



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED**

- AND -

**IN THE MATTER OF FAWAD UL HAQ KHAN and
KHAN TRADING ASSOCIATES INC. carrying on business as MONEY PLUS**

**REASONS AND DECISION
(Sections 22(1), 55(1) and 60(1) of the CFA)**

Hearing: May 5, 8, 9, 12, 13, 14, 15, 16, 21, 22, 23, 27, 28, 29 and 30, 2014
June 9, 10, 11 and 12, 2014
October 22, 2014

Decision: December 29, 2014

Panel: Vern Krishna, Q.C. - Chair of the Panel
James D. Carnwath, Q.C. - Commissioner

Appearances: Tamara Center - For the Ontario Securities Commission
Anna Huculak
Swapna Chandra

Fawad Khan - For himself

Fawad Khan - For Khan Trading Associates Inc.
carrying on business as Money Plus

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REASONS AND DECISION

I. INTRODUCTION

[1] Staff of the Ontario Securities Commission (the “**Commission**”) allege that Fawad Ul Haq Khan (“**Khan**”) and Khan Trading Associates Inc. carrying on business as Money Plus (“**KTA**” or “**Money Plus**”) (together, the “**Respondents**”) conducted themselves in a manner that violated the Commodity Futures Act, R.S.O. 1990, c. C.20, as amended (the “**CFA**”) and was contrary to the public interest.

[2] Khan is a resident of Ontario who owns and operates a trading school carrying on business as “Money Plus”, which is also located in Ontario.

[3] Between 2008 and 2010, Khan operated Money Plus through a general partnership between himself and his brother, Daud Ahmad Khan (“**D. Khan**”). D. Khan was not a party to this hearing. In late 2010, Khan began to operate the Money Plus business through KTA, a company incorporated on November 3, 2010 under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44. Khan was a director of KTA. While his brother’s name is on the corporate certificate, there is no evidence demonstrating that he had any involvement with the business. Khan was the “controlling mind” of KTA and the evidence demonstrated that KTA’s actions were indistinguishable from those of Khan. References to the actions of the Respondents do not include D. Khan.

[4] Khan, through Money Plus, offered to teach students commodity futures contract trading. Generally, students paid \$500 at the beginning of the course, which involved the teaching of theory, followed by practice trading in “demo” accounts. When students were told by Khan that they were ready for “real” trading, they paid an additional \$500 and Khan, or an employee of Money Plus, helped them set up a “real” trading account. Students were encouraged to set up their trading accounts with certain U.S. brokers with whom the Respondents had referral arrangements.

[5] Upon finishing the trading course, students continued to enjoy access to the Money Plus premises where they could engage in commodity futures contract trading using Money Plus’ equipment. It was Khan’s practice to trade alongside his current and former students at the Money Plus office, suggesting trades to be made through a loudspeaker system and also over the Internet through a communication program.

[6] Between June 2006 and December 2013 (the “**Material Time**”) Khan engaged in multiple forms of solicitation on behalf of Money Plus. These included appearing on radio programs, newspaper advertisements, maintaining several promotional websites and providing free seminars to the public on a regular basis.

[7] Khan also traded commodity futures contracts on behalf of clients. Khan helped clients set up their trading accounts (the “**Managed Accounts**”) and then exercised discretionary trading authority over the Managed Accounts in exchange for a portion of the trading profits.

[8] Staff alleges that during the Material Time, the losses for the majority of the students, doing their own trading, was nearly \$4 million. Clients whom Khan traded on behalf of suffered losses totalling \$263,154.34.

[9] As of January 5, 2010, Khan was bound by an undertaking (the “**Undertaking**”) in favour of the Commission, in which he agreed: (a) not to receive commissions from the public and (b) not to trade Futures unless registered as required by the CFA. In addition, on December 7, 2011, Khan participated in a voluntary interview (the “**Interview**”) conducted by Staff.

II. THE ALLEGATIONS

[10] Staff alleges that the Respondents’ conduct during the Material Time was contrary to Ontario commodity futures law and to the public interest as follows:

- a) the Respondents engaged in business of trading in commodity futures contracts without being registered to do so and without an exemption from the dealer registration requirement, contrary to subsection 22(1)(a) of the CFA;
- b) the Respondents engaged in the business of advising with respect to commodity futures contracts without being registered to do so and without an exemption from the adviser registration requirement, contrary to subsection 22(1)(b) of the CFA;
- c) the Respondents made misleading and untrue statements to Staff during the course of its investigation into the Respondents’ conduct and business, in breach of subsection 55(1)(a) of the CFA;
- d) the Respondents engaged in conduct contrary to the public interest by:
 - a. making misleading statements to students and clients regarding Khan’s expertise and students’ and clients’ prospective trading returns; and
 - b. failing to disclose their referral compensation arrangements with various introducing brokers in the United States and the basis of those arrangements to students and clients; and
- e) Khan engaged in conduct contrary to the public interest by breaching the Undertaking.

III. STAFF’S WITNESSES

[11] Staff called six witnesses at the Hearing:

a. Louisa Fiorini

[12] Louisa Fiorini (“**Fiorini**”) is an investigator in the Enforcement Branch of the Commission. Her testimony can be found at Trans. Vol. 1-5.

[13] Fiorini testified that the Respondents have never been registered under the CFA or been granted exemptive relief from the registration requirements (Trans. Vol. 1, p. 81-84).

[14] Fiorini provided evidence demonstrating the extensive solicitation efforts undertaken by the Respondents. These included multiple websites operated by the Respondents, YouTube videos, newspaper advertisements, radio seminars and free in-person seminars. The evidence demonstrated that the Respondent’s solicitation efforts often contained representations of the success one was likely to have after receiving instruction from Khan. Statements such as “[t]he strategies we use can earn you up to \$200-\$500 a day” (for an example from the Respondents’ website, see Exhibit No. 20), were repeated throughout the examples referred to by Fiorini. Fiorini testified that the promises of success given by the Respondents minimized the effects of any of the risk disclosure given to students and clients.

[15] Fiorini reviewed the consulting agreement (the “**Global Consulting Agreement**”) between the Respondents and Global Futures Exchange & Trading Company, Inc. (“**Global Futures**”) (Exhibit No. 32). Khan, described as a “foreign consultant” under the agreement, earned commissions based upon the number of contracts completed in the accounts he referred to Global Futures. Her evidence showed that Khan requested monthly breakdowns of the commissions he was earning through Global Futures and requested payment not received in a timely manner. Fiorini testified that Khan received US\$343,020.51 in compensation pursuant to the Global Consulting Agreement (Trans. Vol. 3, p. 42).

