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: Michael Robert Breuer

AMENDED NOTICE OF HEARING [1]

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Pacific Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room located at the MFDA offices at 650 West Georgia Street, Suite 1220, Vancouver, British Columbia on January 21, 2014 at 10:30 a.m. (Pacific), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Michael Robert Breuer (the "Respondent"). The Hearing on the Merits will take place in Vancouver, British Columbia at a time and venue to be announced.

DATED this 10th day of December, 2013. Amended on the 27th day of May, 2014.

"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@mfda.ca

[1] Notice of Hearing amended by Hearing Panel Order dated May 27, 2014

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

Allegation #1: Between December 30, 2008 and June 30, 2010, the Respondent engaged in personal financial dealings with client ES by entering into an agreement with client ES whereby the Respondent personally guaranteed to compensate client ES for any shortfall in the value of client ES's account below $150,000, thereby giving rise to a conflict or potential conflict of interest between the Respondent and client ES which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #2: Between June 28 and July 8, 2009, the Respondent engaged in unauthorized discretionary trading by processing two redemptions, totaling approximately $17,400, in client ES's account and depositing the proceeds in client ES's bank account, all without the client's knowledge, instructions or approval, contrary to MFDA Rules 2.3.1(a) and 2.1.1.

Allegation #3: Between June 28 and July 8, 2009, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the conduct of business by using client ES's own monies to compensate her for losses sustained in her account, without her knowledge or approval, contrary to MFDA Rule 2.1.1.

Allegation #4: On or about July 2, 2010, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the conduct of business by changing the mailing address for statements sent by a mutual fund company to client ES from client ES's home address to the Respondent's branch office address, without the client's knowledge, instructions or approval, contrary to MFDA Rule 2.1.1.

Allegation #5: Between July 16, 2008 and September 28, 2011, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the conduct of business by misrepresenting to clients GL and ML that the principal amounts of the investments in their account were fully guaranteed, contrary to MFDA Rule

2.1.1.

Allegation #6: Commencing July 19, 2013, the Respondent has failed or refused to provide documents and information to, and to attend an interview requested by, the MFDA during the course of an investigation, contrary to s. 22.1 of MFDA By-Law No. 1 and 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 May 1993 to December 31, 2008 and from February 4, 2009 to September 28, 2011[2], the Respondent was registered in British Columbia as a mutual fund salesperson with PFSL Investments Canada Ltd. ("PFSL" or "the Member").[3]

2. On September 28, 2011, PFSL terminated the Respondent as a result of the events described herein.

3. The Respondent was also a licensed life insurance agent with Primerica Life Insurance Co. of Canada from June 1, 2008 to July 31, 2012, at which time the license was terminated.

4. The Respondent is not currently registered in the securities industry or licensed in the insurance industry in any capacity.

5. At all material times, the Respondent carried on business from Pitt Meadows, British Columbia.

[2] The Respondent was not registered between January 1 and February 3, 2009.
[3] PFSL has been a Member of the MFDA since January 11, 2002.

Allegation #1: Personal financial dealings with client ES

PFSL's Policies and Procedures

6. At all material times, PFSL's policies and procedures stated that all written correspondence with clients had to be approved in writing by PFSL prior to being provided to the client. In addition, PFSL's policies and procedures expressly stated:

> "Do not imply or represent that an investor's capital will increase or that the purchase of equity mutual funds ensures a preservation capital or a protection against capital loss in value."

7. From 2001 – 2008, the Respondent completed an annual compliance checklist; and in 2009 and 2010 the Respondent completed an electronic attestation. On each checklist and attestation, the Respondent confirmed:

a. That he must read and comply with all the provisions set out in the PFSL Compliance Manual and other PFSL manuals;
b. That he must not and will not lead his clients to believe that a mutual fund investment is guaranteed; and
c. That he must and will not guarantee or project any mutual fund's future performance.

8. The Respondent executed documents with PFSL in May 1992 and June 2003 agreeing to comply with PFSL's policies, including that he would conduct business in an honest, ethical manner and that he would not enter into any contract or arrangements that would prevent PFSL from monitoring them.

9. On April 23, 2007, the Respondent executed a Registered Representative Agreement with PFSL agreeing to, amongst other things:

a. Comply with applicable legislation and regulation, including the rules and by-laws of

any approved self-regulatory organization; and

b. Not entering into any contract or arrangements where PFSL or any securities regulatory authority would be unable to monitor it.

