



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: Charles James White

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the “Hearing Panel”) of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) on September 27, 2016 at 10:00 a.m. (Atlantic) concerning a disciplinary proceeding commenced by the MFDA against Charles James White (the “Respondent”). Members of the public who would like to listen to the teleconference should contact the Manager, Hearings at 416-945-5146 or mwynnyckyj@mfd.ca to obtain particulars. The Hearing on the Merits will take place in Halifax, Nova Scotia at a time and venue to be announced.

DATED this 14th day of June, 2016.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

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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 September 2007 and December 2008, the Respondent failed to record accurate Know-Your-Client (“KYC”) information on new account application forms and loan applications forms in respect of four clients, thereby failing to use due diligence to learn the essential facts relative to each client and failing to observe high standards of ethics and practice in the conduct of business, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #2: Between September and December 2007, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, costs and features of a leveraged investment strategy that he recommended and implemented in the accounts of two clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: In about September 2007, the Respondent failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients’ KYC information and financial circumstances including, but not limited to, the clients’ risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, 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. Since March 2007, the Respondent has been registered in Alberta, British Columbia, New Brunswick, and Nova Scotia, as a mutual fund salesperson (now known as a dealing representative) with Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA.
2. Prior to being registered with Keybase, the Respondent was registered as a mutual fund salesperson as follows:
 - i. from September 1993 to May 1998 with Investors Group Financial Services, a Member of the MFDA;
 - ii. from May 1998 to March 2005 with Dundee Private Investors Inc. (or Member firms it acquired), a Member of the MFDA; and
 - iii. from March 2005 to March 2007 with Global Maxfin Investments Inc., a Member of the MFDA.
3. At all material times, the Respondent carried on business from a sub-branch located in Truro, Nova Scotia.
4. At all material times, the Respondent was also licensed to sell insurance.

The Leverage Investment Strategy

5. The Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, and clients RG, and AG, whereby the clients would borrow monies and invest the proceeds in return of capital mutual funds (“ROC mutual funds”).
6. The leverage investment strategy was based on the premise that the investments purchased by the clients using the investment loans would generate sufficient returns to pay the clients’ borrowing costs, as well as provide them with the ability to pay down their mortgages

faster and/or generate excess discretionary income, such that the clients would not have to incur any out-of-pocket expenses to sustain the leveraged investment strategy.¹

7. Clients FL and SM are former spouses. On or about September 27, 2007, clients FL and SM borrowed \$120,000 from B2B Trust in order to implement the leverage investment strategy based upon the Respondent's recommendation. The investment loan was structured as a 2-for-1 loan whereby clients FL and SM invested \$64,000 to secure the investment loan and B2B Trust loaned them \$120,000. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount of \$121,000. The Respondent believed that the clients were carrying too much debt at the time that he recommended the investment loan, but proceeded to recommend and implement the leverage investment strategy anyway.

8. Clients RG and AG are spouses. On December 31, 2007, clients RG and AG applied for a \$150,000 investment loan from AGF Trust in order to implement the leverage investment strategy recommended by the Respondent. On January 31, 2008, clients RG and AG were approved for a \$121,000 investment loan.

9. The clients used the proceeds from the investment loans to purchase ROC mutual funds as recommended by the Respondent. The Respondent arranged for the distributions paid by the mutual funds to be deposited in the clients' bank account and advised the clients to use the distributions to make the monthly payments on the loans.

10. In the course of recommending the leverage investment strategy, the Respondent failed to accurately record certain KYC information on the clients' new account application forms and loan applications in order to increase the likelihood that the lenders would approve the clients' investment loans and the Member would approve the implementation of the leveraged investment strategy in the clients' accounts.

¹ When dealing with clients, the Respondent referred to the leverage investment strategy as the "Smith Manoeuvre".

11. The Respondent did not adequately explain to clients RG and AG the risks inherent in using borrowed monies to invest generally, or the risks specific to the leveraged investment strategy he recommended.