[16] Fiorini testified that once Khan’s relationship with Global Futures came to an end, he entered into a cooperation agreement (the “**Mirus Cooperation Agreement**”) with Mirus Futures, LLC (“**Mirus**”). Khan’s agreement with Mirus was similar to that with Global Futures. The Respondents’ received commissions based upon the number of completed contracts or “round turns” in accounts referred to Mirus by them. Fiorini testified that Khan received US\$23,304.20 in total compensation from Mirus (Trans. Vol. 3, p. 60).

[17] Fiorini explained the “account-opening process” employed by the Respondents regarding their students’ and clients’ accounts with Global Futures and Mirus. She stated that once students reached a level of proficiency in their demo account that Khan deemed appropriate, Khan or his employee would assist students with their account applications. Students were only given the application package of the broker that the Respondents had an agreement with at that time. She provided evidence that Khan and his employee instructed students on how to fill out the forms in order to ensure that their account was opened by the relevant brokerage house. If a brokerage house had any questions regarding an account application, they were directed to the Respondents, who controlled

the process of eliciting the correct information from the applicant to ensure the account was opened. Fiorini testified that the Respondents referred approximately 600 students to Global Futures alone.

[18] Fiorini described Khan's practice of giving advice to his students during "live" trading sessions at the premises of Money Plus and over "webcasts". Students and clients would attend the sessions in order to trade "live" with Khan. During these sessions Khan called out his own personal trades over a speaker system and through his webcast so that his students and clients were able to follow his moves and attempt to mimic his trades. Fiorini testified that in order to make up for the fast pace of the market, Khan called out a range of suggested prices for buying or selling contracts.

[19] Fiorini testified that the Respondents had trading authority over the accounts of 32 clients, referred to above as the Managed Accounts. Khan entered into agreements with clients to trade on their behalf in return for a percentage of the profits he made. He gained control over the Managed Accounts by obtaining a power of attorney, obtaining joint ownership, or knowing their passwords. Khan consistently promised his clients that there was very little risk involved because he was an expert trader. Even after inflicting large losses in some instances, Khan would return to clients and instruct them to deposit more money, promising he would make up the losses. Fiorini gave evidence that while these agreements often contained clauses that stated Khan would halt trading if the losses in a particular account exceeded \$2,000, Khan routinely ignored these provisions and traded until there was no more funds left in the account, with the losses sometimes totalling tens of thousands of dollars. The total losses in the Managed Accounts during the Material Time were \$263,154.34 (Trans. Vol. 2, p. 160).

[20] Fiorini also testified that Khan executed the Undertaking on behalf of the Respondents on January 5, 2010. The Undertaking included promises by the Respondents not to trade on behalf or receive commissions as a result of public trading, unless registered as required by the CFA (Trans. Vol. 1, p. 88).

b. A.N.

[21] A.N. is a retired small-business owner. Born in Saudi Arabia, he immigrated to Canada in 1982. A.N. gave evidence regarding his experience with the Respondents. A.N. described the training he received from Khan. He received approximately three days of training from Khan in commodity futures trading and FOREX trading. During his training Khan told him and his fellow students that as long as they traded according to his instructions, they would make money (Trans. Vol. 6, p. 12). A.N.'s testimony can be found in Trans. Vol. 6, p. 4-Vol. 7, p. 80.

[22] A.N. described the account-opening process at Money Plus. Khan and an employee of Money Plus filled out large portions of his brokerage application. He was only asked for his signature where it was needed (Trans. Vol. 6, pp. 25-45). A.N. stated that he was not given a choice of brokerage houses, but rather that Khan and his employees told him that Global Futures was "the best brokerage firm" (Trans. Vol. 6, p.

19). A.N. stated that Khan did not disclose his relationship with Global Futures at that time (Trans. Vol. 6, p. 24).

[23] A.N. said that the Respondents frequently advertised in newspapers (Trans. Vol. 6, p. 114), on the radio (Trans. Vol. 6, p. 119), and on television. These advertisements targeted the South Asian community in the Greater Toronto Area.

[24] A.N. testified that after opening a real account through the Respondents, it was his practice to attend live trading sessions with Khan, either in person or over the web. A.N. stated that these sessions were attended by up to approximately a dozen people in person, and an unknown amount online. A.N. stated that during the live trading portion of the sessions, Khan called out the trades he was making so that those following along could copy his trades.

[25] A.N. testified that after incurring some losses as a result of his own trades, Khan offered to trade on his behalf in return for an equal share in the profits (Trans. Vol. 6, p. 55). The agreement also stated that Khan was to be responsible for 50 percent of any losses suffered as a result of the venture. A.N. said the venture was a complete failure and that Khan's trading resulted in the loss of almost all the funds forwarded to the venture.

[26] A.N. testified that he approached Global Futures in order to enter into his own consulting agreement with them and that at one point he also proposed that Khan allow him to open up a second Money Plus location.

[27] A.N. said that he has been engaged in protracted civil litigation with the Respondents and had previously attempted to initiate a class proceeding against them. A.N. showed considerable animus towards Khan. We approached the evidence given by this witness with caution.

c. R.B.

[28] R.B. is a driving instructor in Mississauga, Ontario. Born in New Delhi, India, she immigrated to Canada in approximately 1990, after earning a Master's degree in mathematics from the University of Cincinnati, Ohio (Trans. Vol. 7, p. 81). R.B. testified that she became aware of the Respondents through friends that had invested with them in approximately December 2010. R.B.'s testimony can be found in Trans. Vol. 7, pp.81-155.

[29] R.B. said she entered into an agreement pursuant to which she was to open a trading account under her name. Khan was to trade on her behalf in return for 50 percent of the profits he earned through trading (Trans. Vol. 7, p. 85). She confirmed she never traded in her account. R.B. testified that her Global Futures account application forms were filled out by an employee of the Respondents without her present and that she was only asked for her signatures without being requested to review the documents. She stated that she was not given a choice regarding which brokerage house her account application was made with (Trans. Vol. 7, p. 91). She said she was not informed of any

compensation that Khan received from Global Futures when she opened her account (Trans. Vol. 7, p. 97).

[30] Khan told her there was no risk involved regarding the principal of her investment (Trans. Vol. 7, p. 86). She deposited \$50,000 into her trading account. Due to the trading losses incurred by Khan in the account, she lost substantially all of the \$50,000 (Trans. Vol. 7, p. 99).

d. A.M.

[31] A.M. is a Deck Coordinator at an engineering firm in Mississauga, Ontario. He immigrated to Canada from India, by way of the United Arab Emirates, in 2007. He holds a degree in fabrication engineering from Goa Government Polytechnic in India and is a member of the Ontario Association of Certified Engineering Technicians and Technologists (Trans. Vol. 8, p. 6). A.M.'s testimony can be found at Trans. Vol. 8 pp. 5-79.

