. (**Quadrus**) with one addition. The terms and conditions are as follows:

The Registrant may not act as a dealing representative in respect of any person who is a member of the congregation of the Apostolic Pentecostal Church of Pickering (**Restricted Clients**), or of a spouse, parent, brother, sister, grandparent or child of Restricted Clients

**Overview**

2. On August 15, 2017, Quadrus submitted an initial registration application for Mason that included a disclosure in Item 10 - *Current employment, other business activities, officer positions held and directorships* of Form 33-109F4 - *Registration of Individuals and Review of Permitted Individuals (Form 33-109F4)*. The disclosure detailed his activity as a non-paid minister of the Apostolic Pentecostal Church. As a non-paid minister, Mason says he performs prayers, messages to the congregation, and visits the sick and persons in need.
3. On August 17, 2017, Staff issued a letter to Mason informing him that his outside business activity may place him in a position of potential influence over clients and that they were recommending to the Director that terms and conditions restricting the class of clients that he would be able to provide services to be imposed on his registration. This is commonly referred to as restricted client terms and conditions.
4. Restricted client terms and conditions are imposed on registrants for several reasons, including when the registrant has an outside business activity that puts him/her in a position of power or potential influence over clients or potential clients.
5. The OSC oversees the registration process, including the applicability of terms and conditions, if any, of individual dealing representatives of a mutual fund dealer.
6. Pursuant to section 31 of the Act, the Applicant is entitled to an opportunity to be heard (OTBH) before the Director makes a decision on Staff's recommendation. An in-person OTBH occurred on October 30, 2017.
7. My decision is based on the written and oral submissions of Michael Denyszyn (Senior Legal Counsel, OSC) and Donald Mason.

## Law and Reasons

8. Section 28 of the *Securities Act*, RSO 1990, c.S.5, as amended (the **Act**) provides the director, in his or her discretion, with the power to impose terms and conditions on the registration of any person or company when it appears that the person or company has failed to comply with Ontario securities law or the registration is otherwise objectionable.
9. Subsection 2.2(1) of National Instrument 33-109 - *Registration Information (NI 33-109)* requires an individual applying for registration to submit a completed Form 33-109F4, which includes information relating to business activities outside the sponsoring firm.
10. Part 13.4 of Companion Policy, 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* states that the

“Required disclosure includes the following, whether the registrant receives compensation or not:

- any employment and business activities outside the registrant's sponsoring firm
- all officer or director positions, and
- any other equivalent positions held, as well as positions of influence.

The following are examples of outside business activities that we would expect to be disclosed:

- paid or unpaid roles with charitable, social or religious organizations where the individual is in a position of power or influence and where the activity places the registered individual in contact with clients or potential clients, including positions where the registrant handles investments or monies of the organization ...”<sup>1</sup>
11. Staff’s basis for recommending the restricted client terms and conditions is that, in a situation where a registrant is in a position of power or potential influence, what should be an arm’s length transaction with a client can be influenced by the client’s perception of the dealing representative’s role in a charitable or faith-based or care-giving outside activity. Without the restricted client terms and conditions, the registration of that applicant may be considered otherwise objectionable.
  12. Staff submits that restricted client terms and conditions are the most straightforward and effective way to address the undue influence that may arise out of such a relationship. This imposes a bright-line test to facilitate the required supervision of sponsoring firms. <sup>2</sup>
  13. Staff noted that nearly 700<sup>3</sup> restricted client terms and conditions have been imposed and submitted 21 separate examples to substantiate that restricted client terms and conditions are applied in a principled and non-discriminatory manner across various religious denominations and across various secular caregiving and charitable activities where the applicant is in a position of power or potential influence over clients or potential clients.
  14. Staff submits that restricted client terms and conditions do not prevent individuals who provide valuable services to charitable organizations or to faith-based organizations from also making a living or supplementing their income through trading or advising in securities. Instead, in Staff’s view, restricted client terms and conditions are necessary to achieve the proper separation between a caregiving and counselling role on one hand and one’s registerable activities on the other. Proper

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<sup>1</sup> *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, OSC CP 31-103, Unofficial Consolidation (27 July, 2017), 13.4 - Identifying and responding to conflicts of interest, retrieved from [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_31-103.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_31-103.htm)

<sup>2</sup> Transcript of oral submissions of Michael Denyszyn (30 October 2017) at 8, lines 23-28

<sup>3</sup> *Ibid.* at 11, line 8

separation is especially important where clients or potential clients know the individual primarily in their charitable, faith-based or caregiving role.<sup>4</sup>