The December 30, 2008 agreement with client ES

10. ES had been a client of PFSL since 1993. The Respondent was the mutual fund salesperson responsible for servicing her accounts. During the material time giving rise to these allegations, client ES had a total of six different accounts with PFSL.

11. On or about August 3, 2006, client ES opened a non-registered account at PFSL (one of the aforementioned six accounts she had at PFSL). The Respondent was the mutual fund salesperson responsible for the account. Client ES deposited $150,000 in the account and, relying on the Respondent's recommendation, instructed him to purchase two mutual funds for the account – a balanced income fund and a dividend income fund.

12. The source of funds for the monies deposited by client ES in the account was a home equity line of credit.

13. Between September and December 2008, client ES expressed her increasing concern to the Respondent about the declining value of her account and her desire to redeem her investments and withdraw the proceeds in order to mitigate her losses.

14. In September 2008, the Respondent persuaded client ES to continue with the strategy advising her to switch out of the two mutual funds she had purchased into a bond fund. The Respondent stated that the switch would reduce the risk that the value of the account would decline further.

15. By December 29, 2008, the value of the client ES's account had declined from its initial balance of $150,000 in August 2006 to approximately $90,250, representing an unrealized loss of approximately $59,750.

16. Notwithstanding client ES's desire to sell her investments, the Respondent believed that the market was only undergoing a correction from which it would recover. The Respondent therefore recommended that client ES refrain from selling her investments. The Respondent managed to persuade client ES to agree to this course of action by, among other things, offering to personally make up any shortfall in the value of client ES's account below $150,000 as of June 30, 2010, 18 months hence.

17. The Respondent prepared and entered into a written agreement with client ES, dated December 30, 2008, with respect to his personal guarantee of her account (the "Agreement") which provided, among other things:

> "I, Michael Breuer, do hereby personally guarantee the value of at least $150,000 on or before June 30, 2010. If, on July 1, 2010, the value of the said account is less than $150,000, I will personally deposit into [ES's] TD account the difference"

18. According to the terms of the Agreement, the Respondent's guarantee was subject to the following provisions, among others:

a) the guarantee was only valid provided the Respondent remained as the advisor for the account;
b) any withdrawals from the account, beyond those client ES made at regular intervals to make payments on her home equity line of credit, would reduce the amount guaranteed; and
c) client ES could not invest in high risk or speculative investments.

19. A re-typed version of the Agreement was executed by client ES and the Respondent in or around November 2009. This version of the Agreement was notarized (at client ES's insistence) and contained a handwritten note, dated November 6, 2009, stating that the Respondent agreed that no back end load fees (i.e. deferred sales charges) would apply to investments purchased in the account.

20. At all material times, client ES understood and believed that under the terms of the Agreement, the Respondent was agreeing to personally reimburse her for any shortfall in the value of her account below $150,000 as of July 1, 2010, excluding any amounts (other than the regular amounts she withdrew to pay the interest owing on her home equity line of credit) she withdrew from the account.

21. The Respondent did not seek or obtain permission from PFSL prior to proposing and entering into the Agreement with client ES. There is no evidence that PFSL was aware of the existence of the Agreement.

22. By engaging in the conduct described above, the Respondent engaged in personal financial dealings with client ES which created a conflict or potential conflict of interest between the Respondent and client ES which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client ES, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegations #2, #3 and #4: Discretionary trading and change of client ES's mailing address

23. In June 2010, client ES notified the Respondent that she wanted to sell the investments in her account and withdraw the proceeds. Client ES informed the Respondent that, pursuant to the Agreement, she expected the Respondent to provide her with a money order equal to any shortfall in her account below $150,000 by June 30, 2010, and the Respondent agreed to do so.

24. In confirmation of their understanding and agreement, the Respondent and client ES executed a document, dated June 15, 2010, pursuant to which the Respondent agreed, among other things, to return the full amount of $150,000 to client ES's bank account; that there would be no back-end load fees charged to her account; and that the monies would be in client ES's bank account by June 30, 2010.

25. On or about June 24, 2010, client ES met with the Respondent at his office. The Respondent presented her with a Redemption Request Form to redeem the investments in her

account and a document giving the Respondent permission to deposit the redemption proceeds directly in client ES's bank account, both of which documents client ES signed.

26. The Respondent processed the redemption in client ES's account and, notwithstanding their agreement to the contrary, $5,060 in deferred sales charges ("DSC"), also known as back-end load fees, were deducted from the redemption proceeds. As a result, client ES received net redemption proceeds of $133,080. Client ES believed that under the terms of the Agreement, the Respondent was required to reimburse her a total of $16,920 (representing the shortfall between $150,000 and the net redemption proceeds of $133,080).

