

Re Nicholson

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Gordon Keith Nicholson

2024 CIRO 81

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: November 1, 2024, by electronic hearing in Toronto, Ontario

Decision: November 1, 2024

Reasons for Decision: November 24, 2024

Hearing Panel:

Paul M. Moore, K.C. Chair

Robert White, Industry Representative

Melody Potter, Industry Representative

Appearances:

Maria Di Clemente, Enforcement Counsel for CIRO

Gordon Keith Nicholson, Respondent

REASONS FOR DECISION

The Proceeding

¶ 1 By Notice of Hearing issued June 17th, 2024, the Canadian Investment Regulatory Organization (“CIRO”) commenced a disciplinary proceeding against Gordon Keith Nicholson (the “Respondent”) for misconduct under CIRO’s Mutual Fund Dealer Rule 2.1.1.

Settlement Agreement

¶ 2 Staff of CIRO (“Staff”) and the Respondent entered into a Settlement Agreement dated October 23rd, 2024 (the “Settlement Agreement”) in which the Respondent admitted to the following contravention of Mutual Fund Dealer Rule 2.1.1:

Between April 9, 2020 and December 29, 2021, the Respondent signed the signatures of 13 clients on 19 account forms and submitted them to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

¶ 3 A copy of the Settlement Agreement is attached to these reasons.

Facts

¶ 4 The relevant facts are set out in Section IV of the Settlement Agreement.

Sanctions

¶ 5 The Respondent agreed, as part of the Settlement Agreement, to:

a) be prohibited from conducting securities related business in any capacity while in the employ of

or associated with any Dealer Member of CISO for a period of six months, commencing on the date that this Settlement Agreement is accepted by a Hearing Panel;

- b) pay a fine in the amount of \$7,500 according to the schedule set out in the Settlement Agreement; and
- c) pay costs in the amount of \$1,000 upon acceptance of the Settlement Agreement.

Acceptance by the Hearing Panel

¶ 6 At the hearing on November 1, 2024, after reviewing the Settlement Agreement and the written submission of Staff, the Hearing Panel accepted the Settlement Agreement.

Reasons

¶ 7 The Hearing Panel concluded that the conduct of the Respondent outlined in the Settlement Agreement was in contravention of Rule 2.1.1.

¶ 8 The Hearing Panel accepted the Settlement Agreement because it was reasonable, fair, and in the public interest to do so for the following reasons:

- i) the agreed sanctions:
 - a) fell within a reasonable range of appropriateness having regard to the nature and extent of the misconduct admitted by the Respondent;
 - b) were consistent with sanctions imposed in similar cases reviewed by the Hearing Panel; and
 - c) were sufficiently impactful on the Respondent as a deterrent, in view of the financial circumstances of the Respondent, his ability to pay, and the fact he was no longer registered in the securities industry;
- ii) the Respondent's clients suffered no financial loss;
- iii) there was no lack of client authorisation for transactions relating to the forms;
- iv) the Respondent did not profit financially from the misconduct;
- v) there were no prior regulatory proceedings by the Mutual Fund Dealers Association or CISO against the Respondent;
- vi) the Respondent facilitated a speedy resolution of this proceeding;
- vii) the sanctions provided a general deterrent as a warning for other members of the mutual fund investment advisor community against undertaking similar misconduct;
- viii) the costs amount was reasonable;
- ix) the payment schedule for payment of the fine and costs set out in the Settlement Agreement was reasonable; and
- x) acceptance by the Hearing Panel in these circumstances was in accordance with CISO's regulatory objective of protecting the investing public.

Dated at Toronto, Ontario this 24 day of November 2024.

"Paul M. Moore"

Paul M. Moore, Chair

"Robert White"

Robert White, Industry Representative

"Melody Potter"

Melody Potter, Industry Representative

IN THE MATTER OF:

The Mutual Fund Dealer Rulesⁱ

and

Gordon Keith Nicholson

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA (“CIRO”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Ontario District Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Gordon Nicholson (the “Respondent”).

¶ 2 Staff and the Respondent consent and agree to the terms of this Settlement Agreement.

¶ 3 Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

¶ 4 The Respondent admits to the following violations of the Mutual Fund Dealer Rules:

Between April 9, 2020 and December 29, 2021, the Respondent signed the signatures of 13 clients on 19 account forms and submitted them to the Dealer Member for processing, contrary to the Dealer Member’s policies and procedures and Mutual Fund Dealer Rule 2.1.1.

III. TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO for a period of six months, commencing on the date that this settlement agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);
- b) the Respondent shall pay a fine in the amount of \$7,500 in certified funds, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);
- c) the Respondent shall pay costs in the amount of \$1,000 in certified funds, pursuant Mutual Fund Dealer Rule 7.4.2;
- d) the payment by the Respondent of the fine and costs described above in subparagraphs (b) and (c) shall be in certified funds as follows:
 - i) \$1,000 (costs) and \$1,500 (fine) shall be paid upon acceptance of the Settlement Agreement;
 - ii) \$750 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement;
 - iii) \$750 (fine) shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement;

- iv) \$750 (fine) shall be paid on or before the last business day of the ninth month following the acceptance of the Settlement Agreement;
- v) \$750 (fine) shall be paid on or before the last business day of the twelfth month following the acceptance of the Settlement Agreement;
- vi) \$750 (fine) shall be paid on or before the last business day of the fifteenth month following the acceptance of the Settlement Agreement;
- vii) 750 (fine) shall be paid on or before the last business day of the eighteenth month following the acceptance of the Settlement Agreement;
- viii) \$750 (fine) shall be paid on or before the last business day of the twenty-first month following the acceptance of the Settlement Agreement;
- ix) \$750 (fine) shall be paid on or before the last business day of the twenty-fourth month following the acceptance of the Settlement Agreement.

if the Respondent fails to make any of the payments of the costs and fine described above in subparagraph (d) when the payments become due, then any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to CIRO;

the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1; and

the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

¶ 6 The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

¶ 7 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein.

IV. AGREED FACTS

Registration History

¶ 8 Between January 16, 2019 and May 2, 2022, the Respondent was registered in Ontario as a dealing representative with BMO Investments Inc. (the "Dealer Member"), a Dealer Member of CIRO (formerly a Member of the MFDA).

¶ 9 On May 2, 2022, the Dealer Member terminated the Respondent as a result of the conduct described herein, and the Respondent is currently not registered in the securities industry in any capacity.

¶ 10 At all material times, the Respondent conducted business in the Guelph, Ontario area.

The Respondent Signed Client Signatures

¶ 11 At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from signing a client's name or initials on a document.

¶ 12 Between April 9, 2020 and December 29, 2021, the Respondent signed the signatures of 13 clients on 19 account forms and submitted them to the Dealer Member for processing. The account forms consisted of:

- seven Tax Free Savings Account ("TFSA") Additional Purchase forms;
- two TFSA Redemption forms;
- one TFSA Continuous Savings Plan Update form;
- eight Registered Retirement Savings plan Additional Purchase forms; and

- one TFSA Reinvestment/Exchange form.

The Dealer Member's Investigation

¶ 13 In December 2021, the Dealer Member initiated a review of client files maintained by the Respondent's after it received a report from the Respondent's branch of a suspected falsified client signature on one of the account forms described above.

¶ 14 During its review, the Dealer Member discovered the remaining account forms described above.

¶ 15 The Dealer Member contacted the affected clients and confirmed that the underlying transactions were all authorized.

¶ 16 On May 2, 2022, the Dealer Member terminated the Respondent as a result of the conduct described herein.

Additional Factors

¶ 17 There is no evidence of client financial loss or lack of authorization for the underlying transactions, and no clients have complained to Staff or the Dealer Member.

¶ 18 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

¶ 19 The Respondent states that he has a modest income, and the cost to maintain his liabilities and expenses exceed his monthly income. Given the Respondent's limited financial means, the Respondent states that he is unable to pay a fine and costs greater than the total set out in this Settlement Agreement. The Respondent has provided evidence to Staff to corroborate his financial circumstances.

¶ 20 By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources and expenses that would have otherwise been necessary to conduct a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

¶ 21 This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

¶ 22 The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to Mutual Fund Dealer Rule 7.3.5 and Rule 15.2(2) of the Mutual Fund Dealer Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.ciro.ca.

¶ 23 The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions, or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

¶ 24 Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the Mutual Fund Dealer Rules of Procedure;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal, including before the Board of Directors of CIRO or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings

in respect of any contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with Mutual Fund Dealer Rule 7.4.5; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

¶ 25 If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the Hearing Panel that accepted the Settlement Agreement, if available.

¶ 26 If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

¶ 27 The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 28 The Settlement Agreement may be signed in one or more counterparts, which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 23rd day of October, 2024

“Gordon Nicholson”

Gordon Nicholson

“Witness”

Witness - Signature

“Witness”

Witness - Print name

“Maria Di Clemente”

Maria Di Clemente

Enforcement Counsel, CIRO

Copyright © 2024 Canadian Investment Regulatory Organization. All Rights Reserved

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 that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”) and is recognized under applicable securities legislation.

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. 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.