



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Gabriel Richard Frank

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on April 15, 2014 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Gabriel Richard Frank (the “Respondent”).

DATED this 3rd day of March, 2014.

“Rohit Kumar”

Rohit Kumar,
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between 2006 and April 2011, the Respondent recommended and implemented leveraged investments in the accounts of 10 clients without obtaining the approval of the Member prior to proceeding with the leveraged investments, contrary to the Member's Policies and Procedures, thereby interfering with the ability of the Member to supervise the trading activity in the clients' accounts and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 1.1.2 and 2.5.1 and 2.1.1.

Allegation #2: Between March 2011 and February 6, 2012, the Respondent engaged in personal financial dealings with client AF by borrowing approximately \$245,000 from client AF, of which amount the Respondent repaid only \$73,100, thereby creating a conflict or potential conflict of interest between the Respondent and client AF which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client AF, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #3: Commencing January 3, 2013, the Respondent failed to cooperate with an investigation of his activities by the MFDA by failing or refusing to fulfill undertakings to produce documents and information requested by the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From January 2, 2002 to February 6, 2012, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with Investors Group Financial Services Inc. ("Investors Group" or the "Member").

2. On or about February 6, 2012, Investors Group terminated the Respondent as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

3. During the material time giving rise to the allegations, the Respondent conducted mutual fund business from an Investors Group branch office in Guelph, Ontario. The Respondent resides in Guelph, Ontario.

Background

4. On or about December 15, 2011, this matter came to the attention of MFDA Staff (“Staff”) when Investors Group filed a report on the MFDA’s Member Event Tracking System (“METS”) in accordance with MFDA Policy No. 6. The METS report stated that the Respondent may have borrowed monies from clients and that Investors Group was conducting an internal investigation.

5. Investors Group commenced its investigation after receiving an email from the Respondent on November 25, 2011 during the course of a client file review being conducted by Investors Group’s Compliance Department in which the Respondent stated, among other things, “I continue to borrow from anyone I can (friends and family) to make ends meet.”

6. Following receipt of the METS report on December 15, 2011, Staff commenced an investigation of the matter.

Allegation #1 – Undisclosed leveraged investments in client accounts

7. At all material times, Investors Group’s Policies and Procedures provided that:

All leveraged investments must be supported by a written proposal and must be approved by the Branch Manager and head office. A copy of the proposal, the required leverage documents and any additional documentation deemed relevant to the leverage strategy

must be submitted to the Branch Manager for review and approval prior to the leveraged investment being submitted for funding.

8. In February 2010, Investors Group commenced a review of a complaint made by client AK in which she made a variety of allegations with respect to the handling of her account by the Respondent.

9. In June 2010, Investors Group commenced a review of the files of 15 clients whose accounts were serviced by the Respondent based on concerns it had identified during the course of reviewing client AK’s complaint (the “Client File Review”).

10. On August 31, 2010, Investors Group issued a warning letter to the Respondent in relation to client AK’s complaint. Investors Group determined that the Respondent had, among other things, recommended that client AK borrow monies from a home equity line of credit (“HELOC”) to purchase mutual funds for her account without the Respondent obtaining the prior approval of Investors Group.

11. During the review of client AK’s complaint, the Respondent had advised Investors Group that he had not implemented leveraged investments in the accounts of any other clients without Investors Group’s approval. In fact, upon completion of the Client File Review, Investors Group determined that nine of the 15 accounts it reviewed held leveraged investments for which the Respondent had not obtained the prior approval of Investors Group:

File	Client	Leverage Amount	Date of Leverage Strategy	Disclosed to the Member
1	JW and LW	\$75,000	September 2006	Yes
2	RM & DM	\$98,000	2006	No
3	JA and CA	None	N/A	N/A
4	IW	\$100,000	October 2008	No
5	HS and JS	\$195,000	October 2006	No
6	IS and CS	\$250,000	October 2008	No
7	DC	None	N/A	N/A
8	JY	None	N/A	N/A
9	FF	\$100,000	October 2008	No
10	DB and LM	\$250,000	October 2009	No

File	Client	Leverage Amount	Date of Leverage Strategy	Disclosed to the Member
11	RL and LL	\$375,000	April 2008	No
12	PK	\$100,000	October 2007	No
13		\$100,000		No
14	MZ and CM	\$100,000	November 2008	No
15	PK and CK	\$100,000	March 2007	Yes

12. On December 24, 2010, based on the results of the Client File Review, Investors Group placed the Respondent under internal disciplinary close supervision in relation to the undisclosed leveraging activity in the client accounts.

13. In March 2011, client AF, acting on the Respondent's recommendation, secured a loan¹ for \$112,000 against his condominium and in April 2011, purchased \$110,524.75 of mutual funds for his account. The Respondent indicated on client AF's account documents that the monies used to purchase the mutual funds had not been borrowed.

14. As described in Allegation #2 below, the Respondent engaged in extensive personal financial dealings with client AF, which eventually led client AF to contact Investors Group with his concerns. It was in the course of reviewing those concerns that Investors Group determined that the Respondent had not obtained Investors Group's approval prior to proceeding with the leveraged investment in client AF's account.