15. Mason makes several arguments. First, he submits that he is not in a position of power or potential influence as a non-paid minister.
16. On his Form 33-109 F4, Mason states “My duties as a local, non-paid minister in the Apostolic Pentecostal Church include: performing prayers, messages to the congregations, visiting the sick and persons in need. I am not a pastor or a Religious Leader, and I do not hold a position of authority in the church, and, as such, I do not have any authority or the platform to sway the congregation to act in any special way towards my financial advice.”<sup>5</sup>
17. Also, in a letter submitted on Mason’s behalf by the Apostolic Pentecostal Church of Pickering, it states that the position is a “non competitive position in that the main duty is to assist in prayer, preaching the word from the bible, visiting the sick and those incarcerated.” Also, it states that Mason is one of 40 Lay Leaders of the church but he does not have financial influence over the congregation.<sup>6</sup>
18. Considering the totality of the information provided, the fact that the Applicant is identified as both a minister and Lay Leader, he assists the congregation in prayer, and visits persons who are sick or incarcerated, I am satisfied that the activities conducted by Mason place him in a position of power or potential influence over clients or potential clients who are members of his congregation, as well as their specified relatives, and, therefore, his specific circumstances warrant the imposition of restricted client terms and conditions.
19. Mason’s next two arguments are human rights based and concern the human rights impact of the imposition of restricted client terms and conditions on his registration. First, he claims that imposing restricted client terms and conditions will result in indirect or constructive discrimination under the Human Rights Code (the Code) by infringing on his creed rights. In his view, even if restricted client terms and conditions appear neutral in their application, they adversely affect his ability to fulfill his religious obligations. Second, he argues that requiring his clients or potential clients to confirm that they are not members of the Restricted Client class creates a “poisoned environment.”
20. With respect to the constructive discrimination argument, I am of the view that restricted client terms and conditions in these circumstances are intended to protect potentially vulnerable individuals and, therefore, they advance an important policy goal. For this reason, I think they constitute a reasonable and bona fide requirement within the meaning of section 11(1)(a) of the Code.
21. In addition, Mason is not required to withdraw from his activities as a non-paid minister and Lay Leader. The intent of the restricted client terms and conditions is not to prohibit him from conducting registerable activity, but rather to limit the scope of clients or potential clients that he can deal with.
22. The purpose of restricted client terms and conditions is not to prohibit registrants from volunteering with charitable or religious organizations, but to protect clients or potential clients from potential undue influence from a registrant who is in a position of power or potential influence, whether spiritual or otherwise.

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<sup>4</sup> *Ibid.* at 8, lines 13-22

<sup>5</sup> Disclosure filed on behalf of Donald Mason on August 15, 2017, Schedule G to Item 10/11 Current /Previous Employment Change, Description of Duties

<sup>6</sup> Letter from Reverend Audley Castro re “Donald Mason”, dated October 24, 2017

23. For these reasons, I don't believe that the imposition of restricted client terms and conditions in Mason's circumstances results in constructive discrimination based on creed under the Code.
24. Nor do I accept the poisoned environment argument. The concept of a poisoned environment has been developed through human rights jurisprudence: it is not contained in the Code itself. The concept has usually been applied to some organizational setting, especially the workplace, where offensive comments and/or conduct create an unwelcome environment and where there has been a failure by the responsible body or individual, such as the employer, to respond to and correct the situation.
25. As noted by the Ontario Court of Appeal (cited in the Ontario Human Rights Commission policy supplied by Mason), there must be an evidentiary basis to conclude that a poisoned environment has been created<sup>7</sup> and any such claim must be proven on an objective basis.
26. The manner in which Mason has employed the concept of poisoned environment is not consistent with the manner in which it has been applied in the context of human rights jurisprudence. His argument is that no one likes to discuss their religious beliefs and if he asks the client if he/she is a member of the church then they would not want to do business with him.<sup>8</sup> This potential impact is entirely speculative and I don't think its reasonable to conclude that the imposition of restricted client terms and conditions would have the impact Mason claims. For these reasons, I do not accept the poisoned environment claim.
27. In response to Mason's comments at the OTBH, Staff agreed to further limit the class of Restricted Clients to only the Apostolic Pentecostal Church of Pickering, instead of any Apostolic Pentecostal Church in Ontario. By limiting the class of Restricted Clients in this way, the terms and conditions are carefully tailored to address Mason's situation.
28. Finally, I want to make it clear that the imposition of the restricted client terms and conditions in these circumstances in no way reflects on Mason's integrity.
29. Therefore, based on the foregoing, my decision is to impose the restricted client terms and conditions as recommended by Staff with one change. The class of Restricted Clients is limited to the congregants of the Apostolic Pentecostal Church of Pickering and the specified class of relatives.



Debra Foubert, J.D.  
Director  
Compliance and Registrant Regulation Branch  
Ontario Securities Commission

November 30, 2017

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<sup>7</sup> General Motors of Canada Ltd. v. Johnson, 2013 ONCA 502, referred to in *Ontario Human Rights Policy on preventing discrimination based on creed*, p. 32, at fn. 138.)

<sup>8</sup> Transcript of oral submissions of Donald Mason (30 October 2017) at 27, lines 5-11