



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: Stephen Arnold Smith

AMENDED NOTICE OF HEARING

NOTICE is hereby given that a Hearing on the Merits ~~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 ~~December 15, 2010~~ February 8, 2011 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 Stephen Arnold Smith (the “Respondent”).

DATED this ~~28th~~ day of ~~September, 2010~~ 8th day of February 2011.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
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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 March 8, 2002 and February 20, 2007, the Respondent engaged in personal financial dealings with former client WS by having and continuing with a profit sharing agreement and a co-investing arrangement with client WS in respect of the Respondent's company, Smith & Tomyak International Inc. ("Smith & Tomyak") in which former client WS had invested \$26,000, thereby giving rise to an actual or potential conflict of interest between the Respondent and ~~client~~ WS which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of former client WS, contrary to MFDA Rules 2.1.4¹ and 2.1.1.

Allegation #2: Between September 2004 and February 20, 2007, the Respondent failed to deal fairly, honestly and in good faith with former client WS by deliberately misleading ~~client~~ WS about the status of his investment in Smith & Tomyak, contrary to MFDA Rule 2.1.1.

Allegation #3: From September 2004 to February 20, 2007, the Respondent failed to handle complaints received from former client WS on numerous occasions concerning the status of ~~client~~ WS's investment in Smith & Tomyak promptly and fairly by failing to inform the Member of the complaints and attempting to settle the complaints without the Member's involvement, contrary to MFDA Policy No. 3 and MFDA Rules 2.11 and 2.1.1.

Allegation #4: Between September 2004 and February 20, 2007, the Respondent failed to inform the Member of complaints received from former client WS on numerous occasions concerning the status of ~~client~~ WS's investment in Smith & Tomyak and attempted to settle the complaints without the Member's involvement, thereby failing to comply with the Member's policies and procedures and interfering with the ability of the Member to supervise the Respondent and comply with its obligations under MFDA Rule 2.11, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

Allegation #5: Commencing on or about May 12, 2009, the Respondent has failed to produce for

¹ MFDA Rule 2.1.4 was amended on February 27, 2006. It is alleged that the Respondent's conduct contravened MFDA Rule 2.1.4 both pre- and post-amendment.

inspection copies of documents and records requested by the MFDA during the course of an investigation, 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. The Respondent was registered in Ontario as a mutual fund salesperson with Quadrus Investment Services Ltd. (“Quadrus”) from November 19, 2001 to February 20, 2007, when he resigned from the Member.
2. Between March 1995 and November 2001, prior to being registered with Quadrus, the Respondent was registered in Ontario as a mutual fund salesperson with Practitioners Mutual Planning Inc.².
3. Quadrus became a Member of the MFDA on March 8, 2002 and is registered as a mutual fund dealer in all provinces and territories.

Client WS’ 1998 Investment with the Respondent

4. On March 12, 1998, WS entered into a “Profit Sharing Agreement” with the Respondent’s business, Smith & Tomyak International Inc. (“Smith & Tomyak”), a company incorporated by the Respondent on September 26, 1996. The Respondent was the President of Smith & Tomyak. Under the terms of the Profit Sharing Agreement, WS invested \$20,000 in Smith & Tomyak in exchange for 25% of the income generated by an “AIDS Tester Project” that was being launched by Smith & Tomyak in Poland.
5. On August 21, 1998, WS entered into an “Agreement to Purchase Common Shares” with

² Practitioners Mutual Planning Inc. was not a Member of the MFDA. The MFDA did not begin accepting Members until 2002.

the Respondent, wherein WS, in exchange for a \$6,000 payment to the Respondent, purchased 20 common shares of Smith & Tomyak from the Respondent (equivalent to a 2% ownership interest in the company).

Allegations #1 to #4

6. On November 19, 2001, the Respondent became registered as a mutual fund salesperson with Quadrus. ~~That same date, WS became a client of Quadrus. Prior to becoming registered with Quadrus, The~~ the Respondent was the mutual fund salesperson responsible for servicing WS's account at Practitioners Mutual Planning Inc., however WS's mutual fund investments were not transferred to Quadrus when the Respondent became registered there.