15. On November 25, 2011, in response to a request from Investors Group for additional information concerning the leveraged accounts identified during the Client File Review, the Respondent sent Investors Group the aforementioned email in which he disclosed, among other things, that he was in financial distress and made the statement that "I continue to borrow from anyone I can (friends and family) to make ends meet."²

¹ The loan consisted of a mortgage for \$110,226.08 and a line of credit for \$1,774.92.

² As stated in the "Overview", following receipt of this email, Investors Group commenced its internal investigation of the Respondent's activities and filed a METS report with the MFDA.

16. The Respondent failed or refused to cooperate fully with Investors Group's requests for additional information regarding the Client File Review and his leveraging activity, which prevented Investors Group from completing the Client File Review in a timely manner. On February 6, 2012, Investors Group terminated the Respondent as a result of, among other things, his unwillingness to respond to requests for information and the undisclosed leveraging activity in client accounts.

17. By engaging in the conduct described above, between 2006 and April 2011, the Respondent recommended and implemented leveraged investments in the accounts of at least 10 clients without obtaining the approval of the Member prior to proceeding with the leveraged investments, contrary to the Member's Policies and Procedures, thereby interfering with the Member's ability to supervise the trading activity in the clients' accounts and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 1.1.2 and 2.5.1 and 2.1.1.

Allegation #2 – Personal financial dealings with client AF

18. In January 2011, the Respondent met and hired AF to work at the Respondent's call centre.³ The purpose of the call centre was to generate client leads for the Respondent through cold calling.

19. On February 2, 2011, AF became a client of Investors Group whose account was serviced by the Respondent. Client AF subsequently transferred all of his investments to Investors Group and, as described in Allegation #1 above, made a leveraged investment in the amount of approximately \$110,000 in his account at Investors Group in April 2011 acting on the Respondent's recommendation.

20. Between March 24, 2011 and December 22, 2011, the Respondent borrowed a total of \$245,407.97 from client AF. Client AF provided the Respondent with a total of at least 15 cheques and bank drafts made payable to the Respondent personally in amounts ranging from

³ AF is the same individual as client AF described in Allegation #1 above.

\$500 to \$65,000.⁴ The Respondent then deposited the cheques and bank drafts in his personal bank account.

21. Client AF obtained the monies which he lent to the Respondent by redeeming mutual funds held in his account at Investors Group. These redemptions resulted in client AF incurring deferred sales charges in some instances, which amounts the mutual fund company deducted from the redemption proceeds it paid to client AF. In those cases where client AF incurred a deferred sales charge, the Respondent added the amount of the deferred sales charge to the amount he was obligated to repay client AF.

22. As set out in the chart below, over the course of the material time, the Respondent prepared five promissory notes which he provided to client AF as evidence of the Respondent's indebtedness to client AF:

Date of loan	Date of Promissory Note	Loan Maturity Date	Amount Borrowed	Interest Rate Per Annum	Interest Payable	Principal plus Interest
June 15, 2011	July 29, 2011	July 15, 2012	\$125,000.00	12%	\$16,250.00	\$141,250.00
September 1, 2011	September 9, 2011	September 1, 2012	\$26,038.45	12%	\$3,124.61	\$29,163.06
October 7, 2011	October 7, 2011	October 1, 2012	\$42,274.28	12%	\$5,072.91	\$47,347.19
November 18, 2011	November 18, 2011	November 18, 2012	\$42,095.24	12%	\$5,051.43	\$47,146.67
	December 30, 2011	February 1, 2012	\$10,000.00	N/A	\$500.00	\$10,500
Totals			\$245,407.97		\$29,998.95	\$275,406.92

23. According to client AF, the Respondent said he was using the borrowed monies to serve as seed capital for an investment the Respondent was making with some partners in apartment ventures. According to the Respondent, he told client AF that he was borrowing the monies to finance the ongoing costs of running his call center and to pay for client development seminars he conducted. The Respondent has not provided an accounting of how he spent or invested the

⁴ Although the total of this series of 15 cheques amounted to only \$200,000, both the Respondent and client AF agree that the total amount the Respondent borrowed was \$245,407.97.

borrowed monies, nor has he provided documentary evidence of the source(s) of funds used to repay client AF \$73,100.

24. The Respondent did not disclose his personal financial dealings with client AF to Investors Group. At all material times, the Respondent was aware that Investors Group's policies and procedures prohibited Approved Persons from borrowing from clients.

25. In December 2011, client AF contacted Investors Group to express his concerns about his loans to the Respondent. Client AF identified the Respondent but did not identify himself and did not file a formal complaint. As noted above, on December 15, 2011 Investors Group had filed a METS report notifying the MFDA that the Respondent may have borrowed monies from clients and that Investors Group had commenced an internal investigation.

26. By email dated December 20, 2011, Investors Group requested that the Respondent confirm in writing if he had borrowed monies from any of his clients, and if so, to provide a list of those clients and the details of the loans. By email on January 3, 2012, the Respondent falsely responded to Investors Group, "To respond, I have not borrowed any money from any clients."