[32] A.M. testified that he became aware of the Respondents through their website. He attended the trading course in the evenings after his work. Khan told him he could make a minimum of \$200 if he traded according to Khan's teachings (Tr. Vol. 8 p 11). A.M. stated that he was taught theory for the first few nights of the course and that on the third or the fourth day Khan introduced him to the "demo" account (Trans. Vol. 8, p. 18). Through this account, A.M. practiced his trading until Khan told him he was ready to trade on a real account.

[33] During his account opening process with Mirus, Khan filled out some portions of A.M.'s application himself and then showed A.M. where to fill in some other information. Khan did not inform A.M. that he had a referral agreement with Mirus (Trans. Vol. 8, p. 24).

[34] A.M. gave evidence that for a period when he was trading at home he would log into a "web radio" broadcast provided by Khan. During these broadcasts, Khan provided advice to those listening, suggesting when they should get in and get out of certain contracts (Trans. Vol. 8, p. 37). A.M. added that he attended Saturday seminars put on by the Respondents during which Khan would go over the previous week's trading and compare the market to his strategies. According to A.M.'s testimony, Khan's seminars invariably concluded that his strategies had been successful (Trans. Vol. 8, p. 40).

e. E.I.

[35] E.I. lives in Brampton, Ontario and is a senior project manager with a construction firm. He has a degree in architecture from the University of Engineering and Technology, Lahore. He immigrated to Canada from Pakistan in approximately 2000. E.I.'s testimony can be found at Trans. Vol. 9, pp. 5-86.

[36] E.I. testified he first heard about the Respondents through their radio advertisements (Trans. Vol. 9, p. 8). E.I. was part of a group of three investors (the “**Investment Club**”) who contracted with Khan to trade commodity futures contracts and securities on their behalf, in approximately March of 2010. Khan promised them profits of \$300-\$500 daily, based upon their investment (Trans. Vol. 9, p. 11). E.I. also took the trading course offered by the Respondents, although it was never his intention to trade himself. During this course he received assistance from an employee of the Respondents, Mr. S.A. (Trans. Vol. 9, p. 16).

[37] Each member of the Investment Club contributed \$10,000, for a total of \$30,000, which was deposited into a trading account under the name of E.I.’s sister, M.I. E.I. testified that while each member of the Investment Club and Khan had access to the trading account through M.I.’s password, only Khan traded on the account. Under the Investment Club’s agreement with Khan, Khan was entitled to half of the profits earned by his trading (Trans. Vol. 9, p. 30).

[38] E.I. testified that to begin, Khan was successful, earning a few thousand dollars profit. When Khan demanded that he be paid his share, the Investment Club withdrew this share, but subsequently refused to pay it to Khan when the account began to reflect steep losses.

f. M.A.

[39] M.A. lives in Markham, Ontario and after a varied career in accounting departments, restaurants and real estate, is now retired. She holds a degree in mathematics from Delhi University. M.A. immigrated to Canada from India approximately 45 years ago. She first heard of the Respondents through Khan’s radio program on which he stated it was “easy” to make \$200-\$300 a day through taking his course (Trans. Vol. 9, p. 88). M.A.’s testimony can be found at Trans. Vol. 9, pp. 86-155.

[40] She testified that she and her husband paid \$1500 for the Money Plus trading course. Regarding her account opening application, Khan had filled out the application for her and only had her sign the required forms. After she had done so, Khan faxed the forms to Global Futures (Trans. Vol. 9, p. 109). M.A. said that Khan did not disclose his relationship with Global Futures at this time.

[41] Through her experiences with the Respondents, M.A. came to believe that they and their employees had the ability to access her account and possibly those of other students and clients accounts. She said that an employee knew the results of her trading without her having informed anyone at Money Plus.

IV. RESPONDENTS’ WITNESSES

[42] The Respondents called ten witnesses during the hearing. Khan also testified on his own behalf at the hearing.

a. S.U.

[43] S.U. is a taxi driver. He immigrated to Canada from Pakistan in 2000. S.U. testified he heard about the Respondents through their radio advertisements (Trans. Vol. 11, p. 15). He received training in commodity futures contract trading and securities trading through the course offered at Money Plus. After finishing the course he applied to have an account opened through Global Futures. He completed all the necessary forms himself and submitted them himself. S.U.'s testimony can be found in Trans. Vol. 11, pp. 13-50.

b. S.G.

[44] S.G. is a truck driver. After obtaining a degree in medicine and practicing as a doctor for approximately twelve years, he immigrated to Canada from Pakistan in 2003. He heard of the Respondents through their radio advertisements (Trans. Vol. 12, p. 13). He then enrolled in the trading course offered by the Respondents which cost him \$1,000 in two installments. After trading in his practice account for a few weeks, S.G. reached a high enough proficiency that Khan told him he could open a real account (Trans. Vol. 12, p. 19). S.G. said that the brokerage house choice was his to make and that he chose to apply for an account with Global Futures (Trans. Vol. 12, p. 20). S.G. testified that he filled out the account application himself. On a few occasions he came to the Money Plus premises and received assistance in his training from Khan. S.G.'s testimony can be found in Trans. Vol. 12, pp 11-77.

c. M.I.

[45] M.I. is a store administrator. She immigrated to Canada in 2000 from Pakistan. Previous to immigrating, she obtained a degree in education and was an elementary school teacher in Pakistan. M.I. testified that she was a member of the Investment Club. She stated that she entered into a trading agreement with Khan, as the signing authority for the Investment Club, pursuant to which Khan was to trade the Investment Club's funds in return for 50 percent of any profit that he made. It was into her account that funds from the two other members of the Investment Club were deposited, and that Khan traded those funds through her account. M.I. testified that her account application was partially filled in by the Representatives or their employees (Trans. Vol. 12, p. 89). M.I.'s testimony can be found in Trans. Vol. 12, pp. 78-127.

[46] According to M.I., none of the members of the Investment Club traded in her account and that only Khan traded in the account. At one point she withdrew US\$3,200 from the account, with the intention of paying half to Khan as his share of the profits he made, but by the time she received the money from the brokerage house, the account had suffered losses. On that basis she did not pay Khan the profit.

d. S.Y.

[47] S.Y. has been employed as a labourer since immigrating to Canada from Pakistan in approximately 1995. In 1986 she received a degree in architecture from a university in Pakistan. She testified that she heard about the Respondents through their radio advertisements. S.Y.'s testimony can be found at Trans. Vol. 13, pp. 23-99.

[48] S.Y. testified that she took the trading course offered by the Respondents in approximately 2009. She stated that she opened an account with Global Futures after being provided with a list of brokerage houses by Khan.

e. J.A.

[49] J.A. is driving instructor. J.A. obtained his Masters in Engineering from a university in Pakistan as well as a bachelor's degree from the University of Waterloo. Before immigrating to Canada in 1996, J.A. was a major in the Pakistani Air Force, working in the field of mechanical engineering. J.A.'s testimony can be found at Trans. Vol. 14, pp. 5-24.

