



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: Seongho (Steve) Park

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Pacific Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on February 22, 2023 at 10:00 a.m. (Pacific), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Seongho (Steve) Park (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 24th day of November, 2022.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
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 August 2016 and February 2019, the Respondent failed to use due diligence to learn and accurately record the residential address of a client on a new account application form, contrary to the Member’s policies and procedures and MFDA Rules 2.2.1¹, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

Allegation #2: Between August 2016 and May 2017, the Respondent opened a new Tax-Free-Savings-Account and processed mutual fund purchases on behalf of a client who was a non-resident of Canada, contrary to the policies and procedures of the Member, and MFDA Rules 2.2.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).

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 May 2016 to February 2019, the Respondent was registered in British Columbia as a dealing representative with BMO Investments Inc. (“BMOII”), a Member of the MFDA.
2. In February 2019, the Respondent resigned from BMOII and is currently registered with Royal Mutual Funds Inc., a Member of the MFDA.
3. At all material times, the Respondent conducted business in the North Vancouver, British Columbia area.

Allegations #1 and #2 – Failed to Accurately Record a Client’s Address, and Opened a TFSA and Processed Trades for a Non-Resident Client

4. At all material times, BMOII’s policies and procedures prohibited: (i) clients who did not reside in Canada from opening a new Tax Free Savings Account (“TFSA”); and (ii) clients who

¹ MFDA Rule 2.2.1 was amended multiple times including on December 13, 2005, December 3, 2010, December 3, 2011, February 22, 2013 and December 31, 2021. The conduct of the Respondent referred to in this Notice of Hearing contravened all versions of Rule 2.2.1 that were in force prior to and after the amendments that were made.

resided in the United States from opening new accounts or making any purchases or switches in their account, as follows:

A TFSA cannot be opened by a nonresident of Canada.

b) Out of country (foreign) investors

BMOII's mutual fund family is registered for sale across Canada, but has not been registered for sale in any other country. Although most countries do not have restrictions or regulations preventing the sale of mutual funds to their residents, some other countries have unique rules that forbid their residents from buying securities that are not registered in their country. Therefore, to avoid breaching international securities laws, if an investor is a nonresident (as determined by the primary address on their application), a RISR's decision as to whether to open an account or handle a trade should be based on the rules set out below:

Purchase and switch requests from out of country investors: Clients who opened a mutual fund account before relocating to another country may continue to hold or redeem their current investments.

Residents of the United States (U.S.), United Kingdom (U.K.), Hong Kong or Mainland China, may not open new accounts or make any purchases or switches in their account (including through Continuous Savings Plans).

5. On August 19, 2016, the Respondent met client SD at a branch of BMOII and assisted the client with opening a new TFSA.
6. During the August 19, 2016 meeting, the Respondent became aware that client SD was a resident of the United States.
7. The Respondent submitted the NAAF to open a TFSA for client SD. The NAAF recorded the primary address of client SD as an address in North Vancouver, British Columbia even though the Respondent was aware that client SD was a resident of the United States.
8. At the request of client SD, the Respondent then processed a \$46,500 contribution into the account and used the contributed amount to purchase the BMO Balanced EFT Portfolio.
9. During the August 19, 2016 meeting, the Respondent failed to ensure that client SD's primary address was accurately recorded on the NAAF to facilitate the opening of the account. This had the effect of concealing from the Member that client SD was a non-resident of Canada who was therefore not eligible to open a TFSA or make purchases in an investment account with the Member.

10. On April 18, 2017, the Respondent emailed client SD to report on the status of the client's account and informed the client that she had additional contribution room in her TFSA in the amount of \$5,500. The Respondent advised the client to utilize this room by making an additional TFSA contribution.
11. On May 16, 2017, the Respondent processed a deposit and an additional purchase of \$5,500 into the BMO Select Trust Balanced Portfolio in client SD's TFSA.
12. As noted in paragraph 4 above, the policies and procedures of BMOII indicated that a TFSA could not be opened for a non-resident of Canada and that purchases could not be processed in accounts of U.S. residents like client SD.
13. In October 2019, BMOII placed a lock on client SD's TFSA based on instructions it received from the Canada Revenue Agency ("CRA") resulting from a tax penalty that was imposed on client SD by the CRA as a result of her holding and contributing to a TFSA account while being a non-resident of Canada.
14. From 2016 until 2019, as noted above, the Respondent facilitated two purchases in client SD's TFSA contrary to the policies and procedures of the Member. As a consequence of opening and maintaining a TFSA for which she was not eligible as a non-resident, client SD incurred a tax penalty from the CRA.
15. On November 13, 2019, client SD complained to BMOII about the fact that she had incurred a financial penalty owed to the CRA because the Respondent had advised her to open a TFSA while she was a non-resident of Canada. Client SD asked BMOII to liquidate the TFSA so that the proceeds of the redemption could be used to pay the CRA. Client SD subsequently redeemed her holdings in her TFSA and applied the proceeds towards the payment of her tax penalty.
16. By virtue of the foregoing, the Respondent failed to use due diligence to learn and accurately record the residential address of a client on a new account application form, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).
17. By virtue of the foregoing, the Respondent opened a new Tax-Free-Savings-Account and processed mutual fund purchases on behalf of a client who was a non-resident of Canada, contrary

to the policies and procedures of the Member, and MFDA Rules 2.2.1, 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1).

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; and
- 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 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: Brendan Forbes
Email: bforbes@mfd.ca

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

- a) providing four 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 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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