12. In the case of clients FL and SM, the leveraged investment strategy was unsuitable for the clients having regard to their personal and financial circumstances, including the clients' low investment risk tolerance, limited investment knowledge, and inability to make the payments on their investment loans without using their own monies in the event the leveraged investment strategy did not perform as the Respondent represented it would.

13. By late 2008 or early 2009, the unit values of the mutual funds purchased by the clients had declined and the distributions paid by the mutual funds to investors were reduced. The clients' portfolios declined significantly in value. This jeopardized the clients' financial security and caused them financial hardship.

Allegation #1 – Failure to Record Accurate KYC Information

14. Between September 2007 and January 2008, the Respondent failed to record accurate KYC information on new account application forms and loan application forms in respect of clients FL and SM and clients RG and AG. In particular, the Respondent: (a) misrepresented the clients' risk tolerance and investment knowledge; and (b) overstated the clients' income and assets.

15. The Respondent failed to learn, or otherwise ignored, the essential facts relative to each client necessary to ensure that his leverage recommendations were suitable for the clients. The Respondent presented the leveraged investment strategy to the clients and, if the clients agreed to proceed with the leveraged investment strategy, the Respondent populated the clients' new account applications and loan applications with KYC information which matched his recommendations and made his recommendations appear to be suitable for the clients. By engaging in this conduct, the Respondent made it more likely that lenders would approve the

clients' investment loans and the Member would approve the implementation of the leveraged investment strategy in the clients' accounts.

(a) Misrepresenting Risk Tolerance and Investment Knowledge

16. The Respondent populated the clients' new account application forms and loan applications forms with information, which did not accurately reflect the clients' personal and financial circumstances, as follows:

Client	Risk Tolerance	Investment Knowledge
FL and SM	Medium-high	Fair
RG and AG	Medium	Good

17. At the time the Respondent recorded the information on the clients' new account application forms and loan applications forms, he knew or ought reasonably to have known that all four clients had low risk tolerances. As described in greater detail in Allegation #2 below, the clients relied upon the Respondent's misrepresentations concerning the leveraged investment strategy and believed that the leveraged investment strategy was low risk.

18. At the time the Respondent recorded the information on the clients' new account application forms and loan applications forms, he also knew or ought reasonably to have known that none of the four clients had the recorded levels of investment knowledge. The clients were unsophisticated investors with limited or no investment knowledge.

(b) Overstating Income

19. The Respondent overstated the income on the loan application documents of the four clients, as follows:

Client	Date & Type of Form	Income Recorded	Actual Income
FL and SM	Investment Loan Application – September 26, 2007	\$63,500 + \$15,000 = \$78,5000 \$33,500 + \$22,000 = \$55,500 Total = \$134,000	\$100,000-\$125,000
RG and AG	Investment Loan	\$72,610 + \$19,200 + \$24,000	\$91,810

Client	Date & Type of Form	Income Recorded	Actual Income
	Application – December 31, 2007	Total = \$115,810	

20. The Respondent recorded the inflated income information for the four clients when he knew or ought reasonably to have known that their actual incomes were materially less.

(c) Overstating assets

21. The Respondent overstated the clients’ assets on the new account application forms and loan application forms of four clients, as follows:

Client	Date & Type of Form	Assets
FL and SM	NAAF – September 26, 2007	<ul style="list-style-type: none"> Asset (50% ownership of house) recorded as having a value of \$75,000, but house belonged to mother.
RG and AG	Investment Loan Application – December 31, 2007	<ul style="list-style-type: none"> Asset (property) recorded as having a value of \$30,000 was only worth \$20,000.

22. The Respondent overstated the clients’ assets on new account application forms and loan application forms when he knew or ought reasonably to have known that their actual assets were materially different.

23. The Respondent failed to perform the necessary due diligence to learn the essential facts relative to each client or, if he did perform the necessary due diligence, he chose to disregard, or failed to properly record, the information on the client’s new account application forms and loan application forms.

