



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: Nathan Hersh Disenhouse

ORDER

WHEREAS on December 17, 2009, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Nathan Hersh Disenhouse (the “Respondent”);

AND WHEREAS on January 19, 2010, the Respondent filed a Reply;

AND WHEREAS Staff of the MFDA (“Staff”) brought a motion, in writing, for an Order granting leave to amend the Notice of Hearing in this proceeding in the form attached as Schedule “A” to this Order;

AND WHEREAS the Respondent does not oppose the relief sought by Staff;

AND UPON READING Staff’s Notice of Motion and appended email of Michael Meredith, counsel for the Respondent, dated April 5, 2010 (redacted);

IT IS HEREBY ORDERED THAT:

- (i) the Notice of Hearing shall be amended in the form attached as Schedule “A” to this Order and served upon the Respondent; and
- (ii) the Respondent may serve and file an amended Reply, within 20 days of being served with the amended Notice of Hearing.

DATED this 29th day of April, 2010.

Per: “John W. Morden”
The Honorable John W. Morden, Chair

Per: “Robert C. White”
Robert C. White, Industry Representative

Per: “Selwyn Kossuth”
Selwyn Kossuth, Industry Representative

Doc 211463



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: Nathan Hersh Disenhouse

AMENDED NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the "Hearing Panel") of the Central Regional Council 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 February 8, 2010 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Nathan Hersh Disenhouse (the "Respondent").

DATED this 17th day of December, 2009.

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between October 2004 and October 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the sale of an investment product that was not approved for sale by the Member to 18 individuals, 11 of whom were clients, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: Between October 2004 and October 2005, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to 18 individuals, 11 of whom were clients, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #3: Between October 2004 and October 2005, the Respondent failed to disclose to investors in the above-noted investment product that he had an interest in the company offering the investment product, thereby placing his own interests above those of the investors and giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the investors, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #4: Between 2005 and 2008, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by entering into a referral agreement and referring clients to a third party that administered pension plans, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #5: Between February 2006 and 2008, the Respondent obtained and maintained blank, pre-signed trading forms in client files and used such forms to process a trade in at least one client account, thereby:

- (a) failing to comply with the Member's express directions that he obtain original client signatures on trading authorization forms, contrary to MFDA Rules 1.1.2

and 2.5.1; and

- (b) failing to observe high standards of ethics and engaging in business conduct or practice that was unbecoming, contrary to MFDA Rule 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. From December 1, 1998 to June 27, 2008, the Respondent was registered in Alberta and Ontario as a mutual fund salesperson and branch manager with IPC Investment Corporation (“IPC”). The Respondent’s branch was located in Toronto, Ontario.
2. IPC became a Member of the MFDA on March 8, 2002.
3. The Respondent was previously registered in Alberta and Ontario as follows:
 - a) February 1994 to December 1998: as a mutual fund salesperson and branch manager with Multi Mutual Inc.; and
 - b) October 1990 to February 1994: as a mutual fund salesperson with Counsel Financial Service.
4. On June 27, 2008, the Respondent was terminated by IPC as a result of the events described herein.
5. The Respondent is not currently registered in the securities industry in any capacity.

Allegations #1 & #2 – The Maypoint Debentures

6. Maypoint Investments Inc. (“Maypoint”) is an Ontario company incorporated on July 14, 2004.

7. At the material time, Maypoint purportedly carried on business raising funds through the sale of debentures (“Maypoint debentures”) to investors. The Maypoint debentures were for a term of one year, required a minimum investment of \$25,000, and paid investors 14% annually.

8. The Maypoint debentures were sold by way of an offering memorandum in reliance upon the exemptions from the prospectus and registration requirements in the *Securities Act* (Ontario).

9. The proceeds from the sale of the Maypoint debentures were purportedly invested by Maypoint in the secured notes of an entity known as GTA Financial Inc. (“GTA”), which in turn purportedly used the proceeds to advance consumer loans to individuals to finance the purchase of used vehicles. GTA filed for bankruptcy on June 9, 2006.

