



CIRO · OCRI

Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Notice of Hearing

File No. 202420

IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
Michael Rolland Smith

NOTICE OF HEARING

NOTICE is hereby given that a disciplinary proceeding has been commenced by the Canadian Investment Regulatory Organization (“**CIRO**”) against Michael Rolland Smith (the “**Respondent**”). The first appearance will take place by videoconference before a hearing panel of the Nova Scotia District Hearing Committee of CIRO (the “**Hearing Panel**”) on November 12, 2024, at 10:00 a.m. (Atlantic) or as soon thereafter as the hearing can be held. The Hearing on the Merits will take place by videoconference at a time and venue to be announced. Members of the public who would like to attend the first appearance by videoconference as an observer should contact hearings@ciro.ca to obtain particulars.

DATED this 18th day of September 2024.

“Michelle Pong”

Michelle Pong
Director, Hearings

Canadian Investment Regulatory
Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Telephone: 416-945-5846
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NOTICE is further given that CIRO alleges the following violations of the MFDA Rules and Mutual Fund Dealer Rules:

Allegation #1: Between January 2017 and May 2023, the Respondent misappropriated or otherwise obtained monies from a client, some or all of which he did not repay, contrary to MFDA Rules 2.1.1 or 2.1.4.¹

Allegation #2: On or about March 17, 2022, the Respondent changed the designated beneficiary for a client's mutual fund accounts to the Respondent's family members, contrary to Mutual Fund Dealer Rules 2.1.1 or 2.1.4(2).

Allegation #3: Commencing on July 31, 2024, the Respondent failed to cooperate with an investigation into his conduct by CIRO Staff, contrary to Mutual Fund Dealer Rule 6.2.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by CIRO at the hearing:

Overview

1. Between March 2017 and May 2023, the Respondent misappropriated or otherwise obtained approximately \$460,126 from client BR, some or all of which he has not repaid. The Respondent processed approximately 236 mutual fund redemptions and 200 electronic cash withdrawals from client BR's accounts and directed the proceeds to the Respondent's bank account. In addition, between May 2018 and November 2019, by changing client BR's banking information recorded with the Dealer Member to the Respondent's bank account, the Respondent received payouts from client BR's Registered Retirement Income Fund Account (the "RRIF"). The mutual fund redemptions, electronic cash withdrawals,

¹ On June 30, 2021, amendments to MFDA Rule 2.1.4 came into effect. As the misconduct that is the subject of Allegation #1 commenced prior to these amendments, the version of MFDA Rule 2.1.4 in effect prior to June 30, 2021 applies to Allegation #1.

and the changes to client BR's banking information recorded with the Dealer Member were done by the Respondent without client BR's knowledge or authorization.

2. Between 2017 and 2018, the Respondent received four blank cheques from client BR, which the Respondent used to obtain a further \$26,500 from the client.

3. In 2022, the Respondent changed the beneficiary designation for two of client BR's accounts to the Respondent's own family members, such that the Respondent's family members would receive the amounts held in the investment accounts in the event of client BR's death.

4. Between January 2024 and July 2024, CIRO Staff ("**Staff**") made multiple attempts to obtain documents and information from the Respondent during Staff's investigation into the Respondent's conduct described herein. The Respondent failed to provide Staff with the documents and information, thereby failing to cooperate with Staff's investigation.

Registration History

5. Between January 16, 2012 and May 24, 2023, the Respondent was registered as a dealing representative in Nova Scotia and New Brunswick with Investors Group Financial Services Inc. (the "**Dealer Member**"), a Dealer Member of CIRO (formerly a Member of the MFDA).

6. On May 24, 2023, the Dealer Member terminated the Respondent as a result of the conduct that is the subject of this proceeding, and the Respondent is not currently registered in the securities industry in any capacity.

7. At all material times, the Respondent conducted business in the Amherst, Nova Scotia area.

Allegation #1 - Misappropriation

8. At all material times, the Dealer Member's policies and procedures prohibited its Approved Persons from: (a) misappropriating client monies; (b) linking a client's account with the Approved Person's bank account; (c) borrowing from clients; and (d) receiving monetary gifts from clients.

9. At all material times, client BR was a client of the Dealer Member whose accounts were serviced by the Respondent.

10. At the time the misconduct described below commenced, client BR was 74 years old, retired, and held approximately \$170,000 in a non-registered account and \$450,000 in two registered accounts with the Dealer Member. At around the time the Respondent's misconduct was discovered, the balance remaining in client BR's non-registered account and registered accounts was approximately \$54 and \$111, respectively.

11. Between March 2017 and May 2023, the Respondent processed 236 mutual fund redemptions and 200 electronic cash withdrawals from client BR's accounts.² In each instance, the Respondent directed the proceeds of redemption and the electronic cash withdrawals to the Respondent's bank account by submitting to the Dealer Member a banking customer account information form that falsely portrayed the Respondent's bank account as belonging to client BR.³

12. In addition, between May 2018 and November 2019, by changing the banking information for client BR recorded with the Dealer Member to the Respondent's bank

² Beginning in November 2019, client BR's investment accounts were changed to nominee accounts, such that proceeds of redemption were placed as cash in the investment accounts, necessitating cash withdrawals for the Respondent to obtain the money.

