



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 Gerard Carney

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 September 13, 2016, 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 James Gerard Carney (the “Respondent”).

DATED this 28th day of June, 2016.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5143
Facsimile: 416-361-9781
Email: corporatesecretary@mfda.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 May 2012 and January 2014, the Respondent processed approximately 188 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to ten (10) clients, contrary to MFDA Rules 2.3.1 and 2.1.1; and

Allegation #2: Between August 13, 2013 and March 31, 2014, the Respondent processed 11 trades in the accounts of two (2) clients based on the request from someone other than the clients, contrary to MFDA Rules 2.3.1 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 May 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. (“Investors Group”), a Member of the MFDA.
2. From December 2008 to November 2012, the Respondent was registered as a branch manager with Investors Group in Ontario.
3. At all material times, the Respondent conducted business in the Brampton, Ontario area.

Allegation #1 – Authorized Discretionary Trading

4. Between May 2012 and January 2014, the Respondent processed approximately 188 trades in respect of ten (10) clients where he determined the amount and timing of the trades, thereby engaging in discretionary trading.

5. The Respondent states that he processed the discretionary trades to implement a dollar-cost averaging strategy. Dollar-cost averaging is a strategy whereby a client will make investments at periodic intervals in order to diversify the purchase price for a unit of a given mutual fund.

6. Under the strategy, the Respondent met with individual clients and determined which mutual funds the clients would purchase and what percentage of the clients' total investment would be allocated to each of the mutual funds (the "Target Portfolio").

7. Once the Respondent determined the Target Portfolio, he invested the client's monies in a money market mutual fund or deposited the monies in the client's account as cash. The Respondent then, at his discretion, periodically processed trades on behalf of the client by transferring the client's investment from the money market mutual fund or cash to the mutual funds that comprised the client's Target Portfolio (the "Transfers").

8. The Respondent periodically processed the Transfers until the client's entire investment was allocated in accordance with the agreed upon Target Portfolio. Generally, the Respondent would fully allocate the client's investment within several weeks to several months after the determination of the Target Portfolio.

9. The Respondent decided the particulars of each Transfer, including the date of the Transfer and the number of mutual fund units purchased by the client. The Respondent did not obtain the client's authorization prior to processing the Transfer, and the client did not determine the specific of elements of the Transfer. In some instances, the Respondent contacted the client after Transfers were processed in order to inform the client of the details of the Transfers.

10. By virtue of the foregoing, the Respondent engaged in discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1.

Allegation #2 – Trades Processed Based on Requests from Someone Other than the Client
Client TM

11. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client TM and her spouse, client RM.

12. On August 13, 2013, client RM contacted the Respondent's assistant and requested that the Respondent process a \$10,000 redemption from client TM's Tax Free Savings Account (the "TFSA") to pay personal expenses of clients TM and RM.

13. On August 13, 2013, the Respondent, acting on client RM's request, processed two (2) redemptions in client TM's TFSA in the amounts of \$5,178.96 and \$4,852.25.

14. The Respondent:

- (a) did not receive instructions from client TM to process the redemptions in her account;
- and
- (b) used his discretion to select which mutual funds would be redeemed.

15. There was no power of attorney or similar authorization from client TM on file that authorized the Respondent to process trades in any of client TM's accounts.

Client RD

16. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client RD, and her spouse, client DD.

17. On March 25, 2014, client DD contacted the Respondent and requested that approximately \$37,000 be redeemed from client RD's accounts to pay personal expenses of client RD.

18. Between March 25, 2014 and March 31, 2014, the Respondent, acting on client DD's request, processed 9 redemptions in 3 of client RD's accounts in the total amount of \$35,690.11. Without instructions from client RD, the Respondent used his discretion to select which mutual funds would be redeemed and the dates that the redemptions would occur.

19. There was no power of attorney or similar authorization from client RD on file that authorized the Respondent to process trades in any of client RD's accounts.

20. By virtue of the foregoing, the Respondent engaged in discretionary trading, contrary to MFDA Rules 2.3.1 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 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: Paul Blasiak
Fax: 416-361-9073
Email: pblasiak@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.

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