



THE SECURITIES ACT )  
Subsections 8(1) and 148.1(1) )  
)

Order No. 6435  
December 15, 2011

**KENNETH WAYNE MUZIK**

**WHEREAS:**

(A) On December 13, 2011, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider whether or not it was in the public interest to grant an order pursuant to subsections 8(1) and 148.1(1) of The Securities Act (the "Act") with respect to Kenneth Wayne Muzik ("Muzik");

(B) Staff of the Commission and Muzik entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated December 13, 2011 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Muzik has consented to the issuance of this Order and has waived his rights to a full hearing;

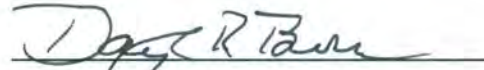
(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

**IT IS ORDERED:**

1. **THAT** the Settlement Agreement be approved.
2. **THAT** a reprimand be noted on Muzik's registration record under the Act;
3. **THAT** Muzik make a voluntary payment to the Minister of Finance in the amount of \$15,000.00; and

4. THAT Muzik pay costs of the proceedings of \$5,000.00.

**BY ORDER OF THE COMMISSION**

  
\_\_\_\_\_  
Director, Legal and Enforcement

SCHEDULE "A"

**IN THE MATTER OF: THE SECURITIES ACT**

**- and -**

**IN THE MATTER OF: KENNETH WAYNE MUZIK**

**SETTLEMENT AGREEMENT**

A.1 By way of Notice of Hearing and Statement of Allegations (collectively the "Notice of Hearing") of Staff of The Manitoba Securities Commission ("Commission"), notice was given to Kenneth Wayne Muzik ("Muzik") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 8(1) of *The Securities Act* (the "Act"), that the registration of Kenneth Wayne Muzik under the Act be suspended, cancelled or subject to terms and conditions;
2. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act that Muzik pay an administrative penalty;
3. whether or not it is in the public interest to order, pursuant to subsection 19(5) of the Act that subsection 19(1) of the Act does not apply to Muzik with respect to such of the trades referred to in that subsection and that subsection 19(2) of the Act does not apply

to Muzik with respect to such of the securities referred to in that subsection;

4. whether or not it is in the public interest to order that Muzik pay the costs of the investigation and the hearing;

A.2 Discussions have been held amongst Muzik and Staff of the Commission ("Staff") in an effort to settle all issues in connection with the matters set out in the Notice of Hearing (the "Proceedings") and this Agreement. A Settlement (the "Settlement") has been reached based on the terms and conditions set forth in this Agreement (the "Settlement Agreement").

A.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Muzik be resolved. Muzik consents to the Settlement and to the making of the Consent Order referred to in paragraph D.1 below, on terms and conditions set forth in this Settlement Agreement.

## **B STATEMENT OF FACTS**

B.1 Muzik agrees with the facts set out in this Part B.

B.2 At all material times, Muzik was registered as a salesperson under the Act. The registration history material to the matters at issue are as follows:



- a) Muzik was registered as a salesperson of Aurum Securities Ltd. from October 7, 1994 through December 31, 1999;
- b) Muzik was registered as a salesperson and non-trading senior vice-president of Summit Aurum Financial Group Inc. from January 1, 2000 to October 31, 2001; and
- c) Muzik was registered as a salesperson with Assante Financial Management Inc. from September 4, 2001 to May 7, 2004.

B.3 Following May 7, 2004 Muzik became registered as a salesperson with Wellington West Financial Services Inc. ("Wellington West").

B.4 At all material times, Muzik was registered with broker dealers restricted to the trading of mutual funds and labour sponsored funds.

B.5 Muzik's employing broker as early as September, 1999 had a policy requiring that each salesperson complete Know Your Client Forms for each client.

B.6 Muzik has completed the following courses since 2009: The Canadian Securities Course (June 23, 2010) and Conduct and Practices Handbook (completed May 25, 2011) and he is currently enrolled in the Wealth Management Essentials Course.

B.7 Since 2004, the Director has imposed strict supervision restrictions on the activities of Muzik. Wellington West has carried out this strict supervision requirement on the following terms:

1. Muzik must comply with all directions from the Compliance Officer regarding daily and monthly supervisory reviews.
2. Muzik could not execute any transactions by way of a limited trading authorization or power of attorney.
3. Muzik did not execute any transactions in any accounts until the full and correct documentation was in place including a current KYC.
4. Muzik could not handle any securities or issue any cheques to clients without management approval.
5. All transfers of securities between client accounts had to be authorized by the client and reviewed by the Compliance Officer
6. Any client complaints had to be reported immediately to the Compliance Officer. All follow-up requests by the Compliance Officer were responded to in the timelines prescribed.
7. Muzik had to follow the prescribed rebating procedures as outlined in the Compliance Manual. This included the proper forms for proprietary and third party funds.
8. Appropriate backup arrangements were made to facilitate trading instructions in Muzik's absence.
9. All articles, promotional materials and advertisements had to be approved by the Compliance Officer prior to dissemination. Promotion of leverage



was not communicated verbally or in writing and was reviewed and approved by Compliance.

10. Muzik had to meet with his clients to assess suitability of investments in the clients' portfolios.
11. Muzik had to provide a list of all clients with whom he had personal financial dealings with as outlined in the Compliance Manual. Muzik had to acknowledge that he complied with the rules outlined in the Compliance Manual.
12. Muzik had to acknowledge that there were no guarantees made to clients that there would not be any charges applicable on their accounts.
13. Muzik could not execute any transactions or solicit any clients for new business in jurisdictions wherein he was not registered.
14. Muzik had to provide responses to all compliance inquiries within acceptable time frames.
15. No blank forms could be signed to facilitate transactions.
16. The offices of Wellington West could not be used to host any non Wellington business.
17. All outside business activities had to be disclosed to the Compliance Officer. Approval for any acceptable outside business had to be granted by the Compliance Officer.
18. Trades had to be processed immediately as per the Compliance Manual.
19. New Client Application forms have been submitted on a timely basis.

