



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: Sherry L. McKenzie

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 at the MFDA offices, located at 121 King Street West, Suite 1000, Toronto, Ontario on August 5, 2015 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Sherry L. McKenzie (the “Respondent”).

DATED this 8th day of June, 2015.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-945-5143
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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 October 16, 2009 and June 15, 2012, the Respondent altered and re-used 46 original or photocopies of previously-used account forms in order to process transactions in respect of 25 clients, and obtained and maintained 10 blank or partially complete pre-signed account forms in respect of 6 clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Commencing in November 2013, the Respondent failed to produce for inspection copies of bank account statements and has failed to attend for an interview with Staff for the purpose of investigating the Respondent's conduct, contrary to section 22.1 of MFDA By-law No. 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 August 22, 2002 to April 8, 2013 when she resigned, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Independent Planning Group Inc. ("IPG"), a Member of the MFDA.
2. At all material times, the Respondent conducted business from an IPG branch in the Cambridge, Ontario area.

Background

3. At all material times, IPG's policies and procedures prohibited its Approved Persons from: (i) photocopying account forms in order to duplicate a client's signature; or (ii) obtaining or using blank or partially complete pre-signed account forms.

4. In July 2009, IPG conducted an audit of the Respondent's branch office which included a review of client files maintained by the Respondent. During the audit, IPG detected that the Respondent had photocopied, altered and re-used previously submitted account forms in order to process trades in respect of three clients. IPG instructed the Respondent to cease this practice.

5. On October 15, 2009, the Respondent sent a letter to IPG confirming that she had ceased photocopying, altering and re-using account forms and this conduct "would never happen again".

Allegation #1: Pre-signed and Falsified Account Forms

6. On October 19, 2012, IPG conducted an audit of the Respondent's branch office. During review of client files conducted as part of the audit, IPG identified instances where the Respondent had (once again) altered and re-used originals and photocopies of previously-used account forms, and maintained blank or partially complete pre-signed account forms in client files. IPG immediately commenced an investigation into the Respondent's conduct.

7. On November 1, 2012, the Respondent signed, and submitted to IPG, an "Associate Compliance Audit Questionnaire" in which the Respondent falsely confirmed that she did not maintain blank or partially complete pre-signed account forms in client files.

8. In December 2012, IPG reviewed, as part of its investigation, all of the client files maintained by the Respondent.

9. During the course of its investigation, IPG determined that, between October 16, 2009 and June 15, 2012¹, the Respondent:

(a) altered and re-used 46 original or photocopies of previously-used account forms in order to process transactions in respect of 25 clients; and

(b) obtained and maintained 10 blank or partially complete pre-signed account forms in respect of 6 clients.

10. On December 18, 2012, IPG sent letters to all of the clients serviced by the Respondent requesting that the clients review their account statements to determine whether the clients had authorized the transactions processed in their accounts. IPG did not receive any responses to its letter.

11. By virtue of the foregoing, the Respondent altered and re-used original or photocopies of previously-used account forms in order to process transactions in respect of clients, and obtained and maintained blank or partially complete pre-signed account forms in respect of clients, contrary to MFDA Rule 2.1.1.

Allegation #2: Failure to Cooperate

12. In addition to the conduct detected by IPG with respect to the Respondent's use of account forms (described above), the Respondent was also the subject of client complaints to IPG, after she ceased to be registered with IPG, alleging that she:

(a) engaged in an undisclosed and unapproved referral arrangement or outside business activity with a portfolio management company;

¹ This covers the period after the Respondent confirmed to IPG, in writing, that she had ceased photocopying, altering and re-using account forms.

- (b) misrepresented to clients the costs and benefits of redeeming accounts with IPG and transferring those monies to the portfolio management company; and
- (c) attempted to process trades in client accounts with IPG after she had ceased to be registered in the securities industry; and
- (d) misused IPG client data.

13. On November 7, 2013, Staff sent a letter to the Respondent requesting that she attend an interview with Staff regarding the matters described in paragraph 12 above. The letter requested that the Respondent contact staff by November 21, 2013 in order to confirm an interview date in January or February 2014. Staff did not receive a response from the Respondent.

14. On November 25, 2013, Staff sent a letter to the Respondent, by email, requesting that the Respondent contact Staff by November 26, 2013 and provide dates for an interview with Staff in January or February 2014.

