



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: Barbara Suk Yee Man

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) 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 July 17, 2013 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 Barbara Suk Yee Man (the “Respondent”).

DATED this 10th day of May, 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 January 27, 2011 and May 25, 2011, the Respondent failed to observe high standards of ethics and engaged in business conduct or practice that was unbecoming by altering account transfer forms signed by clients JL and JaL to effect the transfer of their accounts from Member 1 to the Member “in cash” instead of “in kind” as the clients had instructed, contrary to MFDA Rule 2.1.1.

Allegation #2: Between January 27, 2011 and May 25, 2011, the Respondent failed to observe high standards of ethics and engaged in business conduct or practice that was unbecoming by obtaining a blank, pre-signed account transfer form from client JaL which the Respondent then used to effect the transfer of client JaL’s account from Member 2 to the Member “in cash” instead of “in kind” as client JaL had instructed, contrary to MFDA Rule 2.1.1.

Allegation #3: In or about February 2011, the Respondent engaged in discretionary trading by transferring the accounts of clients JL and JaL to the Member “in cash” instead of “in kind” as the clients had instructed, contrary to MFDA Rules 2.3.1(a) 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:

The Respondent’s Registration History

1. From December 2006 to May 25, 2011, the Respondent was registered in Ontario as a mutual fund salesperson with Royal Mutual Funds Inc. (“RMFI”), a Member of the MFDA. Prior to that, the Respondent was registered with TD Investment Services Inc. from January 1987 to November 22, 2006.
2. On May 25, 2011, the Respondent resigned from RMFI. She is not currently registered in the securities industry in any capacity.

Allegations #1 to #3: Alteration and use of Pre-signed Forms

3. On or about January 27, 2011, the Respondent met with JL and JaL, a married couple, to complete the forms necessary for them to open accounts with RMFI and to transfer the investments in their accounts at Member 1 and Member 2 to RMFI. During that meeting, clients JL and JaL instructed the Respondent to have their existing investments transferred to RMFI “in kind”.¹

4. During the January 27, 2011 meeting, the Respondent asked clients JL and JaL to sign, among other documents, transfer forms for submission to Member 1 (the “Member 1 Transfer Forms”) containing instructions that their existing investments be transferred to RMFI “in kind”. The Respondent also asked client JaL to sign a blank transfer form for submission to Member 2 that did not contain any instructions regarding the transfer of her investments from Member 2 (the “Member 2 Transfer Form”).

5. On February 3, 2011, the Respondent gave the Member 1 Transfer Forms to an assistant, DP, and instructed DP to submit them for processing. The Respondent also gave the Member 2 Transfer Form to DP and directed DP to complete the blank, pre-signed form to provide that client JaL’s investments at Member 2 would be transferred to RMFI “in kind”.

6. Acting on the Respondent’s directions, DP submitted the Member 1 Transfer Forms for processing and also completed the Member 2 Transfer Form to provide that client JaL’s investments were to be transferred from Member 2 “in kind” and submitted it for processing.

7. On February 4, 2011, and again on February 9, 2011, RMFI’s back office informed the Respondent that all or part of client JL’s and JaL’s investments could not be transferred from Member 1 and Member 2 to RMFI “in kind”. Rather, RMFI’s back office advised the Respondent that the clients’ investments could only be transferred to RMFI “in cash”.

8. Following receipt of RMFI’s notifications, the Respondent asked DP to ascertain whether

¹ Transferring investments “in kind” means that the investments are not sold but are transferred to the client’s new account “as is”.

any deferred sales charges would be applied to client JL's and JaL's investments if they were sold and the proceeds transferred to RMFI "in cash". The Respondent further instructed DP as follows: "if there is no [deferred sales charges] cost please instruct to transfer in cash of these funds. [sic]"

9. On or about February 18, 2011, following receipt of confirmation that no deferred sales charges would be applied to the redemption of the clients' investments, DP, acting on the Respondent's directions, altered the Member 1 Transfer Forms and the Member 2 Transfer Form to indicate that the clients' investments were to be transferred to RMFI "in cash" rather than "in kind". DP then submitted the altered Member 1 Transfer Forms and the altered Member 2 Transfer Form for processing.

10. The Respondent did not inform clients JL and JaL that the Member 1 Transfer Forms and the Member 2 Transfer Form had been altered and used to authorize the transfer of their investments to RMFI in a manner inconsistent with the clients' instructions.

11. In accordance with instructions contained in the altered Member 1 Transfer Forms and the Member 2 Transfer Form, Member 1 and Member 2 arranged for the liquidation of the investments held by clients JL and JaL in their respective accounts and the transfer of the cash proceeds to client JL's and JaL's new accounts at RMFI.²

12. Upon completion of the account transfers, the Respondent informed clients JL and JaL for the first time that their investments had been transferred to RMFI "in cash" rather than "in kind". The clients then submitted a complaint to RMFI, which complaint was resolved, with the clients' agreement, by reversing the account transfers.

RMFI's Policies and Procedures

13. At all material times, RMFI's policies and procedures expressly prohibited the use of fully or partially incomplete forms. RMFI's policies and procedures provided, in part, as follows:

Pre-signed forms:

² No investment losses resulted from the liquidation of the clients' investments.

“Any incomplete form, (e.g., trade tickets, cheques or Account Application-KYC Forms, etc.), whether fully or partially incomplete, that has been signed by a client. Licensed representatives may only use forms that are duly executed by the client after the information has been fully and properly completed. As previously stated, pre-signed forms are not permitted as they enable a licensed representative to complete details of the transaction, or KYC, at a later date and in the client’s absence.”

14. By altering the signed Member 1 Transfer Forms to effect the transfer of client JL’s and JaL’s accounts to RMFI in a manner inconsistent with the clients’ instructions and without the clients’ knowledge or consent, the Respondent failed to observe high standards of ethics and engaged in business conduct or practice that was unbecoming, contrary to MFDA Rule 2.1.1.

15. By obtaining and using the blank, pre-signed Member 2 Transfer Form to effect the transfer of client JaL’s account to RMFI in a manner inconsistent with client JaL’s instructions and without client JaL’s knowledge or consent, the Respondent failed to observe high standards of ethics and engaged in business conduct or practice that was unbecoming, contrary to MFDA Rule 2.1.1.

16. By transferring client JL’s and JaL’s accounts from Member 1 and Member 2 to RMFI “in cash” instead of “in kind” as the clients had instructed, the Respondent engaged in discretionary trading, contrary to MFDA Rules 2.3.1(a) 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, 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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