

Re Somers

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Jennifer Nicole Somers

2025 CIRO 11

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: January 17, 2025, in Toronto, Ontario (via videoconference)

Decision: January 17, 2025

Reasons for Decision: February 7, 2025

Hearing Panel:

Emily Cole, Chair

Linda Anderson, Industry Representative

Dave Persaud, Industry Representative

Appearances:

Paul Blasiak and Tyler Beazer, Enforcement Counsel

Christopher Justice, Counsel for the Respondent

Jennifer Nicole Somers, Respondent (present)

REASONS FOR DECISION

I. REASONS FOR DECISION

[1] On January 1, 2023, the Mutual Fund Dealers Association (MFDA) and the Investment Industry Regulatory Organization of Canada (IIROC) merged to form the Canadian Investment Regulatory Organization (CIRO). Under CIRO's transitional provisions, the conduct addressed by these reasons remains subject to the rules and bylaws of the MFDA that were in force at the time the conduct occurred.

II. OVERVIEW

[2] The Panel found that the Respondent, Jennifer Nicole Somers contravened Dealer Member policies and procedures and MFDA Rules by processing transactions and completing Know Your Client information for three clients using information already on file with the Dealer without having met or communicated with them. The Respondent also sent account forms with this KYC information on file at the Dealer to the clients' former representative who was then unregistered.

[3] After considering the nature and extent of the misconduct the panel found that the proposed sanctions including a four-month prohibition from conducting securities related business in any capacity while in the employ of or associated with any CIRO Dealer Member, a \$10,000 fine and \$2,500 costs fell within a reasonable range of appropriateness.

[4] These are the reasons for our decision:

III. CONTRAVENTIONS

- [5] The Respondent admits to the following violations of the Mutual Fund Dealer Rules:
- a) In August 2022, the Respondent processed transactions and completed Know Your Client information for clients without having met or communicated with any of the clients, contrary to Mutual Fund Dealer Rules 2.2.1 and 2.1.1; and
 - b) In August 2022, the Respondent sent client information to an unregistered individual without the consent of the clients, contrary to Mutual Fund Dealer Rule 2.1.3.

IV. PROPOSED SANCTIONS

- [6] Staff and the Respondent agreed and consented to the following sanctions:
- a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any CISO Dealer Member for a period of four 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 \$10,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
 - c) the Respondent shall pay costs in the amount of \$2,500, pursuant to Mutual Fund Dealer Rule 7.4.2, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
 - d) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.2.1, 2.1.1 and 2.1.3.

V. AGREED FACTS

- [7] The Panel relied on the Agreed Facts set out in the Settlement Agreement attached. The key facts are summarized in these reasons.

VI. ANALYSIS

JURISDICTION OF THE HEARING PANEL

- [8] A hearing panel is authorized to either accept or reject a settlement agreement.

Mutual Fund Dealer Rule 7.4.4.3

- [9] The role of a hearing panel in reviewing a settlement agreement is to determine whether the proposed penalties agreed to by Staff and the Respondent fall within a reasonable range of appropriateness – not to determine what the correct penalty is, in its view. A hearing panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

Milewski (Re), [1999] I.D.A.C.D. No. 17.

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16 at para. 37.

- [10] Settlements provide an effective and efficient way of addressing misconduct in the securities industry. When the parties can agree upon appropriate sanctions, settlements can provide certainty, save time, and conserve the regulator’s limited resources. Respondents who take responsibility and admit their misconduct are more likely to comply with the sanctions imposed. This helps CISO meet its primary objective of investor protection.

British Columbia Securities Commission v. Seifert, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), *aff’d* [2007] B.C.J. No. 2186 at para. 31 (C.A.).

[11] The Panel considered the Respondent's conduct, the mitigating and aggravating factors and the comparable cases and determined that the proposed sanctions fall within a reasonable range of appropriateness.