[50] J.A. testified that he heard of the Respondents through friends and attended a seminar in approximately 2011. The Respondents did not charge him for the trading course.

[51] J.A. said he opened a practice account and then a real account with Mirus. He filled out his own application form online without assistance from the Respondents.

f. A.R.

[52] A.R. is currently retired. He obtained bachelor degrees in commerce and law in Pakistan and worked as in accounting until immigrating to Canada in 1994. Before retiring, A.R. owned and ran a motel business and then a Laundromat business in Scarborough, Ontario. A.R.'s testimony can be found at Trans. Vol. 14, pp. 25-46.

[53] A.R. testified that he first learned of the Respondents' business through newspaper articles in the Urdu Post and Toronto Star. He first visited the Money Plus premises in December 2011. A.R. testified that he paid the Respondents \$1,000 in two installments for a two week trading course (Trans. Vol. 14, p. 31). After finishing the course, A.R. opened a trading account with Mirus, and practiced trading for approximately two to three months (Trans. Vol. 14, p. 32).

[54] A.R. said he filled out his own application forms for a real account with Mirus (Trans. Vol. 14, p. 35). He stated that Khan never told him specific contracts to buy and sell, but rather Khan suggested "reasonable" buys and "reasonable" sells. He continues to receive guidance from Khan in the form of "alert" letters, which state they "are only for educational purposes" and also warn of the substantial risks involved with trading (Trans. Vol. 14, p. 37).

g. C.V.

[55] C.V. is an aerospace parts inspector. C.V. obtained a science degree from Punjabi University in India and worked in telecommunications in New Delhi before immigrating to Canada in 1972. C.V.'s testimony can be found at Trans. Vol. 15, pp. 7-73.

[56] C.V. testified that he learned about the Respondents' business after hearing Khan on the radio and decided to take the trading course offered by them. At the conclusion of the trading course the Respondents offered him a choice of brokerage houses to open a practice trading account (Trans. Vol. 15, p. 14). After practicing for a few months, a Money Plus employee helped him fill out his application to open a real trading account with Mirus.

h. S.H

[57] S.H. works in financial accounting. S.H. obtained a master's degree in commerce in Pakistan and worked as a manager of the finance department of Alazhar Industries before immigrating to Canada in 2005. He first heard about the Respondents through friends and the Respondents' radio advertisements. S.H.'s testimony can be found at Trans. Vol. 16, pp. 13-33.

[58] S.H. testified that when he first attended the Respondents' seminars in 2011 he was told by Khan that day trading carried a high degree of risk (Trans. Vol. 16, p. 15). After taking the trading course offered by the Respondents and practising trading for a few months, he decided to open an account with Mirus. He chose Mirus because it was easier for him to understand, since he had practiced with Mirus. He filled out the application forms himself.

i. Z.H.

[59] Z.H. is an IT consultant. Z.H. obtained a degree in computer science from the University of Karachi in 1995. Z.H. migrated to Canada in 2004. He first learned of the Respondents through their radio sessions in approximately September 2011. Z.H.'s testimony can be found at Trans. Vol. 18, pp. 56-89.

[60] Z.H. testified that the trading course offered by the Respondents consisted of approximately a week of theory lessons, after which he opened a practice account with the software provided by Mirus. He chose Mirus based upon his own research (Trans. Vol. 18, p. 61) and later opened a real account with them for the same reasons (Trans. Vol. 18, p. 77).

[61] Z.H. said Khan used to advise him on certain ranges within which he should enter and exit commodity futures contracts.

j. A.K.

[62] A.K. is an automotive engineer in Scarborough, Ontario. A.K. obtained his bachelor's degree in engineering in Pakistan and immigrated to Canada in 2000 after working in a Pakistani government ministry for ten years (Trans. Vol. 19, pp. 6-61).

[63] A.K. said he heard about the Respondents through a friend in June 2010. After taking the trading course offered by the Respondents, he opened an account with Global Futures. He filled out his account application with Global online.

[64] S.U., S.G., M.I., S.Y., J.A., A.R., C.V., S.H., Z.H., and A.K. all are landed immigrants, arriving from South Asian countries such as India and Pakistan. All have learned English as a second or even third language. We have nothing but admiration for their efforts in overcoming the challenges of making a new life in Canada. However, it became clear to the Panel as the witnesses testified that the majority of the Respondents' witnesses had been coached by Khan before their testimony. For example, all of Khan's witnesses confirmed they filled out the broker application independently of Khan. We mean no disrespect to those witnesses by finding that it was more likely than not that the applications were completed in full or in part by Khan or his employee at Money Plus. This finding is confirmed by the evidence of Staff's witnesses on this point, which evidence we accept.

k. Khan

[65] Khan testified that the payments he received from Global Futures were reimbursements for marketing Global Futures. Khan stated that he also received other fringe benefits under his agreement with Global Futures, such as discounts on his own trading. He said that it was his understanding that his payment was not related to the commissions Global Futures charged its clients (Trans. Vol. 17, p. 13). Khan's evidence can be found at Trans. Vol. 17, pp 5-155.

[66] Khan testified he charged students \$1,000 dollars in two installments for the Money Plus trading course and described the material he used to give his students. Khan testified that when his students filled out application forms for brokerage houses, they did it themselves, although he offered his assistance if they were having trouble filling out the forms. Khan gave examples of this assistance, including that he told students they should include their past experiences exchanging currencies when travelling as trading experience (Trans. Vol. 17, p. 19). He told students that if they had engaged in the sale of goods on a small level that this too should be included in their calculation of past trading experience.

[67] Khan said it was his practice to trade in clients' accounts if they had given him power of attorney to do so. He confirmed that he entered into agreements with such persons under which he would be entitled to a certain percentage of the profits from his trading (Trans. Vol. 17 p. 21).

[68] Khan said that during his interview by Staff that, Staff pressured him and used the fact his English is a second language to their advantage, in order to get him to say things he would not have otherwise admitted, such as the receipt of commissions from brokerage houses.

[69] We give little weight to Khan's evidence. We find him disingenuous and inconsistent. Further, we find later in these reasons that Khan breached section 55 of the CFA by making misleading and untrue statements to the Commission.

V. ISSUES

[70] Staff's allegations raise the following issues:

- f) Did the Respondents engage in unregistered trading and unregistered advising in Futures, in breach of subsection 22(1) of the CFA?
- g) Did the Respondents make misleading and untrue statements to Staff, in breach of subsection 55(1)(a) of the CFA?
- h) Did the Respondents engage in conduct contrary to the public interest by:
 - i. making misleading statements to students and clients regarding Khan's expertise and students' and clients' prospective trading returns; and
 - ii. failing to disclose their referral compensation arrangements to students and clients?
- i) Did Khan engage in conduct contrary to the public interest by breaching the Undertaking?

