



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: James Howard Munro Stuart

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 MFDA offices located at 121 King Street West, Suite 1000, Toronto, Ontario on September 28th, at 10:00 a.m. or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against James Howard Munro Stuart (the “Respondent”). The Hearing on the Merits will take place in Toronto at a time and venue to be announced.

DATED this 20th day of July, 2015.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils
Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
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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: Commencing in March 2014, the Respondent failed to cooperate with an investigation conducted by Staff of the MFDA (“Staff”) by failing to attend an interview requested by Staff for the purpose of providing a statement and information regarding the matters under investigation, contrary to section 22.1 of MFDA By-law No. 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. From January 7, 1993 to December 24, 2012, the Respondent was registered in Ontario as a mutual fund salesperson / dealing representative¹ with W.H. Stuart Mutuals Ltd. (“W.H. Stuart”).
2. The Respondent was also registered in Manitoba with W.H. Stuart as a non-trading officer until October 2, 2003 and in Alberta as a non-trading officer until December 5, 2003.
3. Since approximately July 1, 2000, the Respondent has been the President and Chief Executive Officer of securities dealers and/or other entities operating in the financial services industry in the United States such as Stuart Financial Corporation.
4. On March 26, 2003, W.H. Stuart became a Member of the MFDA. On May 31, 2013, a Hearing Panel of the MFDA made an order pursuant to section 24.3 of MFDA By-law No. 1 suspending W.H. Stuart from membership in the MFDA (the “Suspension Order”).
5. From March 26, 2003 until December 24, 2012, the Respondent was an Approved Person of W.H. Stuart.

¹On September 28, 2009, the mutual fund salesperson registration category was changed to “dealing representative – mutual fund dealer”.

6. The Respondent is not currently registered in the securities industry in any capacity in any jurisdiction in Canada.

The MFDA Disciplinary Proceeding commenced against W.H. Stuart and its Principals

7. On November 27, 2014, subsequent to the Suspension Order, the MFDA issued a Notice of Hearing commencing a disciplinary proceeding against W.H. Stuart and its principals, Marilyn Dianne Stuart (“Dianne Stuart”) and Walter Howard Stuart (“Howard Stuart”).

8. In the Notice of Hearing, Staff alleged, among other things, that:

- (a) Dianne Stuart and W.H. Stuart solicited and accepted approximately \$6 million from more than 180 clients purportedly to be invested on their behalf (the “Note Program”), which monies they used for the benefit of Dianne Stuart, W.H. Stuart and companies that they controlled and failed to repay or otherwise account for; and
- (b) Dianne Stuart and W.H. Stuart misappropriated or have otherwise failed to account for more than \$800,000 of investments and monies from over 30 clients.

The Respondent’s Relationship with W.H. Stuart and its Principals

9. The Respondent is the son of Dianne Stuart and Howard Stuart.

10. As noted above, in addition to being an Approved Person of W.H. Stuart, the Respondent has also been a principal of Stuart Financial Corporation and Stuart Securities Corporation (collectively, “Stuart Securities”). The Stuart Securities entities were incorporated in the state of Georgia and were affiliated with W.H. Stuart.

11. During the course of the investigation that resulted in the issuance of the Notice of Hearing against W.H. Stuart, Dianne Stuart and Howard Stuart, Staff became aware that a number of clients of W.H. Stuart who invested in the Note Program were provided with shares in Stuart Securities as a result of their investment in the Note Program.

12. Some investors in the Note Program were also informed that the money raised through the Note Program was being used to grow the company in the United States.

13. In March 2014, after becoming aware of the apparent connection between Stuart Securities and the Note Program offered by W.H. Stuart, Staff commenced an investigation of the Respondent's activities as an Approved Person of W.H. Stuart. As described below, the Respondent has failed to cooperate with Staff's investigation of his conduct.

Allegation #1 – Failure to Cooperate

14. On March 14, 2014, Staff sent a letter by courier and regular mail to the Respondent informing him that Staff was investigating concerns about the conduct of W.H. Stuart and his activities as an Approved Person of W.H. Stuart. The letter requested that the Respondent contact Staff within 10 business days in order to schedule a date for an interview for the purpose of obtaining a statement from the Respondent regarding his knowledge of the matters under investigation.

15. As of March 31, 2014, Staff had not received a response from the Respondent. Accordingly, Staff sent a second letter by courier and regular mail to the Respondent requesting that he contact Staff by April 14, 2014 in order to schedule a date for an interview. The March 31, 2014 letter from Staff informed the Respondent that if he disregarded Staff's request to schedule an interview, Staff would consider commencing enforcement proceedings against him for failing to cooperate with Staff's investigation.

16. On April 3, 2014, Staff received an undated letter from the Respondent in which he acknowledged receipt of Staff's correspondence, but claimed that he had "resigned as an approved person of W.H. Stuart Mutuals Ltd. in 1999".

17. On April 4, 2014, Staff sent a letter by courier and regular mail to the Respondent informing him that a review of his documented registration history indicated that he continued to be registered with W.H. Stuart until December 24, 2012. The April 4, 2014 letter:

- (a) reiterated Staff's request that the Respondent contact Staff to schedule an interview;
- (b) warned the Respondent again that enforcement proceedings might be commenced if he failed to do so; and
- (c) stipulated a deadline of April 21, 2014 for a response to Staff's request.

18. On April 14, 2014, Staff received a letter dated April 14, 2014 from the Respondent asserting again that he resigned from W.H. Stuart in 1999. The Respondent did not agree to participate in an interview with Staff to give information with respect to the matters under investigation.

19. On April 17, 2014, Staff sent a letter by courier and regular mail to the Respondent informing him that he could contact the Ontario Securities Commission if he wished to dispute the records of his registration history. The letter informed the Respondent that he was required to attend an interview with Staff on May 20, 2014 at the office of the MFDA or contact Staff to discuss alternatives.

20. On May 14, 2014, Staff received a letter dated May 5, 2014 from the Respondent in which he stated that he would not be attending an interview with Staff on May 20, 2014.

21. On May 20, 2014, Staff sent another letter by courier and regular mail to the Respondent offering him another opportunity to attend an interview with Staff on June 16, 2014. The Respondent was asked to confirm his attendance at the interview by June 11, 2014.

22. The Respondent did not respond to the May 20, 2014 letter from Staff and he did not attend an interview on June 16, 2014 or propose an alternative date for an interview with Staff. Following receipt of his letter dated May 5, 2014, Staff has not received any further communication from the Respondent.

23. To date, the Respondent has refused to attend an interview with Staff to give information regarding matters under investigation by Staff and has thereby failed to cooperate with Staff's investigation of his conduct, contrary to section 22.1 of MFDA By-law No. 1. By disregarding his regulatory obligations to cooperate with Staff's investigation the Respondent has also failed to uphold the standard of conduct and has engaged in conduct that is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

24. Due to the Respondent's failure to cooperate with Staff's investigation, Staff has been unable to investigate the full nature and extent of, among other things, the involvement of the Respondent and Stuart Securities in the Note Program.

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: Paul Blasiak
Fax: 416-361-9073
Email: pblasiak@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 #436971