



THE MANITOBA
SECURITIES
COMMISSION

April 21, 2023

IN THE MATTER OF: THE SECURITIES ACT

- and -

**IN THE MATTER OF: WILLIAM GEORGE MACKAY and
ADVANTAGE WEALTH SYSTEMS INC.**

**REASONS FOR DECISION
OF THE SETTLEMENT HEARING PANEL
THE MANITOBA SECURITIES COMMISSION**

Hearing Date: April 19, 2023

Panel:

Panel Chair: Mr. J. McJannet, K.C.

Member: Ms. L. Vincent

Appearances:

Mr. A. Poushangi) Counsel for Commission Staff

Ms. B. Harris) Counsel for William George MacKay and
) Advantage Wealth Systems Inc.

REASONS AND DECISION

BACKGROUND

- 1) Staff of the Manitoba Securities Commission (Staff) and William G MacKay and Advantage Wealth Systems Inc. (the "Respondents") have jointly submitted that it would be in the public interest to approve a settlement agreement dated April 18, 2023 (the "Settlement Agreement") and issue an order in respect of the Settlement Agreement, all under the relevant provisions of *The Securities Act* C.C.S.M c. S50 (the "Act").
- 2) After considering the Settlement Agreement and the submissions of the parties, this panel (Panel) has concluded that it would be in the public interest to approve the Settlement Agreement and issue the requested order. The following are our reasons.
- 3) On May 2, 2022, a Notice of Hearing and Statement of Allegations (the "Pleadings") were issued by the Manitoba Securities Commission (Commission) against the Respondents.
- 4) Prior to the issuance of the Pleadings two complainants (the "Complainants") had filed financial loss payment claims with the Director of the Commission. Those claims formed part of the sanctions sought in the Pleadings. The Panel was advised that the Complainants had entered into a settlement of the matters against the Respondents, which settlement was facilitated by a judge of the Court of King's Bench, Manitoba. The Complainants have provided a written notice of withdrawal of their financial loss payment claims to the Commission. We were further advised that the Complainants had been represented by their own counsel during this process, including the withdrawal of their financial loss payment claims.
- 5) The Settlement Agreement, which is Attachment "A" to this Decision, includes, among other things, that:
 - a) The Respondents provided advice and accepted monies for investments in securities in three different entities from the Complainants;
 - b) Some, but not all of the investment monies had been repaid to the Complainants; and
 - c) The Respondents had received compensation for their role in the sale of the securities to the Complainants.
- 6) The Respondents acknowledge in the Settlement Agreement that:
 - a) They acted as securities adviser, investment counsel, and/or adviser under the Act without being registered; and
 - b) In acting as a securities adviser, investment counsel and/or adviser under the Act without being registered, they acted in a manner contrary to the public interest.
- 7) The terms of the Settlement Agreement provide that:
 - a) Mackay will be prohibited from acting as an officer and director pursuant to section 154.3(1) of the Act; and
 - b) Pursuant to section 19(5) of the Act, the exemptions set out in s. 19(1) and 19(2) will not apply to the Respondents; and
 - c) The Respondents will pay to the Commission the sum of \$5,000.00 as a contribution to the costs of the investigation and hearing, which monies are payable on a schedule as set out in the Settlement Agreement.

LAW AND ANALYSIS

- 8) The Commission's role at a settlement hearing is to determine whether the terms of the settlement fall within a range of reasonable outcomes and whether the approval of the settlement is in the public interest. In each case the Commission must determine whether the sanctions agreed to are appropriate in light of all of the circumstances.
- 9) The Panel notes that the breaches of the Act admitted to by the Respondents are serious. Registration is a cornerstone of the securities regulatory regime, designed to ensure that those who sell or promote securities are proficient, solvent and act with integrity. Trading without the required registration undermines investor protection and the integrity of the capital markets.
- 10) It is not this Panel's role to substitute its view of what the appropriate sanctions should be. Rather, the Panel must be satisfied that the sanctions agreed to are sufficient in all of the circumstances and provide both specific deterrence to the Respondents as well as general deterrence to the community.
- 11) In respect of specific deterrence, we were influenced by the counsel's statement that the individual Respondent is over the age of 70 years and retired and that the corporate Respondent was no longer conducting business.
- 12) The Settlement Agreement is a public document and thereby provides a general deterrence for others in the industry.
- 13) We were advised by counsel that the settlement agreement was negotiated at considerable length by the parties. We were advised that there were several pre-hearing motions that were to be raised by the Respondents if the hearing were to proceed.
- 14) Settlement agreements have the benefit of resolving matters promptly and avoiding the significant resources that are incurred in a contested hearing.
- 15) As was noted in the recent decision of this Commission in *Re: Malthouse*,