24. The clients signed the new account application forms and loan applications either prior to the Respondent populating the relevant KYC information on the documents or, if the clients signed the documents after the Respondent had populated the information on the documents, they did so relying on the Respondent’s representations, express or implied, that he had

populated the documents in a manner consistent with the information the clients had provided to him.

25. The Respondent did not review or explain the concepts (for example, risk tolerance) and information required to be filled in on the new account application forms and loan application forms with the clients sufficiently or at all in order to ensure the clients understood the concepts and information, the importance of recording it accurately, and its relevance to determining whether the leveraged investment strategy was suitable for them.

26. By misrepresenting the KYC information on the clients' new account application forms and loan application forms as described above, the Respondent presented a more favorable depiction of the clients' personal and financial circumstances to the Member and to the investment loan providers in a manner which increased the likelihood that the Member would not query or reject the leveraged investment strategies recommended by the Respondent to the clients, and the lenders would approve the clients' investment loan applications.

27. By engaging in the conduct described above, the Respondent failed to record accurate KYC information on new account application forms and loan applications forms in respect of the clients, thereby failing to use due diligence to learn the essential facts relative to each client and failing to observe high standards of ethics and practice in the conduct of business, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #2 – Failure to Explain Leveraged Investment Strategy

28. From about September to December 2007, 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 and its underlying investments that he recommended and implemented in the accounts of clients RG and AG.

29. In particular, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain:

- (a) the nature of the distributions that the ROC mutual funds paid to investors such that the clients were not aware that a substantial portion of the distributions paid to investors may consist of a return of the investors' own capital;
- (b) the risk that the ROC mutual funds might decline in value over time, particularly since the recommendation was that the clients would use the distributions paid to them by the ROC mutual funds to pay their investment loans or for discretionary expenses;
- (c) the risk that if the ROC mutual funds declined in value, the clients may not be able to redeem the ROC mutual funds to pay back the entirety of their investment loans or cover investment losses; and
- (d) the risk that the ROC mutual funds might reduce, suspend or cancel altogether the distributions paid to investors due to declining market conditions, poor investment performance or other factors, such that the clients would be forced to incur out-of-pocket expenses to make the payments on their investment loans and sustain the leveraged investment strategy.

30. During his discussions with clients RG and AG, the Respondent focused on the positive aspects of the leveraged investment strategy and did not disclose or discuss all of the attendant risks and potentially negative outcomes. The Respondent either did not disclose and discuss the likelihood of any risks materializing, or if he did discuss such risks and the likelihood of the risks materializing, he did so in a manner that downplayed the likelihood of the risks arising and the potential consequences for the clients if the risks did materialize.

31. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent presented and relied on documents which showed only positive financial outcomes, and contained no substantial information regarding possible risks or downsides of the leveraged investment strategy, such as investment losses or the possibility that the clients might be paid distributions by the ROC mutual funds that would be insufficient to cover the costs of servicing their investment loans.

32. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent also prepared and relied on personalized spreadsheets (“Spreadsheets”) for the clients that showed only positive financial outcomes, and did not contain information regarding possible risks or downsides of the leveraged investment strategy.

33. Specifically, the Spreadsheets used illustrations and calculations which:

- (a) assumed the ROC mutual fund would pay investors a monthly distribution of \$0.08 per unit without alerting the client of the potential risk (and negative impact) of the distributions being reduced or cancelled altogether; and
- (b) did not take into account any decreases in the value of the units of the ROC mutual funds which would reasonably be expected to occur as a result of high or unsustainable distribution payments to investors.

34. The Respondent did not present the leveraged investment strategy in the Spreadsheets he provided to clients RG and AG in a fair and balanced manner. The Respondent failed to include performance projections based on more conservative rates of return or declining market conditions, including a negative rate of return (i.e., investment losses), which would have demonstrated to the clients the potential range of outcomes that might arise if they chose to implement the leveraged investment strategy and in particular, the consequences if the leveraged investment strategy did not generate distributions sufficient to cover the clients’ costs of servicing their investment loans.