³ Between March 2017 and May 2018, the Respondent used the false banking customer account information form to submit "one-time" instructions with each unauthorized redemption to direct the proceeds to the Respondent's bank account. In May 2018, the Respondent used the same false form to change client BR's banking information with the Dealer Member from client BR's bank account to the Respondent's bank account on a go-forward basis.

account, the Respondent received monies resulting from payouts from client BR's RRIF account.

13. In total, the Respondent obtained \$460,126.47.

14. All the mutual fund redemptions and electronic cash withdrawals described above, the change to client BR's banking information with the Dealer Member, and the Respondent's receipt of the payout from the RRIF was done without client BR's knowledge or authorization.

15. The Respondent provided client BR with two false account statements covering the periods between July 1, 2022 through September 30, 2022 and October 1, 2022 through December 31, 2022, respectively, which falsely showed \$260,000 in investments in client BR's non-registered account that in reality did not exist.

16. Between 2017 and 2018, the Respondent received four blank signed cheques from client BR, which client BR provided to make investments with the Dealer Member. The Respondent completed the cheques and, without client BR's knowledge or authorization, placed the Respondent's name as the payee. The Respondent deposited the cheques, which totaled \$26,500, into the Respondent's bank account.

17. In addition to the loss of the \$486,626.47 due to the Respondent's conduct described above, client BR also suffered tax expenses of \$41,578.50 and deferred sales charges of \$1,678.20 as a result of the Respondent's unauthorized redemptions.

18. By engaging in the conduct described above, the Respondent acted contrary to MFDA Rule 2.1.1.

19. To the extent the mutual fund redemptions and electronic cash withdrawals described above were authorized by client BR and the amounts received by the Respondent were loans or gifts, the Respondent's conduct gave rise to a conflict or potential conflict of interest that the Respondent failed to disclose to the Dealer Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client.

20. By engaging in the conduct described above, the Respondent acted contrary to MFDA Rule 2.1.4.

Allegation #2 – Beneficiary Designations

21. At all material times, the Dealer Member's policies and procedures required that its Approved Persons identify, report to the Dealer Member, and address in the best interest of the client all existing and reasonably foreseeable conflicts of interest.

22. On or around March 17, 2022, the Respondent completed and submitted for processing two account forms to change the beneficiary of client BR's two registered accounts from client BR's cousin to the Respondent's wife, son, and daughter.

23. Client BR had no knowledge and did not authorize the Respondent to change the beneficiaries of client BR's accounts.

24. By adding the Respondent's family members as beneficiaries to client BR's accounts, the Respondent's conduct gave rise to a material conflict of interest that the Respondent failed to identify, report to the Dealer Member, or otherwise address in the best interest of the client.

25. By engaging in the conduct described above, the Respondent acted contrary to Mutual Fund Dealer Rules 2.1.1 or 2.1.4(2).

Allegation #3 – Failure to Cooperate

26. On May 16, 2023, Staff commenced an investigation into the Respondent's conduct after receiving a complaint made on client BR's behalf by client BR's accountant concerning among other things, that client BR's investment accounts appeared to have been depleted.

27. On January 24, 2024, Staff interviewed the Respondent, during which he undertook to provide certain documents and information (the “**undertakings**”) following the interview.

28. Between January 26, 2024 and July 17, 2024, Staff made multiple requests to the Respondent that he satisfy the undertakings as well as provide additional information and documents, including the Respondent's bank records.

29. Despite Staff's repeated requests and repeated extensions granted to the Respondent, the Respondent failed to satisfy the undertakings or provide the additional documents and information requested by Staff. As a result, Staff has been unable to determine the full nature and extent of the Respondent's conduct, including whether the Respondent may have misappropriated money from other clients.

30. As a result of the foregoing, the Respondent failed to cooperate with an investigation into the Respondent's conduct by Staff, contrary to Mutual Fund Dealer Rule 6.2.1.

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 pursuant to Mutual Fund Dealer Rule 1A that any person subject to the jurisdiction of the Mutual Fund Dealers Association of Canada prior to January 1, 2023 remains subject to the jurisdiction of CIRO in respect of any action or

matter that occurred while that person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada at the time of such action or matter.

NOTICE is further given that the Mutual Fund Dealer Rules provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with CIRO;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Dealer Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of the Mutual Fund Dealer Rules of CIRO;
- has engaged in any business conduct or practice which such Hearing Panel 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 Hearing Office within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Attention: Alan Melamud
Email: amelamud@ciro.ca

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

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

Canadian Investment Regulatory Organization
40 Temperance Street, Suite 2600
Toronto, ON M5H 0B4
Attention: Hearings Office; or

(b) transmitting 1 electronic copy of the **Reply** to the Hearing Office by e-mail at hearings@ciro.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 CIRO in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by CIRO 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 CIRO 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 CIRO in the Notice of Hearing as having been proven and may impose any of the penalties described in the Mutual Fund Dealer Rules.

End.

iM# 1521340

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.