10. The Maypoint debentures were not an investment product known to or approved for sale by IPC.

11. The Maypoint debentures were sold to investors in Ontario through limited market dealers, including PanFin Equicap Ltd. (“PanFin”).

12. In September 2004, the Respondent met with a principal of Maypoint and learned of the Maypoint investment. The Respondent then attended a Maypoint presentation, learned further details about the Maypoint investment, and received a detailed term sheet, subscription agreement, accredited investor form and client acknowledgement form.

13. On September 15, 2004, the Respondent personally invested \$30,000 in Maypoint

debentures.

14. As set out in the chart below, between October 8, 2004 and October 1, 2005, the Respondent sold, referred or facilitated the sale of \$730,000 of the Maypoint debentures to 18 investors. Of the 18 investors, 11 were clients of IPC.¹

	Investor	Transaction Date	Investment Amount
	(Nathan Disenhouse)	September 15, 2004	\$30,000)
1.	Client JW	October 8, 2004	\$25,000
2.	Client AL	October 12, 2004	\$25,000
3.	DP	October 29, 2004	\$25,000
4.	Client TL	November 9, 2004	\$50,000
5.	FE	November 25, 2004	\$25,000
6.	Clients MC & FC	January 4, 2005	\$50,000
7.	AP & FP	January 4, 2005	\$25,000
8.	Client RG	January 24, 2005	\$25,000
9.	Client SM	January 26, 2005	\$50,000
10.	Client MC	January 27, 2005	\$25,000
11.	CF & HK	February 18, 2005	\$25,000
12.	HK	February 18, 2005	\$25,000
13.	Client RT	February 18, 2005	\$100,000
14.	EP	March 4, 2005	\$25,000
	Client TL (renewal)	May 4, 2005	\$50,000
	Client AL (renewal)	June 17, 2005	\$25,000
15.	Client JC	July 14, 2005	\$50,000
16.	JJ & EJ	July 14, 2005	\$30,000
17.	Clients WK & ZK	August 29, 2005	\$50,000
18.	Client IK & JK	October 1, 2005	\$25,000
		Total Invested	\$730,000

15. The Respondent received referral fees for each investment made in the Maypoint debentures, including his own. In total, he earned \$8,320 in referral fees.

16. The referral fees were paid directly to the Respondent by way of a series of

¹ As shown in the chart, in some cases the Maypoint debentures were held by the investors in joint accounts at IPC or jointly outside IPC. In total, 24 individuals purchased the Maypoint debentures, 14 of whom were clients of IPC.

cheques issued by PanFin. IPC was not aware that the Respondent was involved in the sale or referral of the Maypoint debentures. Neither the transactions concerning the Maypoint debentures nor the resulting fees received by the Respondent were carried on for the account of IPC or through its facilities.

17. Maypoint remains incorporated but the Maypoint debentures have not paid interest or returned invested capital to investors since 2007.

18. At no time did the Respondent disclose to or seek approval from IPC to engage in the activity described above with respect to Maypoint. As described in greater detail in Allegation #3 below, the Respondent also did not disclose to IPC at any time that he had an ownership interest in Maypoint.

19. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account of IPC and through the facilities of IPC, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

20. In the event the conduct engaged in by Respondent did not constitute securities related business, then the Respondent had and continued in a dual occupation that was not disclosed to and approved by IPC by selling, referring or facilitating the sale of the Maypoint debentures, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #3 – Conflict of Interest

21. Between October 2004 and October 2005, the Respondent was a shareholder in Glenside Holdings Inc. (“Glenside”), a corporation which was, in turn, the sole shareholder of Maypoint.

22. The Respondent advised Maypoint investors that he was, like them, an investor in Maypoint but he did not disclose to them that he had an ownership interest in Maypoint by virtue of the fact that he was shareholder of Glenside, which in turn was the sole

shareholder of Maypoint.

