



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: Donato Gragasin

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 November 29, 2013 at 10:00 a.m. (Mountain) concerning a disciplinary proceeding commenced by the MFDA against Donato Gragasin (the “Respondent”). Members of the public who would like to listen to the first appearance should contact the MFDA Hearings Coordinator at 416-945-5146 or mwynnyckyj@mfd.ca to obtain particulars. The hearing of this matter on its merits will take place in Winnipeg, Manitoba at a time and venue to be announced.

DATED this 19th day of July, 2013.

“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 2006 and July 2008, the Respondent prepared and submitted new account application forms and investment loan applications for 10 clients which the Respondent knew or ought to have known contained false, misleading or incorrect information, thereby failing to observe high standards of ethics and conduct in the transaction of business and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Between October 2006 and July 2008, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs of a leveraged investment strategy that he recommended to 10 clients, thereby failing to ensure that the leveraged investment recommendations were suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Between October 2006 and July 2008, the Respondent failed to ensure that the leveraged investment recommendations he made to 10 clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to:

- (a) the clients' relevant "Know-Your-Client" information and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses; and
- (b) the Member's requirements regarding the use of leveraging, as set out in the Member's policies and procedures;

contrary to MFDA Rules 2.2.1 and 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 was registered as a mutual fund salesperson with WFG Securities of Canada Inc. (“WFG”), a Member of the MFDA, in the following provinces:

- (a) Manitoba, from September 18, 2006 to May 15, 2009;
- (b) Alberta, from October 27, 2006 to May 15, 2009; and
- (c) British Columbia, from July 6, 2007 to May 15, 2009.

2. WFG terminated the Respondent on May 15, 2009. The Respondent is not currently registered in the securities industry in any capacity.

The Leveraged Investment Strategy

3. Between about October 2006 and July 2008, the Respondent recommended and facilitated the implementation of a leveraged investment strategy (the “Leveraged Investment Strategy”) in the accounts of at least 10 clients whereby the clients were directed to obtain interest-only investment loans and use the proceeds of the investment loans to purchase return of capital (“ROC”) mutual funds¹ for their accounts.

4. The Leveraged Investment Strategy was based on the premise that the ROC mutual funds would generate sufficient proceeds each month to cover the clients’ costs of servicing their investment loans, such that the Leveraged Investment Strategy would pay for itself and the clients would not have to incur any out-of-pocket expenses in order to sustain the Leveraged Investment Strategy.

5. In the course of recommending the Leveraged Investment Strategy to the clients, the Respondent made the following representations, among others:

- (a) the ROC mutual funds would not decrease in value and could be relied upon to pay

¹ “Return of capital” mutual funds are structured to pay a set monthly amount of proceeds (for example, 8%) to an investor which may include a return of the capital originally invested by the investor. In the event the value of a ROC mutual fund declines due to deteriorating market conditions, poor investment performance or other factors such that the amount of the promised monthly proceeds exceeds the increase in the value of the fund, there is a real and substantial risk that the fund will be required to reduce, suspend or cancel altogether, the monthly proceeds paid to investors.

monthly proceeds to investors;

- (b) the proceeds paid by the ROC mutual funds to investors were guaranteed and would not be reduced or stopped;
- (c) the proceeds paid by the ROC mutual funds to investors would be sufficient to pay (or greater than) the costs associated with the clients' investment loans, such that the Leveraged Investment Strategy would pay for itself;
- (d) to the extent that the proceeds paid by the ROC mutual funds to investors exceeded the clients' costs of servicing their investment loans, the Leverage Investment Strategy would provide a source of income for the clients to pay living expenses or enjoy an increased lifestyle, to purchase additional investments, or to purchase other products or services from the Respondent, such as life insurance policies;
- (e) the ROC mutual funds would continue to grow in value over time; and
- (f) the Leveraged Investment Strategy was low risk.

6. The Respondent did not discuss with the clients how they could or would repay the principal amount of their interest-only investment loans.

Implementation of the Leveraging Investment Strategy

7. The 10 individuals to whom the Responded proposed the Leveraged Investment Strategy² relied upon the Respondent's recommendations to open accounts at WFG and apply for and obtain interest-only investment loans totaling \$275,000 from AGF Trust, as set out below:

Client	Date of Loan	Loan Amount
SB and EB	December 2006	\$25,000
NB and EvB	October 2006	\$50,000
NT and AT	October 2006	\$50,000

² See paragraph 3 above.