VI. APPLICABLE LAW

a. Standard of Proof

[71] The standard of proof in this hearing is the civil standard of proof on a balance of probabilities. The Panel needs to assess each of these issues by examining the evidence in this matter and determining whether on a balance of probabilities "...it is more likely than not that the event occurred" (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 at para. 44 ("*McDougall*"). As stated by the Supreme Court of Canada, "...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*McDougall*, supra at para. 46).

b. Hearsay

[72] Staff introduced into evidence a number of documents which were hearsay evidence. Subsection 15(1) of the Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

(the “SPPA”) gives the Panel the discretion to admit relevant evidence that might not be admissible as evidence in a court, including hearsay evidence:

What is admissible in evidence at a hearing

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
any oral testimony; and
any document or other thing,
relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[73] In *Re Sunwide Finance Inc.* (2009) (32 O.S.C.B. 4671 at para. 22) the Commission held “[a]lthough hearsay evidence is admissible under the SPPA, the weight to be accorded to such evidence must be determined by the panel...” It is accordingly the duty of the Panel to take into consideration the indicators of reliability surrounding any hearsay evidence that it allows to be entered and accord that evidence the proper weight in its judgment.

c. Unregistered Trading and Unregistered Advising

1. Registration

[74] The dealer and adviser registration requirements of the CFA are found in subsection 22(1):

22. (1) No person or company shall,
- (a) trade in a contract unless such person or company is registered as a dealer or is registered as a salesperson or floor trader or as a partner or as an officer of a registered dealer and is acting on behalf of such dealer;
 - (b) act as an adviser unless such person or company is registered as an adviser, or is registered as a representative or as a partner or as an officer of a registered adviser and is acting on behalf of such adviser, and such registration has been made in accordance with Ontario commodity futures law and such person or company has received written notice of such registration from the Director and, where such registration is subject to terms and conditions, the person or company complies with such terms and conditions.

(CFA, subs 22(1))

[75] Registration requirements play a key role in Ontario commodity futures law. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on commodity futures contracts. The Commission commented on the purpose of these requirements in the securities context in *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 (“*Limelight*”):

“Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with the or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade... meet the applicable proficiency requirements, are of good character, satisfy ethical standards and comply...”

It is our view that registration under the CFA serves the same purposes.

[76] In order for there to be fairness and confidence in Ontario’s capital markets, it is critical that brokers, dealers and other market participants who are in the business of selling or promoting commodity futures contracts meet the minimum registration, qualification and conduct requirements of the CFA.

[77] Accordingly, the requirement that individuals and companies be registered to trade in securities is an essential element of the regulatory framework established to achieve the purposes of the CFA.

2. Unregistered Trading

[78] The CFA requires individuals and companies to be registered if they are involved in trading contracts.

Trading

[79] The CFA provides a broad definition of “trade” or “trading”:

(a) Entering into contracts, whether as principal or agents

...

(d) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing

[80] The Commission has established that trading under the *Securities Act* R.S.O. 1990 c. S.5 (the “**Act**”) is a broad concept that includes any sale or disposition of a security for valuable consideration, as well as any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition. This

interpretation has been confirmed by the Ontario courts in their acknowledgement that “[r]egarding ‘trade’, the legislature has chosen to define the term... broadly in order to encompass almost every conceivable transaction in securities” (*R v Sussman* (1993), 16 O.S.C.B. 1209 (Ont. Ct.) at p. 1230) (“*Sussman*”). Furthermore, in *Re Access Fund Management, LLC et al.* (2012), 35 O.S.C.B. 9019 (“*Access*”), the Commission discussed the inclusion of the word “indirectly” in the description of acts in furtherance of trades, and stated that it “reflects the intention of the legislature to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly”.

[81] Given the similarity of the purposes of the Act and CFA, it is proper that the broad concept of trading identified by the court in *Sussman* and by the Commission under the Act, apply to trading under the CFA as well.

Commodity Futures Contracts

[82] “[C]ontract” is defined in the CFA to include any “commodity futures contract”. “[C]ommodity futures contract” is defined as follows:

“commodity futures contract” means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange’s by-laws, rules or regulations;

[83] The CFA defines “commodity” as:

“commodity” means, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations;

[84] OSC Rule 14-502 (Commodity Futures Act) Designation of Additional Commodities, 28 OSCB 4403 (13 May 2005) (“**OSC Rule 14-502**”), designates additional “commodities” within the meaning of the CFA:

1.1 Designation of Additional Commodities - In addition to the commodities listed in section 1 of the Commodity Futures Act, each of the following is designated as a commodity:

(a) Energy and fuel, including gas, oil, electricity and energy-related products whether in their original or processed state, and any by-products thereof;

...

(g) A security as the term is defined under the Securities Act, except for a security described in paragraph (p) of the definition;

(h) An index, economic indicator, series or any other numeric reference;

...

(j) Any interest that is a value determined with reference to any commodity, good, article, service, right or interest, or the relationship between any such values, or any combination thereof.

(OSC Rule 14-502, s 1.1, Schedule B)

[85] Companion Policy 14-502CP (Commodity Futures Act) Designation of Additional Commodities, 28 OSCB 4404 (13 May 2005) (“**14-502CP**”) confirms that, by virtue of subsection 1.1(j) of OSC Rule 14-502, cash-settled futures contracts are governed by the CFA. (14-502CP, Part 3.1(j), Schedule B)

3. Unregistered Advising

[86] Adviser is defined in the CFA as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to trading in contracts” (s. 1(1)). Therefore, to trigger the adviser registration requirement under subsection 22(1)(b), a person or company must: (a) provide advice to others regarding trading in contracts; and (b) in so doing, be engaged in or hold himself, herself or itself out as engaging in, the business of advising.

Providing Advice

[87] In *Re Costello* (2003), 26 O.S.C.B. 1617 (“*Costello*”), the Commission considered what it means to “provide advice”. In its decision, the Commission noted that the definition of adviser should be interpreted in a broad manner. While *Costello* was conducted under the Act, the Panel thinks a similar approach should be taken regarding the definition of adviser in the CFA.

[88] The Commission clarified in *Costello* that the mere provision of financial information regarding certain securities does not constitute the giving of advice.

However, it recognized that where an opinion is provided on the wisdom or value of investing in a specific security, advice may have been given. Furthermore, for it to be found that advice was provided, a one-on-one relationship involving the giving of advice on specific securities does not need to exist.