15. On November 29, 2013, the Respondent replied by email confirming her availability for an interview with Staff on any date in January or February 2014. Later that day, Staff replied to the Respondent's email advising her that the interview would be held January 27, 2014.

16. On December 31, 2013, Staff sent an email to the Respondent requesting information and documentation with respect to the alleged outside business activity or referral arrangement, including copies of the Respondent's bank account statements (for the period of January 1, 2013 to April 30, 2013) so that Staff could determine whether she received commissions and other payments outside of the books and records of IPG. Staff requested that these materials be delivered by January 14, 2014.

17. On January 13, 2014, the Respondent responded to Staff's request by email advising that she had not participated in any improper activities and would not be attending the interview scheduled for January 27, 2014.

18. On January 20, 2014, Staff replied to the Respondent by email advising the Respondent of her obligation to cooperate with Staff's investigation, and requesting that she provide the information requested by Staff and contact Staff to schedule an alternative interview date by January 27, 2014. Staff did not receive a response from the Respondent.

19. On February 10, 2014, Staff sent a letter, by registered and regular mail, to the Respondent advising her that a new interview date was scheduled for April 29, 2014 and requesting that she provide, among other things, the bank account statements requested by Staff by February 28, 2014.

20. On February 28, 2014, the Respondent replied to Staff's letter email requesting clarification on the materials requested by Staff. Later that day, Staff received an email from the Respondent's assistant providing some of the information and documents requested by Staff, but not copies of the Respondent's bank account statements.

21. On March 3, 2014, Staff sent an email to the Respondent requesting that she contact Staff by telephone. The Respondent did not respond.

22. On March 5, 2014, Staff contacted the Respondent by telephone and left a message for her requesting that she contact Staff. Staff did not receive a response from the Respondent.

23. On April 16, 2014, Staff sent an email to the Respondent reminding her that an interview with Staff was scheduled for April 29, 2014 and reiterating Staff's request for copies of the Respondent's bank account statements. Staff did not receive a response from the Respondent.

24. On April 25, 2014, Staff sent an email to the Respondent requesting that she confirm her attendance at the interview scheduled for April 29, 2014 and again requesting copies of the outstanding bank account statements.

25. On April 28, 2014, the Respondent emailed Staff to advise that she would not be attending the interview on April 29, 2014 because it was “tax season”.
26. On June 19, 2014, Staff contacted the Respondent, by registered mail, regular mail and email, advising the Respondent that an interview would be held on July 18, 2014 and she was required to provide the outstanding bank account statements by July 3, 2014.
27. On June 20, 2014, Staff received an email from the Respondent advising Staff that the Respondent was scheduled for surgery on June 23, 2014 and would not be returning to her office until August 2014. Later that day, Staff replied to the Respondent by email requesting that the Respondent provide Staff with a medical note confirming her surgery and expected period of recovery. Staff did not receive a response from the Respondent.
28. On July 2, 2014, Staff sent a letter to the Respondent again requesting a medical note confirming the Respondent’s surgery date and expected period of recovery. Staff further advised the Respondent that, should she fail to provide such a medical note, Staff expected her attendance at the interview scheduled for July 18, 2014 and to receive the outstanding bank account statements. Staff did not receive a response from the Respondent.
29. The Respondent did not attend an interview with Staff on July 18, 2014.
30. On July 29, 2014, a process server retained by Staff served the Respondent’s office with a letter outlining Staff’s attempts to schedule an interview with her and advising her that the request for bank account statements remained outstanding. The letter also advised the Respondent that Staff would be commencing enforcement action against the Respondent for her failure to cooperate with Staff’s investigation.
31. By failing to attend an interview with Staff and provide Staff with copies of bank account statements for the period January 1, 2013 to April 30, 2013, the Respondent frustrated Staff’s ability to investigate her activities while she was registered as a mutual fund salesperson,

including the nature and scope of her involvement in an undisclosed and unapproved referral arrangement or outside business activity with a portfolio management company.

32. By virtue of the foregoing, the Respondent failed to cooperate with Staff's investigation into her conduct, contrary to section 22.1 of MFDA By-law No. 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 Office of 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 L. Abate
Fax: 416-361-9073
Email: mabate@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

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 one (1) copy of the **Reply** to the Office of 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 Office of the Corporate Secretary permits otherwise; or
- (c) transmitting one (1) electronic copy of the **Reply** to the Office of 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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