



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: Carmen G. Moerike

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 800 - 6th Avenue S.W., Suite 850, Calgary, Alberta on August 5, 2009, at 10:00 a.m. (Mountain), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Carmen G. Moerike (the “Respondent”).

DATED, this 22nd day of June, 2009.

“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
Fax: 416-361-9781
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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 January 11, 2002 and January 28, 2008, the Respondent borrowed monies from clients BC and MF to finance his outside business activities, thereby giving rise to an actual or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4¹ and MFDA Rule 2.1.1.

Allegation #2: From November 2002 to November 2007, the Respondent accepted and held a general power of attorney or other similar authorization for clients BC and MF, contrary to MFDA Rule 2.3.1(a).

Allegation #3: Between September 25, 2006 and March 28, 2007, the Respondent failed to comply with the policies and procedures of the Members for which he was an Approved Person by failing to disclose to the Members his personal financial dealings with clients BC and MF, thereby interfering with the ability of the Members to supervise his activities, contrary to MFDA Rules 1.1.2 and 2.5.1 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. The Respondent is currently not registered in the securities industry in any capacity.

¹ MFDA Rule 2.1.4 was amended effective February 27, 2006. The Respondent's conduct commenced prior to the date of the amendment and continued after the amendment. It is alleged that the Respondent's conduct contravened Rule 2.1.4 both before and after it was amended.

2. From April 16, 2007 to April 6, 2009, the Respondent was registered in Saskatchewan, Alberta, British Columbia and Manitoba as a mutual fund salesperson with IPC Investment Corporation ('IPC'). The allegations in this Notice of Hearing concern events that transpired while the Respondent was working as a mutual fund salesperson in Regina, Saskatchewan.

3. The Respondent was previously registered in the same jurisdictions as a mutual fund salesperson with the following Members:

(a) from November 17, 2006 to April 16, 2007, FundEx Investments Inc. ('FundEx'); and

(b) from October 2000 to November 2006, with Rice Financial Group Inc. ('Rice Financial').

4. Rice Financial became an MFDA Member on January 11, 2002.²

5. IPC became an MFDA Member on March 8, 2002.

6. FundEx became an MFDA Member on April 12, 2002.

Outside Business Activities

7. The Respondent participated in several disclosed and approved outside business activities, including:

(a) CCC Acres Inc. ('CCC Acres'); and

(b) 606177 Saskatchewan Ltd. ('606177 Saskatchewan').

8. CCC Acres is a company incorporated in the state of Texas. At all material times, the Respondent was the President and sole Officer and Director of CCC Acres. CCC Acres invests in real estate in Canyon Lake, Texas. CCC Acres purchases undeveloped land with the aim of development and resale for profit.

² On December 19, 2008, Rice Financial changed its name to MGI Financial Inc.

9. 606177 Saskatchewan is a company incorporated in Saskatchewan. It is owned and operated by the Respondent. The Respondent states that 606177 Saskatchewan is a holding company for CCC Acres and Moerike Financial Services, the company through which he is paid the commissions and fees he earns as a mutual fund salesperson.

10. The Respondent disclosed CCC Acres and 606177 Saskatchewan as ongoing outside business activities to his Member(s) and the applicable local securities regulatory authorities. All three companies are listed on the Respondent's profile in the National Registration Database ("NRD").

Personal Financial Dealings, Acting as Executor & Powers of Attorney

First loan from client BC

11. In 1997, the Respondent was a mutual fund salesperson with Halmac. BC was a client of Halmac. At this time, the Respondent, through his company CCC Acres, borrowed \$80,000 US, on an interest-free basis, from BC.

12. In March 2000, Halmac was purchased by Rice Financial. The Respondent's registration as a mutual fund salesperson was transferred to Rice Financial and BC transferred his account(s) to Rice Financial.

13. On January 11, 2002, Rice Financial became a Member of the MFDA.

Respondent named executor of client MF's estate & granted power of attorney

14. MF was also a client of Rice Financial. In November 2002, the Respondent was named as the executor of MF's estate and was granted MF's power of attorney.

Loan from client MF

15. On May 1, 2003, the Respondent borrowed \$135,485.06 CDN from MF. The loan was made payable to 606177 Saskatchewan and in return, the Respondent provided MF with a promissory note from 606177 Saskatchewan. The promissory note stated that the loan was for a term of five years with an annual interest rate of 5.5%.