Client	Date of Loan	Loan Amount
RG and PG	March 2007	\$25,000
AE	December 2006	\$50,000
NE	January 2007	\$35,000
	July 2008	\$40,000

8. Relying upon the Respondent's recommendations, the 10 clients used the proceeds of their investment loans primarily³ to purchase ROC mutual funds offered by IA Clarington Investments ("Clarington") and Fidelity Investments Canada ("Fidelity") on a deferred sales charge ("DSC") basis, as set out below:

Client	Amount	ROC Mutual Fund	Date
SB and EB	\$25,000	Clarington Canadian Dividend Fund	December 2006
NB and EvB	\$40,000	Clarington Canadian Dividend Fund	October 2006
	\$10,000	Clarington Global Income Fund	
NT and AT	\$40,000	Clarington Canadian Dividend Fund	October 2006
	\$10,000	Clarington Global Income Fund	
RG and PG	\$25,000	Clarington Canadian Dividend Fund	March 2007
AE	\$10,000	Clarington Canadian Dividend Fund	December 2006
	\$10,000	Clarington Global Income Fund	
	\$10,000	Fidelity Amer. Disciplined Equity Fund	
NE	\$35,000	Clarington Canadian Dividend Fund	January 2007
NE	\$40,000	Clarington Dividend Growth Fund	July 2008

Performance of the Leveraged Investment Strategy

9. Commencing March 2008, the Fidelity American Disciplined Equity Fund purchased by client AE began to reduce the monthly proceeds paid to investors and its unit value also began to decline.

10. Commencing June 2008, the Clarington Global Income Fund purchased by clients NB,

³ One client, client AE, used \$20,000 of their \$50,000 investment loan for other purposes.

EvB, NT, AT and AE began to reduce the monthly proceeds paid to investors and its unit value also began to decline.

11. Commencing December 2008, the Clarington Canadian Dividend Fund purchased by clients SB, EB, NB, EvB, NT, AT, RG, PG and AE began to reduce the monthly proceeds paid to investors and its unit value also began to decline.

12. Commencing December 2008, the Clarington Dividend Growth Fund purchased by client NE began to reduce its monthly proceeds paid to investors and its unit value also began to decline.

13. As a result of the reductions in the amount of proceeds paid to investors, the monthly proceeds received by the 10 clients became insufficient to cover the costs of servicing their investment loans. The clients were eventually forced to incur out-of-pocket expenses, which they had difficulty affording or were unable to reasonably afford, in order to sustain the Leveraged Investment Strategy.

14. Further, as a result of the decline in value of the ROC mutual funds held by the clients, the total value of the clients' investments declined below the outstanding principal amount of their investment loans. As a consequence, the clients were not in position to sell their ROC mutual funds and use the sale proceeds to pay down their investment loans without incurring a shortfall for which they would be responsible.

15. Commencing December 2008, the 10 clients began to file complaints with WFG with respect to the suitability of the Leveraged Investment Strategy. WFG conducted a review and investigation of the complaints and provided compensation to all of the affected clients, except one.

Allegation #1: New account application forms and loan applications

16. The Respondent completed the documents required to implement the Leveraged Investment Strategy in the accounts of the clients, including the WFG New Account Application Forms ("NAAFs") and the AGF Trust investment loan applications, without discussing the

contents of the documents with the clients. The Respondent then had the clients sign the fully-completed documents without reviewing the contents of the documents with the clients adequately or at all. As a consequence, the clients' documented Know-Your-Client information did not accurately reflect the clients' actual personal and financial circumstances in material respects.

17. The Respondent completed the clients' documents so that the information recorded on the documents complied or substantially complied with WFG's minimum requirements permitting the use of leveraging. WFG's policies and procedures stated that leveraging was only suitable for those clients that met the following criteria, among other factors:

- (a) an investment knowledge of "good" or "excellent";
- (b) a "long term" time horizon;
- (c) a "medium" or "high" risk tolerance;
- (d) the clients "must be able to afford to service their debt load using their own demonstrated personal income"; and
- (e) the borrowed monies did not exceed 40 percent of clients' net worth.⁴

18. The Respondent recorded the investment knowledge of all 10 clients as "good" when he knew or ought to have known that the clients' actual investment knowledge was limited to nil. All of the clients were new clients to WFG and none of the clients had any prior experience investing in mutual funds or any other types of securities.

19. The Respondent recorded the investment risk tolerance of all 10 clients as "medium" when he knew or ought to have known that the clients' actual investment risk tolerance was "low".

20. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

⁴ At times between 2006 and 2008, WFG's policies and procedures stated that borrowed monies were not to exceed 50 percent of clients' net worth.

Allegation #2: Failure to Explain Leveraged Investment Strategy

21. At all material times, the clients relied entirely or substantially on the Respondent's recommendations with respect to the Leveraged Investment Strategy and his explanations, to the extent he provided any, of the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy.

22. The Respondent did not take any, or sufficient, steps to ensure that he understood or adequately informed himself of:

- (a) the risks inherent in using borrowed monies to invest; and
- (b) the operation and features of ROC mutual funds and, in particular, the risks they posed to investors when used as part of the Leveraged Investment Strategy.

23. As a consequence, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy to the clients, as more particularly described below.