**Frances Senkiw**

B.8 In or about 1989, Frances Senkiw became a client of Muzik's.

B.9 In the fall of 1999 Muzik recommended to Senkiw that she invest a portion of her portfolio in a series of technology funds. These funds were high risk and outside of Senkiw's risk tolerance.

B.10 Neither Muzik nor his employing brokers (listed in paragraph B.2 above) can produce Know Your Client Forms with respect to Senkiw that were prepared prior to October, 2002.

**Raymond Jacques**

B.11 In or about 1989 Jacques became a client of Muzik with respect to the trading of mutual funds.

B.12 At the recommendation of Muzik, Jacques invested in artisan funds, including the Artisan New Economy Fund in or about 2001.

B.13 30% of the funds were of high risk and outside of Jacques risk tolerance.

B.14 Neither Muzik nor his employing brokers (listed in paragraph B.2 above) can produce Know Your Client Forms with respect to Jacques that were prepared prior to 2001.



**Margaret O'Brien**

B.15 In or about 1997 O'Brien became a client of Muzik.

B.16 In or about September of 2000 Muzik recommended that O'Brien invest 30% of her portfolio in Universal European Opportunity Fund, a medium to high risk fund, 40% in Universal Select Managers Fund (now Mackenzie Focus), a medium risk fund and 30% in Universal World Science and Technology Fund, a medium to high risk fund. The Universal World Science and Technology Fund has now merged into the Mackenzie Universal Technology Class, a high risk fund.

B.17 Some of the funds were outside of O'Brien's risk tolerance.

B.18 O'Brien continued to be a client of Muzik until approximately the end of 2000 at which time she transferred her account to another salesperson (financial institution). Neither Muzik nor his employing brokers (listed in paragraph B.2 above) can produce Know Your Client Forms with respect to O'Brien.

**Debbie Anania**

B.19 In or about 1994 Anania became a client of Muzik with respect to the trading of mutual funds, at which time she was approximately 38 years of age.

B.20 At all material times, Anania was employed as a teacher. At the recommendation of Muzik, Anania secured a home equity loan for the purposes of investing in mutual funds (leveraging).

B.21 Leveraging was outside of the risk tolerance of Anania.

### **C. ACKNOWLEDGEMENT BY MUZIK**

C.1 Muzik acknowledges that he acted contrary to the public interest in that:

- a) He recommended investments in mutual funds some of which were outside of the risk tolerance of clients;
- b) He recommended leveraging which was outside the risk tolerance of a client; and
- c) He made recommendations to clients at times when completed Know Your Client forms were not on the clients' files, pursuant to which recommendations transactions were permitted by his employing brokers listed in paragraph B.2 above.

### **D. TERMS OF SETTLEMENT**

D.1 Staff seek a consent order from the Commission consistent with the terms contained in Section D.2 of the Settlement Agreement pursuant to the provisions of the Act.

D.2 The Consent Order sought by Staff is as follows:

- a) That the Settlement Agreement be approved;
- b) That a reprimand be noted on Muzik's registration record under the Act;
- c) That Muzik make a voluntary payment to the Minister of Finance in the amount of \$15,000.00; and
- d) That Muzik pay costs of the proceedings of \$5,000.00.

## **E. PROCEDURE**

E.1 The approval of this Settlement Agreement shall be sought at a public hearing.

E.2 If this Settlement Agreement is approved by the Commission, and if a Consent Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and, upon the making of the order contemplated by this Settlement Agreement, Muzik waives his right to a full hearing and appeal of this matter.

E.3 Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Section D above is not



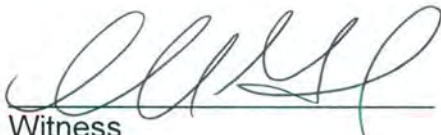
made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, Muzik shall have all of the usual rights of a person subject to such proceedings.

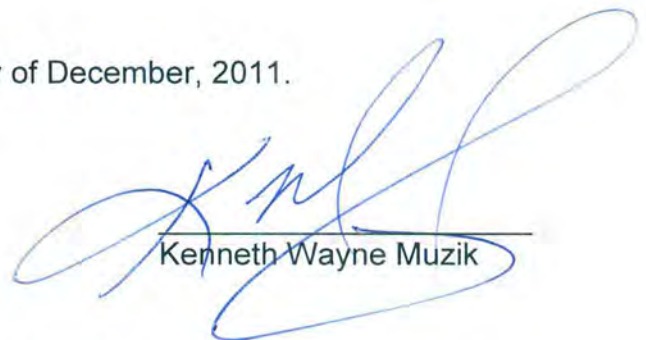
- E.4 If the Settlement Agreement is not approved or the Consent Order set out in Section D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
- E.5 If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
- E.6 Muzik agrees that, if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Muzik will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval

of this Settlement Agreement, alleged bias, alleged unfairness, or any such other challenges to the validity of the Consent Order.

E.7 Muzik further agrees that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, he will not make any statements inconsistent with the terms of this Agreement.

Dated at Winnipeg, Manitoba this 12<sup>th</sup> day of December, 2011.

  
Witness

  
Kenneth Wayne Muzik

Dated at Winnipeg, Manitoba this 13<sup>th</sup> day of December, 2011.

Staff of The Manitoba Securities Commission

Per:   
Douglas R. Brown