23. By not disclosing his ownership interest in Maypoint to Maypoint investors, the Respondent placed his own interests above those of the investors, thereby giving rise to an actual or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the investors, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #4 – Referrals to Gilles R. Marceau & Associates Inc.

24. On March 7, 2005, the Respondent entered into a referral agreement with Gilles R. Marceau and Associates Inc. (“GMA”) (the “Referral Agreement”), a pension plan consulting firm that establishes and administers pension plans for its clients. The Respondent would manage the pension plan assets once the plan was established by GMA.

25. Each GMA client would pay an annual fee of \$1,500 for the pension plan services. Under the terms of the Referral Agreement, 50% of the annual fee would be paid to the Respondent.

26. The Respondent referred three IPC corporate clients to GMA: PC Inc., AGDP Inc., and BBHP, and was paid a total of \$3,750 in referral fees in accordance with the terms of the Referral Agreement.

27. At no time did the Respondent disclose to or seek approval from IPC for his outside business activities in relation to GMA.

28. By entering into a referral agreement and referring clients to a third party that administered pension plans, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member, contrary to MFDA Rules 1.2.1(d), 2.4.2 and 2.1.1.

Allegation #5 – Pre-signed Forms

29. On February 3, 2006, IPC conducted a branch review of the branch for which the Respondent was the Branch Manager, wherein it was found that:

- a. In the sample of 29 client files for which the Respondent was the mutual fund salesperson responsible for the account, trades had been processed in the client accounts but none of the client files contained trading authorization forms that displayed original client signatures; and
- b. Two client files contained blank, signed mutual fund trading documents with no trading instructions or date completed.

30. On May 29, 2006, as a result of the findings of the IPC branch review, IPC placed the Respondent on strict supervision, reduced his commissions, and instructed him to obtain specific client instructions and maintain adequate records of each trade order and instruction. IPC assigned the Respondent's branch a high risk ranking. IPC specifically reminded the Respondent of the requirement to obtain original client signatures on IPC order entry forms and letters of direction concerning trading activity in client accounts.

31. On August 29, 2006, IPC conducted a follow-up review of the Respondent's branch. IPC reduced the high risk ranking assigned to the branch. Effective September 1, 2006, the Respondent's strict supervision was removed and his commissions reinstated.

32. On November 12, 2007, IPC conducted a review of the Respondent's branch, wherein it was noted that in a review of client files for which the Respondent was the mutual fund salesperson responsible for the account:

- a. One client file did not contain evidence of client trade authorization; and

- b. One client file contained evidence that the Respondent had used a photocopy of a blank, signed order entry form to process a trade in a client's account.
33. Subsequent to the November 12, 2007 branch review, IPC found that another of the Respondent's client's files, belonging to client BA, contained an IPC order entry form, and a financial account change form, each of which contained BA's signature but no trade instructions.
34. On April 15, 2008, IPC again placed the Respondent on strict supervision and reduced his commissions. The Respondent's branch was assigned a high risk ranking.
35. On April 22, 2008, the Respondent signed an Acknowledgment issued by IPC regarding the prohibition on discretionary trading and pre-signed forms, and confirming the Respondent's agreement not to engage in such practices in future.
36. Between February 2006 and 2008, the Respondent obtained and maintained blank, pre-signed forms in client files and used such forms to process a trade in at least one client account, thereby failing to comply with IPC's express directions that he obtain original client signatures on all trading authorization forms, contrary to MFDA Rules 1.2.1 and 2.5.1, and failing to observe high standards of ethics in the conduct of business and engaging in conduct unbecoming, contrary to MFDA Rule 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 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: Lyla Simon
Fax: 416-361-9073
Email: lsimon@mfd.ca

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

- (a) providing 4 copies of the **Reply** to 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 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 Corporate Secretary permits otherwise; or

- (c) transmitting 1 electronic copy of the **Reply** to 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.

Doc 195758

Doc 206945