The Respondent's Misconduct was a Serious Lapse in Judgment

[12] Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

Mutual Fund Dealer Rule 2.1.1

[13] The Respondent's misconduct was a serious lapse in judgment. After 16 unblemished years of experience in the securities industry the Respondent was approached by KH, a former Approved Person with the Dealer and asked to process certain transactions KH had neglected to process before resigning.

[14] The Respondent and KH were acquaintances and former colleagues who both started with the Dealer in July 2014. The Respondent agreed to help.

[15] The Respondent recorded notes on the Dealer Member's system which falsely stated that, she had spoken over the phone with two of the clients to discuss the transactions that she had processed in their accounts. The Panel considered this an aggravating factor.

[16] The Dealer determined through a subsequent investigation that the clients had in fact authorized the transactions.

[17] At the hearing the Respondent told the panel that she was trying to help the clients. She did not act with ill will or malice. With hindsight, she could clearly see her error and said that she deeply regretted her actions.

[18] Previous Hearing Panels have held that where an Approved Person processes trades in the client's account without communicating directly with the client, the Approved Person has acted contrary to the Know-Your-Client obligations in Rule 2.2.1 and the standard of conduct in Rule 2.1.1.

Hagerman (Re), [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202021, Panel Decision dated September 25, 2020, at para. 11.

[19] An Approved Person is not permitted to process transactions for a client based on investment instructions that were obtained by an unregistered individual. When this occurs, the Approved Person loses the ability to ensure that the client has properly authorized the trading activity in their account and is left unaware of what representations were made by the unregistered individual to the client. In addition, the Dealer Member, unaware that the Approved Person has not communicated with the client, is misled into thinking that the client has at all times been dealing with a properly qualified Approved Person who is bound by all CISO requirements and subject to the Dealer Member's policies and procedures.

Roche (Re), [2014] Hearing Panel of the Prairie Regional Council, MFDA File No. 201420, Panel Decision dated November 17, 2014, at para. 9.

The Technical Breach of Rule 2.1.3

[20] Mutual Fund Dealer Rule 2.1.3 states:

Confidential Information

All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons and other employees and agents. No such information shall be disclosed to any other person or used for the advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by

legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested.

[21] The Panel found that the Respondents' actions described below technically contravened Rule 2.1.3.

[22] In assessing the Rule 2.1.3 breach it is important to closely examine the facts. The Respondent admitted that she:

- (i) emailed six account forms which contained the personal and financial information of three clients to the personal email address of KH (who was no longer registered), and
- (ii) failed to obtain the consent of any of the clients to send their personal and financial information to KH, which was contrary to the Dealer Member's policies and procedures.

[23] The Respondent sent clients' personal and financial information which was on file at the Dealer to KH who had assisted these clients until KH's recent resignation. It is reasonable to infer that the personal and financial information was collected by KH and therefore known to KH.

[24] An Approved Person's duty to keep clients' personal and financial information confidential continues after their resignation. There was no evidence the clients' confidential information was disclosed to a third party or used for the advantage of the Member or anyone else. This is a much less serious breach of Rule 2.1.1. than sending clients' confidential information to a 3rd party unregistered person.

VII. MITIGATING FACTORS

[25] The Hearing Panel also considered the following mitigating factors:

- a) There was no financial benefit to the Respondent.
- b) The clients did not suffer any financial harm.
- c) The clients had authorized the transactions.
- d) The Respondent expressed remorse and cooperated fully with Staff;
- e) The Respondent addressed the panel at her hearing and apologized to the securities industry.
- f) The Respondent has not previously been the subject of CIRO disciplinary proceedings and,
- g) By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources, and expense associated with conducting a contested hearing of the allegations.

VIII. COSTS

[26] The costs award is appropriate and consistent with previous decisions.

IX. CONCLUSION

[27] We are satisfied that the proposed sanctions, including a four-month suspension from conducting securities related business in any capacity, a \$10,000 fine and \$2,500 costs will serve as specific deterrence to the Respondent, Jennifer Nicole Somers, and general deterrence to others in the industry who may contemplate engaging in similar misconduct in the future.