27. Unbeknownst to client ES, the Respondent created another Redemption Request Form, which he dated June 28, 2010, by photocopying client ES's signature from the June 24, 2010 Redemption Request Form on to a blank Redemption Request Form. The Respondent used this form to process a redemption in the amount of $16,700 (net) from one of client ES's other accounts at PFSL, in which she only held mutual funds purchased from Manulife Mutual Funds (the "Manulife account"), without client ES's knowledge, instructions or approval. The Respondent deposited these redemption proceeds in client ES's bank account.

28. On or about July 2, 2010, the Respondent contacted Manulife and arranged for the mailing address on the statements that Manulife sent to client ES to be changed from client ES's home address to the Respondent's branch office address, without client ES's knowledge, instructions or approval. The effect of this unauthorized change in mailing address was to delay client ES's discovery of the fact that the monies deposited to her bank account by the Respondent to compensate her for her losses had in fact been withdrawn from the Manulife account.

29. On July 8, 2010, while still unaware of the unauthorized redemption from the Manulife account, client ES contacted the Respondent and expressed her view that pursuant to the Agreement, the Respondent still owed her approximately $700. At the Respondent's request, client ES sent a fax to the Respondent authorizing him to deposit directly in her bank account the amount of money necessary to reach a total of $150,000.

30. On or about July 8, 2010, the Respondent processed another redemption in the amount of $668 from the Manulife account, without client ES's knowledge, instructions or approval. In order to process this redemption and deposit the redemption proceeds to client ES's bank account, the Respondent attached, to an unsigned Redemption Request Form, the aforementioned note from client ES authorizing the Respondent to direct deposit to her bank account the amount of money necessary to reach a total of $150,000.

31. At all material times, client ES believed that the amounts that the Respondent had deposited to her bank account, totaling approximately $17,400, were paid out of the Respondent's own pocket pursuant to the terms of the Agreement. In fact, unbeknownst to client ES, the Respondent had used client ES's own monies, obtained by way of the unauthorized redemptions from the Manulife account, to fulfill the terms of his personal guarantee under the Agreement.

32. By engaging in the conduct described above, between June 28 and July 8, 2009 the Respondent engaged in unauthorized discretionary trading by processing two redemptions, totaling approximately $17,400, in client ES's account, and depositing the proceeds in client ES's bank account, all without client ES's knowledge, instructions or approval, contrary to MFDA Rules 2.3.1(a) and 2.1.1.

33. By engaging in the conduct described above, between June 28 and July 8, 2009, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the conduct of business by using client ES's own monies to compensate her for losses sustained in her account, without her knowledge or approval, contrary to MFDA Rule 2.1.1.

34. By engaging in the conduct described above, on or about July 2, 2010, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in the conduct of business by changing the mailing address for statements sent by a mutual fund company to client ES from client ES's home address to the Respondent's

branch office address, without client ES's knowledge, instructions or approval, contrary to MFDA Rule 2.1.1.

Allegation #5: Misrepresentation - GL and ML

35. GL and ML are husband and wife. They have been clients of PFSL since approximately 2001. The Respondent was the mutual fund salesperson responsible for servicing their account.

36. Between November 2, 2006 and June 20, 2008, GL and ML borrowed a total of $160,000 from their line of credit to purchase mutual funds in their non-registered account[4].

37. Between November 2, 2006 and June 20, 2008, the Respondent verbally advised GL and ML that the principal amounts of their mutual fund investments (totaling $160,000) were guaranteed.

38. After June 20, 2008, GL and ML became concerned about the Respondent's verbal representations that the principal amount of their investments were guaranteed. On or around June 23, 2008, GL asked the Respondent to confirm his earlier guarantee in writing.

39. On or around July 16, 2008, the Respondent provided GL and ML with a letter (the "**Letter**") dated July 16, 2008 on letterhead bearing the name "Primerica"[5] which stated:

> "This letter is to assure the above mentioned holders of said account, that all monies deposited into this account will hold their value so that at such time of collapse (to pay back mortgage l.o.c.) 100% of the principal will be available."

40. According to the terms of the Letter, the Respondent's guarantee was subject to the following conditions:

[4] The circumstances regarding GL and ML borrowing monies to purchase investments in their non-registered account with the Member, and related issues, are currently being investigated by the MFDA. As such, they are not detailed in this Notice of Hearing.

