

Citation: 2023 BCSECCOM 492

Settlement Agreement

Marcus (Ming) Xu and M.Y. Capital Management Corporation

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Marcus Ming Xu (Xu) and M.Y. Capital Management Corporation (M.Y. Capital) agree as follows:

Agreed Statement of Facts

1. M.Y. Capital, is registered in British Columbia, Alberta, and Ontario as a portfolio manager (PM), investment fund manager (IFM), and exempt market dealer (EMD). It is also registered as a PM and EMD in Manitoba. Since November 1, 2012, M.Y. Capital has been registered in British Columbia. M.Y Capital's head office is in Vancouver.
2. Xu is a resident of British Columbia. Xu was M.Y. Capital's Chief Compliance Officer from November 1, 2012 until May 2022. Since November 1, 2012, Xu has acted as M.Y. Capital's President and Ultimate Designated Person and has been registered as an advising and dealing representative with M.Y. Capital.
3. In its capacity as an IFM, during the period of 2017-2020, M.Y. Capital managed four exempt funds in British Columbia (the MY Funds).

Misconduct

4. In 2020, Commission staff conducted a compliance examination of M.Y. Capital (2020 Exam).
5. The 2020 Exam identified deficiencies in M.Y. Capital's compliance procedures and internal controls.
6. Specifically, Commission staff found that M.Y. Capital and Xu:
 - (a) failed to act in the best interest of the M.Y. Funds and its clients by making short-term fund-to-fund subscriptions that were unsuitable in the particular circumstances;
 - (b) failed to properly manage redemptions by:
 - having no written policies or procedures in place to deal with pre-redemptions;

- disclosing that no redemptions were allowed for some of the MY Funds, when in fact, pre-redemptions were available in select circumstances;
 - allowing certain investors, who claimed to be experiencing financial hardship, to pre-redeem their investments during lock-up periods and prior to the valuation dates;
- (c) failed to manage and properly disclose potential conflicts of interest relating to the sale of an investment holding to a referral agent;
- (d) did not maintain sufficient and current written know your client (KYC) information for some clients, and therefore, failed to demonstrate that it was able to take reasonable steps to assess suitability for those clients; and
- (e) failed to disclose all management fees that clients indirectly paid by investing in one of the MY Funds that invested in another MY Fund.
7. By engaging in the conduct described above, M.Y. Capital and Xu acted contrary to:
- (a) the *Know your client* provisions in subsections 13.2(2) and 13.2(4) of NI 31-103;
 - (b) the *Suitability* provisions in subsection 13.3(1) of NI 31-103;
 - (c) the *Identifying and responding to conflicts of interest* provisions in subsection 13.4 of NI 31-103;
 - (d) the *Relationship disclosure information provisions* in section 14.2 of NI 31-103;
 - (e) section 125 of the Act relating to the *Standard of care for IFMs*; and
 - (f) section 14 of the Securities Rules relating to fair dealings with clients.

Factors relevant to settlement

8. In February 2021, the Commission imposed ten registration terms and conditions on M.Y. Capital that were intended to mitigate ongoing risks to M.Y. Capital's clients and bring M.Y. Capital's compliance system to the standards required of a registrant.
9. M.Y. Capital retained an independent compliance monitor for one year, at its own cost, as required by the terms and conditions. The compliance monitor reported to the Commission on M.Y. Capital's correction of the deficiencies and compliance with securities legislation.
10. In May 2022, the Commission removed nine of the ten registration terms and conditions and imposed two further terms and conditions on M.Y. Capital.
11. In May 2022, M.Y. Capital designated a new Chief Compliance Officer to ensure continued compliance and to support any compliance updates or changes.

12. In December 2022, the Commission was satisfied that M.Y. Capital corrected the outstanding deficiencies, and the registration terms and conditions were removed.

Mitigating Factors

13. M.Y. Capital and Xu have no prior securities disciplinary history.

14. M.Y. Capital and Xu fully cooperated with Commission staff during and after the 2020 Exam.

15. It is a significant mitigating factor that M.Y. Capital and Xu entered into this settlement and allowed the Commission to avoid a potentially lengthy hearing to determine liability.

Public Interest

16. It is in the public interest that the Executive Director issue orders under section 161 of the Act.

Undertakings

17. M.Y. Capital undertakes to pay \$100,000 to the Commission in respect of settlement of this matter which is due and payable immediately without further demand.

Order

¶ 2 The Executive Director will issue orders under section 161(1) of the Act (the Order) that:

1. Xu is prohibited for four (4) years, under section 161(1)(d)(iii), from becoming or acting as a chief compliance officer of M.Y. Capital or any registrant

Consent to Regulatory Orders

¶ 3 M.Y. Capital and Xu consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the Orders set out in paragraph ¶2 above.

Waiver

¶ 4 M.Y. Capital and Xu waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

Counterpart

¶ 5 This Settlement Agreement may be signed in counterpart and all such counterparts of signed copies, whether delivered electronically or otherwise, shall be read or construed together as if they formed one originally executed document.

¶ 6 December 4, 2023

¶ 7 M.Y. Capital Management Corporation
M.Y. Capital Management Corporation
(Signing Authority)

Redacted)
Witness Signature)
Redacted)
Witness Name (please print))
Redacted)
)
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Address)
Redacted)
Occupation)

¶ 8 December 4, 2023

¶ 9 _____
Marcus (Ming) Xu

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Witness Signature)
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Occupation)

Peter J Brady
12/7/2023 | 9:30 AM PST

¶ 10 Peter J. Brady
Executive Director