7. On March 8, 2002, Quadrus became a Member of the MFDA. The Respondent did not disclose to Quadrus his profit sharing agreement and co-investing arrangement with former client WS in Smith & Tomyak at any time, either prior to or following March 8, 2002.

8. Commencing in the fall of 2004, having not received from the Respondent his promised share of revenues from the "AIDS Tester Project", former client WS complained to the Respondent about the Project's lack of returns and inquired about a reimbursement of the \$26,000 he had invested in Smith & Tomyak. This complaint and inquiry by former Client-client WS was repeated on numerous occasions to the Respondent until the fall of 2008 (the "Complaint").

9. Between September 2004 and January 2008, and without ever informing Quadrus of the Complaint, the Respondent promised a number of varying things to former client WS about the reimbursement of his \$26,000 investment. At all times prior to his resignation from Quadrus on February 20, 2007, and continuing into 2009, the Respondent attempted to placate former client WS by falsely promising him imminent reimbursement of his \$26,000 investment and then continuously misleading him about its status, as more particularly described below.

10. At first, the Respondent advised former client WS that he was in possession of the funds and that former client WS would be reimbursed shortly. When the funds were not reimbursed to client WS as promised, the Respondent then advised former client WS that the "AIDS Tester

Project” was not successful and that Smith & Tomyak had been defrauded by a European contact by the name of “Max” and other individuals in Europe. The Respondent then advised former client WS that, through various contacts at the United States Central Intelligence Agency, the Bank of Canada, the Royal Canadian Mounted Police, private investigators and other European authorities, he was working on obtaining WS’s \$26,000 in an effort to reimburse him.

11. Among other misleading communications to former client WS, the Respondent sent the following emails in response to complaints received from ~~client~~-WS, which purported to describe the Respondent’s efforts to obtain and reimburse to ~~client~~-WS the \$26,000 he had invested in Smith & Tomyak:

September 28, 2004: “As far as Poland goes, the drafts are physically at our bank in Ottawa. They arrived on Friday afternoon. Clearing time for them is estimated by the bank to be THREE WEEKS. Please note that they are in EURO DOLLARS.”

October 28, 2004: “The bank drafts have been confirmed by the National Bank of Poland. Now they are being cleared by the Bank of Montreal, the Canadian corresponding bank that is the liaison between the National Bank of Poland and the CIBC.”

June 27, 2006: “Finally to bring you up-to-date, I have spoken to a direct assistant to Bank of Canada Governor, [DD], who is both a banker and a lawyer, who told me that if we don’t get results in the next week or two, we need to contact the head office of the ING Bank in Amsterdam and complain about our treatment, and we need to get the assistance of a Swiss lawyer (I have already made contact with the Swiss lawyer through a business associate) to approach the bank.”

October 18, 2006: Forwarding an email from the Respondent to his European contact named “Max” which read as follows: “Max: No money and No paperwork. I’m on the plane to Switzerland to see the proper authorities. You ruined my life now I will return the favour. By the way, [MG], my friend and the President of the HSBC Bank in the USA, has told me that he is on a personal vendetta to stamp out corruption in the world banking system which is tarnishing the reputation of all of the legitimate world banks. He also says that he is friends with the President of the ING Bank. I will see you in Geneva.”

November 13, 2006: “I spoke to Chris today. He is currently in Geneva finalizing the transfer. Once things have been properly finalized in order to set up a bank account for transfer purposes, and there is a plethora of paperwork for non-residents to accomplish this, he will go to Paris to set up the account with the BNP Bank.”

May 17, 2007: “I am quite certain that I told you before that I hired a former CIA Agent, [AL] by name who is now retired to track down the missing funds from the infamous CASE FROM HELL. Mr. [AL] has used his banking contact to track the corporate funds which are located in an Italian Bank. At the present time, he is using court proceedings in Italy to recover these funds, and HOPEFULLY, VERY SOON, we will be able to recover our original investment.”

June 7, 2007: “We are 90% of the way there. Charges are currently being laid by the Italian Police against the guilty parties. Once this has been finalized, the money will follow.”