"Approval of the Settlement Agreement resolves the matter quickly, efficiently and with certainty. The settlement avoids the time and costs associated with a contested hearing process." (page 2)
- 16) For the above reasons, the Panel concludes it is in the public interest to accept the Settlement Agreement and issue the order requested by the parties.

"J.T. McJannet, K.C."

J.T. McJannet, K.C.
Panel Chair

"L.A. Vincent"

L.A. Vincent
Member

Schedule "A"

Settlement Agreement

**WILLIAM GEORGE MacKAY and
ADVANTAGE WEALTH SYSTEMS INC.**

and

STAFF OF THE MANITOBA SECURITIES COMMISSION

**The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5**

SETTLEMENT AGREEMENT

A. Introduction

- A1. By way of Notice of Hearing and Statement of Allegations (collectively the "Notice of Hearing") of Staff ("Staff") of The Manitoba Securities Commission ("Commission"), notice was given to William George MacKay and Advantage Wealth Systems ("Respondents"), and for the Commission to consider:
- a. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) and/or 148.1 (1.1) of *The Securities Act* ("Act"), that William George MacKay ("MacKay") and Advantage Wealth Systems Inc. ("AWS") pay an administrative penalty;
 - b. whether or not pursuant to section 148.2 of the Act, that MacKay pay compensation for financial loss to DH and LH;
 - c. whether or not pursuant to subsection 148.2(4) of the Act that AWS be jointly and severally liable with MacKay to pay DH and LH compensation for financial loss;
 - d. whether or not it is in the public interest to order, pursuant to subsection 19(5) of The Act, that:
 - i. subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to MacKay and AWS;
 - ii. subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to MacKay and AWS;
 - e. whether or not pursuant to subsection 148.3(1) of the Act that MacKay be prohibited from acting as an officer and director;
 - f. whether or not it is in the public interest to order that MacKay and AWS pay costs of and incidental to the hearing;
 - g. such further and other matters and the making of such further and other orders as the Commission may deem appropriate
- A2. Discussions have been held between the Respondents and Staff in an effort to settle all issues in connection with the Notice of Hearing. A settlement has been reached based on the terms and conditions set forth in this Settlement Agreement.
- A3. Pursuant to the settlement, Staff agree to recommend to the Commission that the Proceedings against the Respondents be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The Respondents consent to the settlement and to the making of the consent order referred to in Part D below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts**Background**

- B1. William George MacKay is a resident in the City of Winnipeg, in the Province of Manitoba.
- B2. Advantage Wealth Systems Inc. is a corporation incorporated pursuant to the laws of Manitoba.
- B3. At all material times, MacKay was the sole officer and director of AWS.
- B4. MacKay and AWS are not and have never been registered under the Act in any capacity.
- B5. In or around the spring of 2008, D.H. and MacKay discussed investment opportunities.
- B6. MacKay made D.H. aware of certain products within the exempt market, provided information on these products to D.H. as provided to MacKay by the issuers, and made recommendations in connection with these products.
- B7. MacKay recommended that D.H. purchase these investment products.

New Solutions Financial (II) Corporation ("NSF")

- B8. NSF was an exempt market offering.
- B9. MacKay provided D.H. with various documents related to the purchase of investments in NSF. Such documents were provided to MacKay by the issuer.
- B10. D.H. initially made his investment under an Offering Memorandum exemption in reliance on information and recommendations provided by MacKay.
- B11. D.H. initially invested \$50,000.00 in NSF in June 2008 and a subsequent \$40,000.00 in or about October 2008. He was issued debentures directly by NSF. In or about December 2008, D.H. received correspondence from NSF that they were unable to utilize this exemption as part of their fundraising process. These investments were subsequently cancelled and re-issued by NSF as a \$90,000.00 investment for NSF debentures under the Accredited Investor Exemption
- B12. On or about May 19, 2009, L.H. invested \$160,000.00 in NSF under the Accredited Investor Exemption in reliance on information and recommendations provided by AWS and MacKay. L.H. was issued debentures by NSF.