(a) Mischaracterization of monthly proceeds paid to investors

24. The Respondent mischaracterized or oversimplified the nature of the monthly proceeds paid to investors by the ROC mutual funds by describing the payments as "income" in a manner which suggested that the payments consisted solely of investment returns generated by the ROC mutual funds. In fact, the ROC mutual funds were permitted to include in the monthly proceeds paid to investors a portion of the capital originally invested by the investors.⁵

(b) Risk proceeds paid to investors would be reduced, suspended or cancelled

25. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain to the clients the risk that in the event the value of the underlying investments held by ROC mutual funds declined due to poor performance, deteriorating market conditions or other factors, such that the amount of the monthly proceeds to be paid to investors exceeded the

⁵ See note 1 above.

increase in the value of underlying investments, there was a real and substantial risk that the ROC mutual funds would be required to reduce, suspend, or possibly cancel altogether, the monthly proceeds paid to investors.

26. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risk that a reduction, suspension or cancellation of the proceeds paid to investors by the ROC mutual funds may prevent the clients from paying, in part or in full, the costs of servicing their investment loans.

(c) Decline in value of the ROC mutual funds

27. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risk that the ROC mutual funds might decline in value over time. In fact, the Respondent led the clients to believe that the ROC mutual funds they purchased during the course of the Leveraged Investment Strategy would only maintain their value or increase in value over time.

28. As described above, the proceeds paid by the ROC mutual funds to investors could include a return of the capital originally invested by the investor. If the returns generated by the underlying investments held by the ROC mutual fund were not sufficient to cover the proceeds paid to investors, then the shortfall would, over time, reduce the value of the investors' units in the ROC mutual funds. This potential problem would be compounded where, as here, the clients did not reinvest the proceeds paid to them by the ROC mutual funds in the ROC mutual funds.

29. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain that in the event the ROC mutual funds did not at least maintain their value over time, then the clients would not be able to rely on the proceeds generated from the sale of the ROC mutual funds to retire the entire principal amount of their interest-only investment loans.

(d) Effect of increase in borrowing costs

30. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risk that:

- (a) an increase in interest rates could affect the sustainability of the Leveraged Investment Strategy if the clients did not have additional sources of income, savings or credit to cover any shortfalls between the amount the clients were required to pay to service their investment loans and the amount of proceeds they received from the ROC mutual funds; and
- (b) the clients would sustain investment losses if the costs of servicing their investment loans exceeded the total returns (increase in unit values plus proceeds) generated by the ROC mutual funds.

(e) Effect of DSC fees

31. The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risk that in the event the clients decided or were required to sell their ROC mutual funds prior to the expiry of the DSC schedules, then the DSC fees would reduce the amount the clients realized from the sale of the ROC mutual funds.

(f) Leverage Disclosure Documents

32. Although the Respondent obtained Leverage Disclosure Documents signed by the clients prior to implementing Leveraged Investment Strategy in their accounts, he failed to adequately review and explain the contents of the Leverage Disclosure Documents to the clients to ensure that the clients fully understood and accepted the risks of using borrowed monies to invest.

33. In summary, by engaging in the conduct described above, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the Leveraged Investment Strategy to the 10 clients, thereby failing to ensure that the Leverage Investment Strategy was suitable for the clients and in keeping with the clients' investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Unsuitable Leveraging Recommendations

34. The Leveraged Investment Strategy recommended and implemented by the Respondent

in the accounts of the 10 clients was not suitable for the clients and in keeping with their investment objectives, in that, among other reasons:

- (a) the clients' investment knowledge was limited to nil;
- (b) the clients' investment risk tolerance was low;
- (c) the clients were not able to service the investment loans using their own personal income. Seven of the 10 clients earned \$35,000 or less; the other three clients earned \$40,000 to \$45,000. All of the clients had mortgages and other expenses which consumed a significant portion of their income. As a consequence, none of the clients had sufficient personal income to cover the costs of servicing their investment loans in the event that the proceeds paid by the ROC mutual funds to investors were reduced, suspended or cancelled; and
- (d) the clients did not have sufficient financial resources to withstand investment losses if the Leverage Investment Strategy did not perform as the Respondent represented it would, and
- (e) the loan to net worth ratios for clients SB and EB, NT and AT, and RG and PG were 78%, 74% and 147% respectively.

35. By engaging in the conduct described above, the Respondent failed to ensure that the leveraged investment recommendations he made to 10 clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to:

- (a) the clients' relevant "Know-Your-Client" information and financial circumstances, including but not limited to the clients' ability to afford the costs associated with the investment loans and withstand investment losses; and
- (b) the Member's requirements regarding the use of leveraging, as set out in the Member's policies and procedures;

contrary to MFDA Rules 2.2.1 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, Ontario
M5H 3T9
Attention: Francis Roy
Fax: 416-361-9073
Email: froy@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, 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@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.

DM 347715 v2