July 23, 2007: “This Friday our investigator from Singapore, [AL], will be in Ottawa to meet with the RMCP in order to present evidence and bring our case to a conclusion. I will head to Europe in a week or two following this in order to pick up the frozen funds.”

12. There is no evidence that S&T ever had any business dealings in Poland in the first place or that any of the above-described events occurred, apart from the Respondent’s unsubstantiated claims.

13. On December 13, 2007, following his resignation from Quadrus, the Respondent counseled former client WS to make an adjustment to his tax information filed for the 2006 tax year to include a \$13,000 small business investment loss resulting from WS’s investment in Smith & Tomyak.

14. On January 16, 2008, the Respondent provided former client WS with a personal Promissory Note stating that: “In order to compensate [WS] for his investment loss of \$26,000.00 CDN in the company, [Smith & Tomyak], I hereby agree to repay [WS] the sum of \$26,000 CDN, without interest, on or before December 31st, 2008”.

15. WS has never received any payments on account of his investment in Smith & Tomyak, despite the terms of the January 16, 2008 Promissory Note and a subsequent judgment against the Respondent obtained by WS in the Ontario Superior Court of Justice.

16. The first time Quadrus became aware of the Complaint was on August 25, 2008, when WS filed a complaint with Quadrus.

17. Between March 8, 2002 and February 20, 2007, by having and continuing with a profit sharing agreement and a co-investing arrangement with former client WS in respect of Smith & Tomyak, in which ~~client~~ WS had invested a total of \$26,000, the Respondent engaged in personal financial dealings with ~~client~~ WS, thereby giving rise to an actual or potential conflict of interest between the Respondent and former client WS which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of ~~client~~ WS, contrary to MFDA Rules 2.1.4 and 2.1.1..

18. By deliberately misleading former client WS about the status of his investment in Smith & Tomyak, the Respondent failed to deal fairly, honestly and in good faith with client WS, contrary to MFDA Rule 2.1.1.

19. By failing to inform Quadrus of former client WS's repeated complaints between 2004 and 2008 and attempting to settle the complaints without the Member's involvement, the Respondent acted contrary to MFDA Policy No. 3 and MFDA Rules 2.11 and 2.1.1.

20. By doing so, the Respondent also failed to comply with Quadrus' policies and procedures, thereby interfering with the Member's ability to supervise the Respondent and comply with its obligations under MFDA Rule 2.11, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

Allegation #5

21. On October 6, 2008, former client WS filed a written complaint with the MFDA about the Respondent and his \$26,000 investment in Smith & Tomyak.

22. On April 30, 2009, during the course of its investigation, MFDA Staff wrote to the Respondent and requested that he provide a number of documents for inspection no later than May 14, 2009.

23. On May 13, 2009, following a request made by the Respondent, MFDA Staff agreed to extend the Respondent's deadline for providing the requested documents to June 1, 2009.

24. On June 2, 2009, following the Respondent's failure to provide the required documents to MFDA Staff, the Respondent sent an email to MFDA Staff stating that "...[a]s soon as I can reasonably assemble the information you have requested, I will immediately courier it to you." That same date, MFDA Staff replied to the Respondent and advised him that:

The request made in [Staff's] letter dated April 30, 2009 was made in accordance with MFDA By-Law 1, section 22. You are required to comply with our request for documents in accordance with your obligations as an Approved Person as set out in section 22.1 of MFDA By-law No. 1. Notwithstanding that you are no longer an Approved Person of [Quadrus] your obligations as an Approved Person continue for a period of five years following your termination, in accordance with section 24.1.4 of MFDA By-law No. 1.

25. Replying to Staff's letter dated June 2, 2009, the Respondent sent a same day email to Staff stating: "Message received and understood." Nevertheless, Staff has never received the requested documents from the Respondent and has never again heard from the Respondent.

26. By failing to produce for inspection copies of documents and records requested by MFDA Staff during the course of an investigation, the Respondent therefore acted 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) 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;
- e) revocation of the authority of such person to conduct securities related business;
- f) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- g) 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: Shelly Feld, Senior Enforcement Counsel
Facsimile: 416-361- 9073

Email: sfeld@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:

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.

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