- B13. The net worth of D.H. and L.H. was not properly calculated at the time the investments in NSF were made, and D.H. and L.H. did not qualify for the Accredited Investor Exemption.
- B14. NSF ran into financial and legal problems. D.H. and L.H. lost money invested into NSF.
- B15. In April 2012, NSF sought protection from creditors under the Companies' Creditors Arrangement Act. A monitor was appointed and D.H. and L.H. received amounts with respect to their debentures in NSF.

Acushot Inc. ("Acushot")

- B16. Acushot was an exempt market offering.
- B17. MacKay provided D.H. with various documents related to the purchase of investments in Acushot. Such documents were provided to MacKay by the issuer.
- B18. In or about October 2009, D.H. purchased four (4) debentures in Acushot for \$20,000.00 in reliance on information and recommendations provided by MacKay.

Jaymor American Opportunity 1 Registered Capital Ltd. ("Jaymor")

- B19. Jaymor was an exempt market offering.
- B20. MacKay provided D.H. and L.H. with various documents related to the purchase of investments in Jaymor. Such documents were provided to MacKay by the issuer.
- B21. On or about March 5, 2010, D.H. purchased bonds and shares in Jaymor for \$20,000.00 in reliance on information and recommendations provided by MacKay.
- B22. D.H. purchased the bonds and shares of Jaymor directly through a self-directed Registered Retirement Savings Plan through Olympia Trust Company.
- B23. D.H. was issued 408 Class B Common Shares and 408 Individual Bonds in Jaymor.
- B24. In connection with the NSF, Acushot, and Jaymor transactions, MacKay and AWS were paid, or expected to be paid, directly or indirectly, compensation for the purchases of securities made by D.H. and L.H. as recommended to them by MacKay and AWS.

C. Acknowledgements

- C1. MacKay and AWS acknowledge that they:
- (a) acted as a securities adviser, investment counsel and/or adviser under the Act without being registered; and
 - (b) in acting as a securities adviser, investment counsel and/or adviser under the Act without being registered, they acted in a manner contrary to the public interest.
- C2. Staff acknowledges that in reaching the proposed disposition described in Part D below, Staff took into consideration that the Respondents and D.H. and L.H. resolved the civil action commenced by D.H. and L.H. in the Manitoba Court of King's Bench having file number CI14-01-92583. As a result of this resolution, D.H. and L.H. withdrew their application for compensation for financial loss in this matter.

D. Terms of Settlement

- D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the Respondents have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to the Act that:
- (a) The Settlement Agreement be approved;
 - (b) MacKay be prohibited from acting as an officer and director pursuant to ss. 148.3(1) of the Act;
 - (c) The exemptions set out in ss. 19(1) and 19(2) of the Act, not apply to the Respondents pursuant to ss. 19(5) of the Act; and
 - (d) The Respondents pay to the Commission, \$5,000.00 for the costs of and incidental to the investigation and enforcement of this matter to be paid in twenty five (25) equal payments of \$200.00 payable on the 1st of the month, commencing May 1, 2024.

E. Procedure for Approval of Settlement

- E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing.
- E2. Staff and the Respondents agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Notice of Hearing and the Respondents hereby waive their rights to a full hearing and appeal of this matter.

- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Part 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, the Respondents shall have all the usual rights of an individual subject to such proceedings. If this Settlement Agreement is not approved or the Consent Order set out in Part D above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will 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.
- E4. Staff and the Respondents agree that 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. The Consent Order and/or approved Settlement Agreement may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents. Respondents should contact the securities regulator of any other jurisdictions in which the Respondents may intend to engage in any securities related activities, prior to undertaking such activities.
- E5. The Respondents agree that they will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.
- E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, the parties hereto will not make any statement inconsistent with this Settlement Agreement.


DATED at Winnipeg, Manitoba, this 17th day of April, 2023



Witness



William George MacKay



Advantage Wealth Systems
Per: *William MacKay*

DATED at Winnipeg, Manitoba, this 18th day of April, 2023

Staff of the Manitoba Securities Commission

Per: 

Chris Besko, Director