Business Purpose

[89] The registration requirement for advisers in the CFA is only triggered if the advice is given for a business purpose. Guidance on the meaning of business purpose can be found from within the securities context. Under the Act, section 1.3 of the National Instrument 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, 32 OSCB (Supp-2) (17 Jul 2009) (“**NI 31-103CP**”) sets out factors to be considered in determining whether the provision of advice is for a business purpose. These factors include; registrant-like activities, frequency, compensation, and solicitation.

[90] Jurisprudence from the securities context provides examples of conduct that satisfied the business purpose requirement. In *Re Hrapstead* (1999), 15 B.C.S.C.W.S. 13 (“**Hrapstead**”), the British Columbia Securities Commission (“**BCSC**”) held that receiving commissions satisfied the business purpose requirement. In *Costello*, the Commission found that a business purpose existed with regards to the Respondent’s use of free seminars to promote other businesses in which he stood to have a financial benefit.

4. Exemption

[91] The CFA provides for an exemption from the registration requirement for advisers at section 31:

31. Registration as an adviser is not required to be obtained by,

...

(b) a lawyer, accountant, engineer, teacher or employee of the Ministry of Agriculture, Food and Rural Affairs;

...

where the performance of the service as an adviser is solely incidental to their principal business or occupation.

[92] Once Staff has proved that the Respondent engaged in an activity for which registration is required, the burden of proof to demonstrate the existence of an exemption from the registration requirement falls on the responding party.

d. Making Misleading or Untrue Statements to Staff of the Commission

[93] Subsection 55(1)(a) of the CFA prohibits persons and companies from making misleading or untrue statements to Staff appointed to make an investigation under the CFA:

55. (1) Every person or company that,

(a) makes a statement in any material, evidence or information submitted to the Commission, a Director, any person acting under the authority of the Commission or the Executive Director or any person appointed to make an investigation or examination under this Act that, in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading;

...

is guilty of an offence and on conviction is liable to a fine of not more than \$5 million or to imprisonment for a term of not more than five years less a day, or to both.

(CFA, subs 55(1)(a), Schedule B)

[94] In order to establish that a breach of subsection 55(1)(a) of the CFA has occurred, Staff must prove that (a) the Respondents submitted a statement to the Commission during an investigation or examination under the CFA; and (b) the statement was, in a material respect and at the time and in the light of the circumstance under which it is made, misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading.

e. Conduct Contrary to the Public Interest

[95] As set out in subsection 1.1(1) of the CFA, it is the Commission's mandate:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient commodity futures markets and confidence in those markets.

[96] In pursuing the purposes of the CFA, the Commission must consider fundamental principles as stated in paragraph 2 of subsection 1.1(2) of the CFA, the relevant parts of which are as follows:

i. requirements for timely, accurate and efficient disclosure of information,

- ii. restrictions on fraudulent and unfair market practices and procedures, and
- iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[97] Staff alleges that the conduct of the Respondents was contrary to the public interest.

VII. ANALYSIS

a. Unregistered Trading and Advising

1. Unregistered Trading

[98] To conclude that the Respondents engaged in unregistered trading contrary to subsection 22(1)(a) of the CFA, it must be determined that the Respondents; (1) were unregistered, (2) engaged in trading, and (3) traded contracts.

2. Registration

[99] Based on the testimony of Fiorini and the section 62 certificate introduced into evidence by Staff, it is clear that none of the Respondents were registered in any capacity under the CFA.

3. Trading and Acts in Furtherance of Trades

[100] The Respondents engaged in two courses of conduct which constituted trading within the meaning of the CFA; first, the process undertaken by Khan as a teacher at Money Plus and second, Khan's trading activity regarding the Managed Accounts.

4. The Money Plus Teaching and Trading Scheme

[101] The Respondents went to extensive efforts soliciting students to attend their trading course. Potential students were given the impression that Khan was an expert trader and promised profits of "\$200-\$500 a day" once they began trading. The Respondents promised to teach students the basics of commodity futures trading and as well as other types of day trading. However, the Respondents did not plan to have their students end contact with them after the conclusion of the course. Instead, students learned that Khan, their expert instructor, now offered to trade alongside them, allowing and even assisting them in copying his trades. It should come as no surprise that many of his students took up the offer. The Respondents succeeded in signing up hundreds of clients to "real" trading accounts. At the same time, the Respondents executed agreements with the same brokers which entitled them to a portion of the commission the brokers made on the students' trades. The scheme resulted in the Respondents reaping

hundreds of thousands of dollars in commissions on trades made by their newly minted traders, whether or not these new traders made any profits themselves.

[102] The Respondents went to great lengths to ensure that their new day traders did in fact trade, including:

- a) Directing students and clients to introducing brokers;
- b) Helping students and clients complete account applications, including completing the applications for them, in ways that permitted customers to trade in commodity futures contracts, even though they might not have been able to do so had a registrant, complying with its suitability obligations, been involved;
- c) Helping students and clients submit hard copy account-opening documents, including faxing and emailing them for them and communicating with brokers on behalf of students and clients; and
- d) Providing students with the computers and Internet access required to trade in commodity futures contracts.

[103] Khan submitted that he had no knowledge of how the payments were calculated and claimed instead that these payments were reimbursements for promotional expenses and a break in commissions on Khan's own trading account. The agreement between Khan and Global Futures, however, was clear that Khan's compensation was calculated by reference to the round turns in the referred accounts.

[104] Khan also rejected Staff's assertion that he or someone under his employment helped students or clients set up their accounts. This is not borne out by the evidence. The Panel heard testimony from multiple sources, which was corroborated by written evidence, that it was the Respondents' practice to assist students and clients to any extent possible in order to ensure that they would be trading through brokerage firms with whom the Respondents had relationships with.

[105] The evidence demonstrates that Respondents engaged in a systematic plan to (1) solicit students for their trading course, (2) set up their students to trade through specific brokers, and (3) ensure that they traded. This guaranteed the Respondents profits in form of commission payments. "[A]ny act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of [trading]," is considered "trading" under the CFA. The Respondents' conduct, as described above, satisfies this definition.

5. The Managed Accounts

[106] The Panel heard evidence that demonstrated that Khan traded on behalf of 32 clients through the Managed Accounts, using methods such as powers of attorney (POA) and joint accounts to access clients' accounts for the purpose of trading. He also gained

access to trading accounts by obtaining the personal passwords of students and clients so that he could access and trade on those accounts.

[107] Khan submitted that there was nothing illegal about trading on those accounts over which he had a POA over or joint ownership with the clients.

[108] However, the unregistered trading prohibition in the CFA prohibits achieving indirectly what is prohibited directly. By engaging in a scheme whereby he gained access to client and student accounts and then traded on behalf of those individuals on a widespread basis, Khan's actions met the requirements of trading within the meaning of the CFA.

