



**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: Valery Herner**

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**NOTICE OF HEARING**

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**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 at the offices of the MFDA, located at 121 King Street West, Suite 1000, Toronto, Ontario on May 9, 2016 at 11:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Valery Herner (the “Respondent”).

**DATED** this 9<sup>th</sup> day of March, 2016.

“Sarah Rickard”

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Sarah Rickard  
Director of Regional Councils

Mutual Fund Dealers Association of Canada  
121 King Street West, Suite 1000  
Toronto, ON 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 June 2011 and June 2012, the Respondent recorded Know-Your-Client information for clients SM and MM on the clients' account documents, which information he believed to be inaccurate, in order to match the clients' information with the risk profile of the investments purchased by the clients, thereby failing to ensure that the orders he recommended or accepted for the accounts of the clients were within the bounds of good business practice, and impairing the Member's ability to properly supervise the Respondent's activities, contrary to MFDA Rules 2.2.1 and 2.1.1.

### **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. The Respondent has been registered in the securities industry since November 2001.
2. Since August 24, 2015, the Respondent has been registered in Ontario as a Dealing Representative (formerly a Mutual Fund Salesperson) at Y.I.S. Financial Inc. ("Y.I.S."), a Member of the MFDA.
3. Between January 22, 2008 and February 28, 2015, the Respondent was registered in Ontario as a Mutual Fund Salesperson at Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.
4. At all material times, the Respondent carried on business in the St. Catharines, Ontario area.

## **Clients MM and SM**

5. Clients MM and SM are a married couple whose accounts were serviced by the Respondent at Investors Group between June 2011 and June 2012.

6. In May 2010, clients MM and SM were both involved in a serious motor vehicle accident which resulted in client MM, a farmer, being required to use a wheel chair and unable to work any longer at his farm. Client SM took a medical leave from her job at a senior's home as a result of her health condition and to assist her husband with his recovery.

7. Clients MM and SM were vulnerable clients by virtue of their health and employment circumstances as a result of being in a serious motor vehicle accident.

## **The Respondent's dealings with clients MM and SM**

8. Prior to becoming clients of Investors Group, the clients held modest investments in Guaranteed Investment Certificates and mutual funds at another financial institution. The clients had limited investment knowledge and experience.

9. The clients received an insurance payment of \$800,000 in relation to the motor vehicle accident described above, and were interested in investing the monies to use it towards future costs of health care, rehabilitation and living expenses.

10. The clients were referred to the Respondent by a relative of theirs who was a business person with experience in investing, and a client of Investors Group whose accounts were serviced by the Respondent.

11. The Respondents first met with the clients in June 2011 in order to invest the proceeds of the insurance payment.

12. The Respondent recommended that the clients invest the \$800,000 in insurance proceeds primarily in mutual funds that were high-risk.

13. The Respondent also processed the transfer of the clients' Registered Savings Plans (RSP) held at another financial institution primarily into mutual funds that were high-risk.

14. Between June 2011 and July 2011, the Respondent opened a total of five accounts for the clients consisting of a joint non-registered account, two individual Tax Free Savings Accounts ("TFSA's"), and two individual RSP accounts.

15. The Respondent completed a New Client Account Form ("NCAF") for the clients' joint non-registered account which included the following KYC information<sup>1</sup>:

	<u>Client MM</u>	<u>Client SM</u>
Age	57	54
Occupation	Farmer	Housekeeper
Income	\$75,000 to \$99,999	
Net Worth	\$1,000,000+	
Investment Knowledge	Fair	
Other Investments Held	Bonds and mutual funds	
Investment Objective	Retirement Savings	
Time Horizon	6 to 10 years	
Risk Tolerance	High	
Investment portfolio profile <sup>2</sup>	Moderate aggressive to aggressive	

### **Recording inaccurate KYC information**

16. At the time the Respondent completed the NCAFs for the joint and individual accounts, the Respondent ascertained that the clients were not investors with a high risk tolerance.

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<sup>1</sup> The same material information was recorded on each of the NCAFs for the clients' TFSA and RSP accounts described in paragraph 15, save for the time horizon, which was indicated to be 10+ years in the other NCAFs.

<sup>2</sup> Investment portfolio profile is determined by Investors Group using the client's risk tolerance and time horizon. A client's investment portfolio profile would be "moderate aggressive to aggressive" when the client has a risk tolerance of "high" and a time horizon of 6-10 years or higher.

17. The Respondent submitted NCAFs for the clients that indicated that their risk tolerance was “high” and investments profiles were “moderate aggressive to aggressive”, when he personally believed that this information did not accurately reflect the clients’ actual information, which information was lower than what was indicated on the clients’ NCAFs.

18. The Respondent inaccurately reflected that the clients’ information on the NCAFs in order to match the risk rating of the investments being purchased by the clients, and make it appear as though the investments were suitable for them.

19. The Respondent did not document or advise Investors Group that the KYC information on the NCAFs that was submitted to Investors Group for processing contained a risk tolerance and investment profile for the clients that he believed at the time was materially higher than the clients’ actual risk tolerance and investment profile.

20. By inaccurately documenting the clients’ information on the NCAFs, he concealed from Investors Group that the clients were placed in investments that may not have been suitable for them given their financial and personal factors and investment objectives. As a result of the Respondent’s conduct, Investors Group could not properly supervise the Respondent’s activities.

21. Investors Group had already cautioned the Respondent with respect to completing client account documentation for another client that did not accurately reflect the client’s actual risk tolerance, just prior to when the Respondent initially met with clients MM and SM for the first time in June 2011.

### **Investment losses**

22. Commencing within approximately 6 months of opening of their accounts, the clients became concerned about the declining value of their investments in their accounts, and met with the Respondent to communicate their concerns. The Respondent advised the clients that the losses in their accounts were due to the financial crisis in Greece, and that the financial markets would soon improve.

23. In December 2011, the clients redeemed a total of \$200,542.70 from various mutual funds they held at Investors Group and reinvested in mutual funds with low risk profiles.

24. By approximately late January 2012, the clients' accounts had been rebalanced and these low risk funds moved to medium or higher risk funds.

25. The market value of the clients' investments continued to decline and, in June 2012, the clients decided to transfer their accounts from Investors Group and accept losses in order to avoid any further decline in their investment values. As a result, on June 6, 2012, the clients redeemed each of their accounts and transferred the proceeds in-cash, incurring losses and fees totaling approximately \$160,065.

**Allegation #1 - The Respondent recorded inaccurate KYC information on the clients' account forms**

26. By recording KYC information for the clients that he believed to be inaccurate, as described above, the Respondent failed to ensure that the orders he recommended or accepted for the accounts of the clients were within the bounds of good business practice, and impaired the Member's ability to properly supervise the Respondent's activities, contrary to MFDA Rules 2.2.1 and 2.1.1.

**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, ON M5H 3T9  
Attention: David Halasz  
Fax: 416-361-9073  
Email: dhalasz@mfd.ca

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

- (a) providing four (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, ON M5H 3T9  
Attention: Office of the Corporate Secretary; or

- (b) transmitting one (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 one (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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