



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: Kenneth Rattenbury

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 17, 2012 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 Kenneth Rattenbury (the “Respondent”).

DATED this 29th of June, 2012.

“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 August 26, 2004 and November 18, 2010, the Respondent maintained and used 63 photocopies of trade instruction forms signed by clients in blank to process trades in the accounts of 10 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

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. At all material times, the Respondent was the President and a shareholder of Rattenbury Financial Management Inc. (“RFM”), a Member of the MFDA located in Edmonton, Alberta
2. The Respondent was registered in Alberta as an Officer (Trading) of RFM from March 14, 2003, and as the Ultimate Designated Person, Chief Compliance Officer and a Director from September 28, 2009, until October 28, 2011.
3. RFM became a Member of the MFDA on February 8, 2002 and was registered in Alberta and British Columbia. RFM resigned its membership in the MFDA effective October 28, 2011.
4. Since November 1, 2011, following the resignation of RFM, the Respondent has been registered as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA. Focused Money represented that the returns were secured by life insurance contracts it had purchased from the original policy holders.

MFDA Compliance Examination 2010

5. Between November 22, 2010 and December 1, 2010, MFDA Compliance Staff attended at RFM's head office in Edmonton and a sub-branch located in Grande Prairie to conduct a compliance examination.

6. During the on-site examination of RFM, MFDA Compliance Staff found a total of 63 pre-signed trade instruction forms in the files for the accounts of 10 clients serviced by the Respondent. The pre-signed forms were photocopies of original blank trade instruction forms that had been signed by the clients.

7. The pre-signed forms consisted of Investment Order forms, which included a section to allow for the updating of a client's Know-Your-Client ("KYC") information, and Redemption Request forms. Full particulars of the pre-signed forms will be provided at the hearing.

8. MFDA Compliance Staff found evidence that the Respondent had used the photocopies of the pre-signed forms to execute trades in the clients' accounts.

9. MFDA Compliance Staff also found email correspondence dated May 10, 2010 from the Respondent to clients NH and PH requesting that the clients sign blank trade instruction forms that the Respondent could use to process trades in their accounts at a later date.

10. On October 12, 2011, the Respondent was interviewed by MFDA Staff Investigators. The Respondent admitted that he had used the photocopies of the blank pre-signed forms to execute trades in the clients' accounts. The Respondent stated that all of the trades were processed pursuant to the clients' instructions following discussions with the clients. In some instances, the Respondent was able to produce copies of emails from the clients authorizing the trades in their accounts that the Respondent had subsequently carried out using the pre-signed forms.

11. None of the clients have filed a complaint concerning the pre-signed forms or indicated to MFDA Staff that trades were processed in their accounts without their knowledge or instructions. MFDA Staff did not find any evidence of unauthorized or discretionary trading in the clients'

accounts.

12. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

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:

- (a) has failed to carry out any agreement with the MFDA;
- (b) 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;
- (c) has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- (d) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- (e) 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
Prairie Regional Office
800 – 6th Avenue SW, Suite 850
Calgary, Alberta
T2P 3G3
Attention: Shari Boyd, Enforcement Counsel
Facsimile: 403-266-8858
Email: sboyd@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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