6. Commodity Futures Contract

[109] The contracts traded by the Respondents satisfy the requirements of the definition of a commodity futures contract in the CFA. Staff submitted evidence demonstrating the types of products Khan was trading, drawing the Panel's attention to specific commodity futures contracts traded, including, metal, currency, energy and fuel, and stock futures contracts. There was no evidence tendered that these contracts were anything other than commodity futures contracts.

[110] Khan submitted he was mainly involved in the teaching and trading of "spot forex" and not commodity futures. Khan submitted that the Respondents actions were therefore outside the scope of the CFA and the jurisdiction of the Commission. While the scope of illegal conduct is properly considered under the sanctioning factors, it is not relevant to consideration whether commodity futures contracts were traded or not.

7. Findings

[111] In order to find that the Respondents engaged in unregistered trading contrary to subsection 22(1)(a) of the CFA, Staff was required to prove, on a balance of probabilities that the Respondents were, (1) were unregistered, (2) engaged in trading, and (3) traded contracts. We find that Staff was successful in doing so at each stage of the test and that as a result the Respondents breached subsection 22(1)(a) of the CFA.

b. Unregistered Advising

[112] The Respondents engaged in unregistered advising contrary to subsection 22(1)(b) through two courses of conduct. The first was the seminars in which Khan provided advice during the course of live trading. The second was Khan's actions as a portfolio manager regarding the Managed Accounts. The adviser registration requirement of the CFA requires that there be (1) the provision of advice and (2) that there be a business purpose for the provision of advice.

1. “Live” Commodity Futures Trading Advice

[113] Khan often gathered with clients and students at the Money Plus premises for “live” trading sessions. During these sessions Khan would trade on his own account and suggest trades to those present. It was understood by those present that Khan was executing these trades himself and that they should attempt to copy his trades.

[114] The provision of advice does not require there to be a one-on-one relationship, or for the participating parties to enter into an advisor agreement (*Costello*). In subsection 8(2) of the General Regulation under the CFA, R.R.O 1990, Reg 90 (the “**CFA Regulation**”), the definition of commodity trading advisor captures this idea of more generalized advice giving:

Every registrant who is an adviser shall elect to be classified into one or more of the following categories:

Commodity trading adviser, but only a person or company that holds himself, herself or itself out as engaging in the business of advising other either directly or through publications or writings as to trading in contracts but that does not purport to design such advice to accord with the financial objectives of specific customers, or intends so to act, may elect to be classified in this category.

[115] It was Khan’s submission that these suggestions regarding trades did not qualify as advice because his clients and students were free to make their own decisions regarding whether or not they actually executed the trades. Khan also testified that Staff’s interpretation of these sessions was incorrect because the market moved too fast for it to be possible for others to copy his trades.

[116] In *Re Donas* (1995), L.N.B.C.S.C. 18, the BCSC held that advice is given where a person “recommends an investment”. Khan recommended when to enter into and when to exit specific contracts in the commodity futures market. The legislation does not require that Khan enter into the contracts on behalf of the clients as well.

[117] Regarding Khan’s claim that advising in a real-time environment is impossible, during the Interview Khan himself explained how he compensated for the fast-moving pace of the market. He stated that he compensated by calling out a range of suggested trades so that those following along had a chance to execute their trades at a range of prices. Whether this was an effective method to provide advice is not at issue.

Business Purpose

[118] The Respondent’s conduct whilst providing trading advice satisfied the business purpose requirement of the CFA. In *Costello* the Commission agreed with the BCSC’s decision in *Hrappstead* that “one need to look no further than the commissions” the adviser received for satisfaction of the business purpose requirement. Khan’s receipt of

commissions based upon the advice given to his students satisfies the business purpose requirement.

[119] That Khan did not receive his commissions directly from his students does not alter the fact that Khan received commissions as a result of his advising. In fact, his was a situation analogous to the mutual fund industry, where advisers often receive commissions by way of fees that are paid to them by the fund company. The fact that they receive payment from the fund company and not directly from the client does not change the nature of their relationship with the client. In this case, Khan advised clients regarding trading commodity futures contracts knowing that he would receive payment for that advice from the broker based upon the number of trades placed by his students and clients.

2. Portfolio Management Advice

[120] Evidence was provided that Khan acted as a “portfolio manager” for the Managed Accounts. Khan admitted that he decided which contracts to trade in the Managed Accounts, which, as noted above, involved the assets of 32 different clients. The full discretionary control over clients’ portfolios satisfies the requirements for the definition of the provision of advice under the CFA.

Business Purpose

[121] Regarding the Managed Accounts, the evidence demonstrated that it was Khan’s practice to enter into agreements with these clients, which entitled Khan to a portion of the profits he earned by trading in the accounts. This type of agreement for profit satisfies the business purpose requirement under subsection 22(1)(b) of the CFA.

3. Findings

[122] We find that the Respondents acted as advisers without being registered to do so, contrary to subsection 22(1)(b) of the CFA. Staff succeeded in demonstrating that the Respondents’ conduct in both instances described above satisfied the requirements of (1) the provision of advice and (2) contained a business purpose.

4. Exemption

[123] The availability of an exemption from the adviser registration requirement was only raised by the Respondent during closing submissions. As such, no evidence was presented on the issue. However, given that the Respondent was unrepresented at the hearing, the Panel gave his submissions full consideration. After doing so, we find there are no exemptions from the adviser registration requirements available to the Respondents.

[124] As Staff has already met its burden of proof regarding the allegations of unregistered advising, the responsibility to prove on a balance of probabilities that there

is an exemption for his conduct now lies upon Khan (*Re Richvale Resource Corp.* (2012), 35 O.S.C.B. 4286). In order to avail oneself of an exemption contained within section 31, Khan must demonstrate that (1) he was a member of one of the enumerated professions, (2) that profession was his principal business or occupation, and (3) that the performance of the service as an adviser was “solely incidental” to his being a teacher.

[125] Khan claimed an exemption from the adviser registration requirement on the basis that he had been qualified as an engineer in Pakistan and that he had been acting in the role of a teacher in his business, Money Plus.

[126] First, as Khan’s conduct during his time in Pakistan is not at issue here it is therefore not relevant to whether Khan is exempted from the adviser registration requirements.

[127] Khan also claims that his position as a teacher at Money Plus exempted him from the adviser registration requirements.

[128] Staff submitted that Khan was not a teacher, or in the alternative, if he was, that it was not his principal business or occupation. While the Panel believes that Staff’s argument on those issues may have merit, we will instead focus our analysis on the words “solely incidental” in the provision and why they preclude Khan from taking advantage of this exemption.

[129] The determination of whether Khan was providing advice solely incidental to his profession as a teacher cannot be made in a vacuum. Rather it must be done with reference to the business purpose requirement of subsection 22(1)(b). Ignoring what signified the business purpose behind the advice would be an artificial separation.