27. In February 2012, client AF again contacted Investors Group to express his concerns about his loans to the Respondent. On this occasion, client AF identified himself but requested that his concerns remain confidential.

28. As described in Allegation #1 above, on February 6, 2012, Investors Group terminated the Respondent for, among other things, his undisclosed leveraging activity in client accounts and his failure to respond to requests for information in a timely manner.

29. In March 2012, client AF provided Investors Group with the details of his loans to the Respondent.

30. Between February 10, 2012 and August 2012 (i.e. the period following his termination by Investors Group), the Respondent repaid client AF a total of \$73,100 on account of the loans by

way of 8 separate payments. Following the completion of its review and investigation, Investors Group compensated client AF for the remaining amount owing to him.

31. On November 14, 2012, during the course of Staff's investigation, Staff conducted an interview of the Respondent during which the Respondent admitted, among other things, that he had borrowed monies from three other clients, including his parents, in addition to client AF. The Respondent claimed that he had repaid all of these three other clients in full but has failed to provide documentary evidence of the repayments.

32. By borrowing \$245,407.97 from client AF between March 2011 and February 6, 2012, of which amount the Respondent repaid only \$73,100, the Respondent engaged in personal financial dealings with client AF, thereby creating a conflict or potential conflict of interest between the Respondent and client AF which the Respondent failed to ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of client AF, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #3 – Failure to Cooperate with MFDA Investigation

33. On February 14, 2012, Investors Group filed a second METS report with the MFDA pursuant to MFDA Policy No. 6 in relation to the Respondent's personal financial dealings with client AF. Upon receipt of the report, Staff commenced an investigation.

34. Following two requests by the Respondent to reschedule his interview, Staff eventually was able to interview the Respondent on November 14, 2012. During the course of the Interview, the Respondent undertook to provide certain information and documents requested by Staff in relation to the matters under investigation (the "Undertakings"). The initial deadline for the Respondent to deliver his responses to the Undertakings was January 3, 2013. As set out in the chart below, the Respondent has failed or refused to provide all of the Undertakings notwithstanding numerous attempts by Staff to contact the Respondent in order to obtain the responses to the Undertakings from him:

Date	Content of Letter	Method of Delivery	Outcome
November 12, 2012	Respondent's counsel provided with a list of the Undertakings and requested to provide the Undertakings on or before January 3, 2013. Deadline: January 3, 2013	Registered & regular mail Copy to Respondent.	No response.
January 9, 2013	Asked Respondent's counsel when Staff can expect to receive the Undertakings.	Email Copy to Respondent	January 14, 2013 – Voicemail – Respondent advised Staff that he was still trying to complete the Undertakings.
February 19, 2013	Respondent requested to advise Staff within 48 hours as to when Staff will receive the Undertakings. Deadline: February 21, 2013	Email Copy to Respondent's counsel.	No response.
February 22, 2013	Advised Respondent's counsel that Staff had not received the Undertakings. Queried whether counsel was still representing the Respondent.	Email	February 22, 2013 – Email – Counsel confirmed that he was still representing the Respondent and it remained the Respondent's intention to answer the Undertakings.
February 25, 2013	Requested Respondent's counsel to provide the Undertakings that are available immediately. Deadline: February 25, 2013	Email	No response.
March 5, 2013	Respondent's counsel provided with a list of the Undertakings again and a chronology of communications regarding the Undertakings. Requested Respondent to provide additional information. Advised that should Respondent fail to provide the Undertakings, Staff will seek authorization to commence enforcement proceedings for failing to cooperate.	Registered & regular mail & email Copy to Respondent.	March 5, 2013 – Voicemail – Respondent asked Staff to call him to discuss the Undertakings. March 5, 2013 – Email – Respondent advised that he did not receive Staff's previous emails as he was no longer using his previous email address and that he will be contacting his lawyer.
March 15, 2013	Requested Respondent's counsel to provide the Undertakings that were available and asked when Staff can expect to receive the outstanding Undertakings.	Email Copy to Respondent	April 1, 2013 – Email – Respondent's counsel advised that the Respondent expresses an extreme anxiety level associated with the MFDA investigation which is inhibiting his ability to complete the work required; and that he seemingly is able to cope adequately with other business

Date	Content of Letter	Method of Delivery	Outcome
			involvements, but he appears to be completely paralyzed in connection with the MFDA investigation. Attached was a note from the Respondent's doctor which indicated that the Respondent was being referred for treatment regarding his anxiety condition.
May 7, 2013	Advised Respondent's counsel that the matter had been escalated to Enforcement Counsel.	Registered & regular mail Copy to Respondent	October 1, 2013 – Email – Answers to undertakings 2, 4, 5, 6 and 10 provided to Staff. Respondent's counsel advised that he cannot commit to when answers may be available to the remaining undertakings; and that his retainer had been suspended.

35. Commencing January 3, 2013, by failing or refusing to fulfill the Undertakings to produce certain documents and information to Staff as described above, the Respondent has failed to cooperate with an investigation of his activities by the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Michelle Pong, Enforcement Counsel
Fax: 416-361-9073
Email: mpong@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting 1 copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing

and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

(a) to **serve** and **file** a **Reply**; or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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