35. Based on the Respondent’s misrepresentations and omissions, the clients believed that:

- (a) the leveraged investments they purchased would increase in value significantly while also generating a continuous monthly cash flow;
- (b) the leveraged investment strategy was low risk and their investments were secure; and
- (c) they would not have to incur out-of-pocket expenses in order to implement and sustain the leveraged investment strategy in their accounts.

36. By misrepresenting, failing to fully and adequately explain, or omitting to explain the risks, benefits, material assumptions, features and costs of the leveraged investment strategy to two clients as described above, the Respondent failed to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3 – Unsuitable Leveraging Recommendations

37. In September 2007, the Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, that was not suitable for the clients having regard to the clients' KYC information and financial circumstances including:

- (a) the clients' low risk tolerance;
- (b) the clients' limited or total lack of investment knowledge;
- (c) the ability of the clients to afford the costs associated with the investment loans, regardless of the performance of the investments and without relying on anticipated income or gains from the investments;
- (d) the ability of the clients to withstand investment losses without jeopardizing their financial security if the leverage investment strategy did not perform as the Respondent represented it would.

38. As stated above, based upon the Respondent's recommendation, clients FL and SM borrowed \$120,000 in order to implement the leverage investment strategy. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount of \$121,000. At the time he recommended the investment loan to clients FL and SM, the Respondent believed that the clients were carrying too much debt. The Respondent nonetheless proceeded to recommended the investment loan and implement the leverage investment strategy anyway.

39. The Respondent's leverage recommendations resulted in the clients having loan-to-net-worth ratio of 153%².

40. The Respondent's leverage recommendation was unsuitable for clients FL and SM having regard to the resulting debt servicing obligations that would be imposed on the clients and the potential for the clients' obligation to repay the investment loans to erode a substantial portion, and potentially all, of the clients' net worth in the event the leveraged investment strategy did not perform as the Respondent represented it would.

41. In implementing the leveraged investment strategy, FL and SM were relying entirely upon the distributions generated by the ROC mutual funds to pay all of the costs of servicing their investment loans. They did not have the means to cover the costs of servicing the investment loans in the event the leveraged investment strategy did not perform as the Respondent represented it would.

42. As described in Allegation #1 above, clients FL and SM had limited or no investment knowledge, such that they were incapable of understanding and appreciating the potential risks of the leveraged investment strategy before agreeing to implement it in their accounts. As described in Allegation #2 above, the Respondent's conduct exacerbated the effect of client FL and SM's limited investment knowledge by leading the clients to believe, through his representations and omissions, that the leveraged investment strategy was a safe and secure manner of investing.

43. As described in Allegation #1, FL and SM had a low investment risk tolerance, such that the leveraged investment strategy generally exceeded the level of risk that they were willing to assume, notwithstanding that the Respondent recorded them as having a risk tolerance of "medium high". Moreover, based on the Respondent's representations, the clients understood that the leveraged investment strategy was low risk and secure.

² The loan to net worth ratios are excessive based on the clients' net worth calculated using the information recorded on the clients' KYC's. However, if the clients' loan to net worth ratios are calculated based on their actual net worth (as reported by the clients), the loan to net worth ratios are generally even higher, making the leveraged investment strategy even more unsuitable.

44. As a result of implementing the leveraged investment strategy, clients FL and SM incurred significant investment losses attributable to both a decline in the value of the investments they purchased and the distributions paid by these investments (which required the clients to draw on other sources of assets or income to sustain the leveraged investment strategy).

45. By engaging in the conduct described above, the Respondent failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

Investment Losses

46. Particulars of the four clients' investment losses will be provided prior to the hearing on the merits. These investment losses have jeopardized the financial security of the clients and caused significant financial hardship for them.

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: Lyla Simon
Fax: 416-361-9073
Email: lsimon@mfd.ca

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

- (a) providing four (4) copies of the **Reply** to the Office of 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 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.

DM 489926 v1