[130] We determined above that the Respondents gave advice for business purposes on the basis of (1) the receipt of commissions and (2) the receipt of income as a result of acting as a portfolio manager. These income sources amounted to hundreds of thousands of dollars and depended solely upon the provision of advice. They were not in any way connected to Khan’s activities as a teacher at Money Plus. The advice in question regarding both courses of conduct examined above was given to students and clients after they had finished the trading course offered by the Respondents. The advice provided could not therefore be solely incidental upon Khan’s position as a teacher.

c. Making Misleading or Untrue Statements to the Commission

[131] Section 55 of the CFA makes the provision of misleading or untrue statements to the Commission a breach of Ontario commodity futures law. In *Wilder v Ontario (Securities Commission)* (2001), 53 OR (3d) 519 (CA) the Ontario Court of Appeal considered section 122 of the Act, which is substantially similar to section 55 of the CFA, and noted, “it is difficult to imagine anything that could be more important to protecting the integrity of capital markets than ensuring that those involved in those markets, whether as direct participant or as advisers, provide full and accurate information to the [Commission].” Staff submitted evidence of multiple breaches by Khan of section 55.

Khan was provided with opportunity during the hearing to explain these alleged fallacies, but failed to do so.

[132] While Staff provided evidence demonstrating numerous examples of such breaches, the Panel will only analyze in detail two particular examples of breaches by Khan, which we will refer to as the “account-opening process” and “compensation from Global Futures”.

1. Account-Opening Process

[133] Throughout the Interview and the hearing, Khan made untrue and misleading statements regarding the brokerage account-opening process at Money Plus. The Panel views these statements as particularly egregious because this process was at the very heart of Khan’s trading scheme. His attempts to conceal this from the Commission therefore go to the very center of his misconduct and further demonstrate his mental culpability.

[134] Khan repeatedly told the Commission that he did not push students and clients to sign up with the brokerage houses with which he had a relationship. Proof of this, he stated, was that he provided students with a list of brokerage houses (the “**Broker List**”) from which they could choose a brokerage house. Despite multiple requests, Khan did not produce the Broker List. The Panel finds the Broker List never existed and that Khan was only interested in having his students and clients apply to the brokerage house with which he had a relationship with at the time. Convincingly, Khan’s own agreement with Global Futures stated that their relationship was to be exclusive. If Khan had suggested other brokers to his students and clients, as he claims he did, he would have been in violation of the agreement.

[135] Khan submitted that he disclosed to his students or clients that he was receiving compensation from the brokers that he was signing them up with. Even the Respondents’ own witnesses did not offer testimony to support the notion that Khan was in the habit of disclosing his consulting relationships. Rather the evidence shows that it was Khan’s practice not to disclose his consulting relationship to his students and clients as a matter of course.

[136] During the Interview and his testimony, Khan asserted that neither he nor any employees of his helped students or clients fill out the brokers’ application forms. However this is contradicted by his own testimony that he provided “guidance” to students and clients. We are persuaded by Staff’s witnesses who testified that the Respondents would partially or even completely fill out the applications and sometimes only asked the applicants for their signatures, before forwarding the required documentation to the brokerage house.

[137] We find Khan engaged in a concerted effort to hide the evidence of his scheme from the Commission through misleading and untrue statements, contrary to section 55 of the CFA.

2. Compensation from Brokerage Houses

[138] Khan made misleading and untrue statements to the Commission, contrary to section 55 of the CFA, regarding his compensation from Global Futures. During the Interview, while Khan was under oath, he stated the only compensation he received from Global Futures were reimbursements for promotional expenses and a break on commissions in Khan's own trading account. The evidence is clear that Khan's compensation was in the form of commissions, calculated by reference to the round turns in the referred accounts. Furthermore, the Panel was presented with emails from Khan to a Global Futures representative, demonstrating Khan knew the basis upon which the payments were calculated. These emails also show that Khan was in the habit of double-checking the calculation of these payments and demanding additional payments when he thought they were owed to him.

[139] Khan also tried to mislead the Commission by minimizing the amount he was receiving in commissions due to trading by his students and clients. He states that his estimated annual income from such sources was around \$40,000 to \$50,000. The evidence demonstrates that by 2010 he was earning two to three times that, in commissions alone.

[140] We find Khan purposely misled or made untrue statements to Staff concerning the compensation he received through commissions, contrary to section 55 of the CFA.

VIII. CONDUCT CONTRARY TO THE PUBLIC INTEREST

[141] The Commission seeks, "to ensure that those who trade... meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the [Act]" (*Limelight*). Khan has demonstrated himself lacking the ability to meet any of these standards. As a result of the Respondent's multiple breaches of the CFA, we find that the Respondents' acted contrary to the public interest within the meaning of the CFA.

[142] We also find that that the Khan acted contrary to the public interest when he breached the Undertaking. Khan specifically gave his undertaking to Staff that he would not engage in trading futures on behalf of the public and that he would not receive commissions on the basis of public trading. Not only did he continue to do both, but he refused to admit to such during the hearing. Khan claimed that his agreements with the U.S. brokers did not result in him receiving commissions. His testimony was that these payments were in fact reimbursements for marketing efforts on behalf of the U.S. brokers. As we noted above, this was not the basis for the payments and furthermore, Khan was aware of this. Multiple witnesses have testified that Khan continued to trade on their behalf past January 2010. Khan admitted to this as well. Why he thought this was acceptable after giving his undertaking not to, is something we don't know.

IX. CONCLUSION

[143] For the reasons stated above, the Panel finds that Respondents:

- a) engaged in the business trading in commodity futures contracts without being registered to do so and without an exemption from the advisor registration requirement, contrary to subsection 22(1)(a) of the CFA;
- b) engaged in the business advising in commodity futures contracts without being registered to do so and without an exemption from the advisor registration requirement, contrary to subsection 22(1)(b) of the CFA;
- c) the Respondents made misleading and untrue statements to Staff during the course of its investigation into the Respondents' conduct and business, in breach of subsection 55(1)(a) of the CFA; and
- d) the Respondents acted contrary to the public interest.

[144] An order will issue as follows:

- a) Staff shall serve and file its written submissions on sanctions and costs by February 6, 2015;
- b) the Respondents shall serve and file their written submissions on sanctions and costs by March 6, 2015;
- c) Staff shall serve and file any reply submissions on sanctions and costs by March 20, 2015;
- d) The hearing to determine sanctions and costs against the Respondents will be held at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, on April 13, 2015, at 10:00 a.m. or such further or other dates as agreed by the parties and set by the Office of the Secretary; and
- e) Upon the failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party, and such party is not entitled to any further notice of the proceedings.

DATED at Toronto this 29th day of December, 2014.

"Vern Krishna"

Vern Krishna, Q.C.

"James D. Carnwath"

James D. Carnwath, Q. C.