[5] PFSL is a wholly owned subsidiary of Primerica Financial Services (Canada) Ltd.

a) There be no more than 10% of the holdings withdrawn in any single given year;
b) Any amount above 10% will lower the guaranteed amount of the principal; and
c) The guarantee was only valid as long as the investments are not invested into anything speculative or high risk.

41. The Letter was signed by the Respondent, GL and ML.

42. Relying upon the Respondent's representations and the Letter, at all material times GL and ML understood and believed that PFSL was aware of the guarantee and the Letter and accordingly, had guaranteed the principle amount of their investments of $160,000.

43. The Respondent did not seek or obtain permission from PFSL to provide the guarantee or the Letter in respect of GL and ML's account. There is no evidence that PFSL was aware of the Respondent's guarantee or the existence of the Letter.

44. As set out in paragraph 6 above, at all material times, PFSL's policies and procedures prohibited its Approved Persons from leading a client to believe that a mutual fund investment was guaranteed, and from providing a guarantee or projection as to the future performance of a mutual fund.

45. In or about December 2012, GL and ML discovered that their mutual fund investments had declined in value from $160,000 to approximately $40,000.

46. In or about early May 2013, GL and ML learned that the Respondent was no longer an Approved Person of PFSL.

47. By engaging in the conduct described above, the Respondent engaged in conduct unbecoming an Approved Person and failed to observe high standards of ethics and practice in

the conduct of business, by misrepresenting to clients GL and ML that the principal amount of the investments in their account was guaranteed, contrary to MFDA Rule 2.1.1.

Allegation #6: Failure to cooperate

48. As set out in the chart below, the Respondent has failed or refused to cooperate with Staff's investigation into the matters concerning Allegation #5:

Date	Communication	Method of Delivery	Result
July 19, 2013	Staff requested the Respondent provide a written response concerning GL and ML's complaint. Deadline: August 12, 2013	Ordinary and registered mail	Respondent failed to respond. Registered mail unclaimed and returned to Staff. Ordinary mail not returned
August 28, 2013	Staff reiterated their request for a written response to GL and ML's complaint and advised the matter could be escalated to MFDA Investigations. Deadline: September 12, 2013	Ordinary and registered mail	Respondent failed to respond. Registered mail unclaimed and returned to Staff. Ordinary mail not returned
November 11, 2013	Staff sent copies of the July 19 and August 28, 2013 letters to the Respondent's e-mail address.	e-mail	Respondent failed to respond. November 12, 2013 – escalated to MFDA Investigations
November 21, 2013	Staff outlined the Respondent's failures to respond to Staff and reiterated their request for the Respondent to respond to GL and ML's complaint and to attend an investigation interview between Dec 2-6, 2013. Staff advised the matter could be escalated to MFDA Enforcement. Deadline: November 27, 2013	Registered Mail Regular Mail Process Server	Registered mail unclaimed and returned to Staff. Ordinary mail not returned Process Server successfully served the Respondent on November 21, 2013.

Date	Communication	Method of Delivery	Result
November 21, 2013	The Respondent states that he is unable to attend for an investigation interview between December 2-6, 2013, and will not be available until July 2014.	e-mail	
November 22, 2013	Staff reiterates the Respondent's obligations as a former Approved Person of the MFDA, and asks for his availability between December 2 and 6, 2013. Staff advises that if the Respondent does not schedule a time, Staff will schedule the interview for December 6, 2013.	e-mail	
November 30, 2013	The Respondent states he will not be available December 2-6, 2013.	e-mail	
December 6, 2013	Respondent fails to attend investigation interview.		
December 27, 2013	Staff advises Respondent that he has failed to cooperate with their investigation and that the matter was escalated to MFDA Enforcement.	e-mail and regular mail	Regular mail not returned. No response from Respondent. February 25, 2014 – Escalation to MFDA Enforcement Staff.

49. To date, the Respondent has not provided Staff with a response to GL and ML's complaint and other requested information.

50. Due to the Respondent's failure to cooperate with the MFDA's investigation, Staff has not been able to determine the full nature and extent of the Respondent's conduct in relation to clients GL and ML, and possibly other clients.

51. Commencing July 19, 2013, by failing to comply with Staff's requests that he provide a written response concerning the matters under investigation, the Respondent has failed to

cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No.1 and 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
Pacific Regional Office
650 West Georgia Street, Suite 1220
Vancouver, British Columbia
V6B 4N9
Attention: Faye Emmanuel
Fax: 604-683-6577
Email: femmanuel@mfda.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@mfda.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.

~~DM 363085 v2~~

DM 380960 v1