Second loan from client BC

16. On August 25, 2005, the Respondent borrowed a further \$50,000 US from BC. This second loan was made payable to CCC Acres and in return, the Respondent provided MF with a promissory note from CCC Acres providing that the loan was for a term of one year with an annual interest rate of 9%.

Respondent named executor of client BC's estate & granted power of attorney

17. In July 2006, the Respondent was named as the executor of BC's estate and was granted BC's power of attorney.

18. On September 25, 2006, Rice Financial conducted a "Branch Environment Review" on the Respondent's branch. During the review, the Respondent informed Rice Financial that he held powers of attorney for two clients but did not disclose that he had borrowed funds from the clients for his outside business activities.

19. In mid-November 2006, the Respondent resigned from Rice Financial and transferred to FundEx.

20. BC did not transfer his account(s) to FundEx. MF did transfer her account(s) to FundEx.

21. On September 25, 2006, in anticipation of the Respondent transferring his registration from Rice Financial to FundEx, FundEx required the Respondent to complete and submit a "Due Diligence Questionnaire". The form required the Respondent to disclose any existing conflicts of interests with clients.

22. The Respondent disclosed the powers of attorney which he held for BC and MF on the Due Diligence Questionnaire but did not disclose the outstanding loans to BC and MF.

23. In April 2007, the Respondent resigned from FundEx and transferred to IPC.

24. On March 28, 2007, prior to the transfer of his registration to IPC, IPC required

the Respondent to complete and submit a “Recruiting Profile and Due Diligence Form”. The form required the Respondent to disclose any existing conflicts of interest with clients including but not limited to, personal borrowing or lending, business associations and any designations as executor in client wills.

25. The Respondent completed the Recruiting Profile and Due Diligence Form but did not disclose any personal dealings or conflicts of interest with any clients, including BC and MF.

26. BC did not transfer his account(s) to IPC. MF did transfer her account(s) to IPC.

27. On July 24, 2007, the second loan from BC to CCC Acres in the amount of \$50,000 US was renewed. A further promissory note was provided to BC from the Respondent. The promissory note stated that the loan was for a term of one year and with an annual interest rate of 9%.

28. On October 17, 2007, IPC commenced an investigation of the Respondent’s activities in response to a letter received by IPC expressing concerns about the Respondent’s dealings with clients.

29. IPC’s investigation revealed that the Respondent had: (i) participated in personal financial dealings with clients; (ii) had provided a false statement on due diligence documentation which specifically requested the disclosure of any personal financial dealings with clients; and (iii) had been appointed power of attorney and executor of an IPC client.

30. On October 31, 2007, MF removed the Respondent as the executor of her estate and revoked the power of attorney granted to him.

31. On November 2, 2007, BC revoked the power of attorney he had granted to the Respondent and on December 8, 2007 removed the Respondent as the executor of her estate.

32. On November 2 and 23, 2007, the Respondent made payments in the amounts of \$75,000 CDN and \$57,108.43 CDN, including interest in the amount of \$2,108.43 CDN,

to BC in respect of the two outstanding loans from BC.

33. By letter dated January 23, 2008, IPC notified the Respondent that he would be terminated unless, among other things, he paid a fine and administrative costs relating to IPC's investigation of his activities and he provided evidence of the repayment of the client loans. The Respondent was given 30 days to comply.

34. On January 28, 2008, the Respondent repaid the loan owing to MF.

35. On January 29, 2008, the Respondent informed IPC that he intended to comply with the requirements set out in IPC's January 23, 2008 letter. On February 27, 2008, the Respondent provided IPC with proof that he had satisfied IPC's requirements, including in particular repayment of the loans to BC and MF.

36. By borrowing monies from BC and MF to finance his outside business activities, the Respondent placed his own interests above those of his clients, 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 clients, contrary to MFDA Rule 2.1.4 and MFDA Rule 2.1.1.

37. By accepting and holding a prohibited a general power of attorney or other similar authorization for BC and MF, the Respondent acted contrary to MFDA Rule 2.3.1(a).

38. By failing to comply with the policies and procedures of the Members for which he was a mutual fund salesperson by failing to disclose to the Members his personal financial dealings with clients BC and MF, the Respondent interfered with the ability of the Members to supervise his activities, contrary to MFDA Rules 1.1.2, 2.5.1 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 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: Maria Abate, Enforcement Counsel
Fax: 416-361-9073
Email: mabate@mfdca.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, ON 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:

- (a) 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
- (b) 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.