[28] Staff provided three comparable cases, two of which addressed similar misconduct: *Hagerman (Re)*, *supra* and *Roche (Re)*, *supra*.

[29] Based on a review of these cases and taking into consideration the Respondent's conduct, the aggravating and mitigating factors discussed above, we are satisfied the proposed sanctions fall within a reasonable range of appropriateness.

[30] We therefore accepted the Settlement Agreement and made an order reflecting the agreed upon sanctions against the Respondent, Jennifer Nicole Somers.

DATED at Ontario, this 7th day of February, 2025

Re Somers 2025 CIRO 11

“Emily Cole”

Emily Cole, Chair

“Linda Anderson”

Linda Anderson, Industry Representative

“Dave Persaud”

Dave Persaud, Industry Representative



CIRO · OCRI

Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Settlement Agreement

File No. 202425

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
Jennifer Nicole Somers**

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 Hearing Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Jennifer Nicole Somers (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:

- (a) In August 2022, the Respondent processed transactions and completed Know Your Client information for clients without having met or communicated with any of the clients, contrary to Mutual Fund Dealer Rules 2.2.1 and 2.1.1; and

- (b) In August 2022, the Respondent sent client information to an unregistered individual without the consent of the clients, contrary to Mutual Fund Dealer Rule 2.1.3.

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 CIRO Dealer Member for a period of four 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 \$10,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (c) the Respondent shall pay costs in the amount of \$2,500, pursuant to Mutual Fund Dealer Rule 7.4.2, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (d) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.2.1, 2.1.1 and 2.1.3; and
- (e) the Respondent shall attend 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 CIRO Hearing Office 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. The Respondent was registered in the securities industry commencing in 2006.

9. Between July 2014 and October 5, 2022, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the “Dealer Member”), a Dealer Member of CIRO (formerly a Member of the MFDA).

10. On October 5, 2022, the Dealer Member terminated the Respondent as a result of the conduct described herein.

11. The Respondent is not currently registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business in the Sarnia, Ontario area.

Failing to Know Clients

13. Between July 2014 and July 26, 2022, KH was an Approved Person registered with the Dealer Member.

14. On July 26, 2022, KH resigned from the Dealer Member, and is not currently registered in the securities industry in any capacity.

15. At all material times, the Respondent and KH were acquaintances.

16. At the time of the misconduct described herein, the Respondent was aware that KH was no longer registered with the Dealer Member.

17. In August 2022, following her resignation from the Dealer Member, KH contacted the Respondent and informed the Respondent that KH had forgotten to process certain transactions (the “Transactions”) prior to KH’s resignation from the Dealer Member in the accounts of client TC and clients RD and SD (spouses) (collectively, the “Clients”).
18. KH requested that the Respondent process the Transactions.
19. The Respondent had never met or communicated with the Clients.
20. KH advised the Respondent that KH would obtain the Clients’ signatures on account forms (the “Account Forms”) that were required to process the Transactions, and that she would return the signed Account Forms to the Respondent.
21. The Respondent agreed to process the Transactions for the Clients, and provide the Account Forms to KH to obtain the Clients’ signatures.
22. On August 15, 2022, without having met or communicated with any of the Clients, the Respondent processed the Transactions in the Clients’ accounts. The Transactions consisted of:
 - (a) three redemptions from client TC’s accounts in the amounts of approximately \$754, \$756, and \$759;
 - (b) updates to the income distribution instructions that were on file at the Dealer Member for client TC’s accounts; and
 - (c) setting up a Systematic Withdrawal Plan to redeem approximately \$2,052 per month from the joint account of clients RD and SD.
23. The Respondent recorded notes on the Dealer Member’s system which falsely stated that, on August 15, 2022, she had spoken over the telephone with clients TC and RD to discuss the Transactions that she had processed in their accounts.
24. The Respondent:
 - (a) failed to discuss or review the Transactions, the Account Forms, or the Clients’ Know-Your-Client (“KYC”) information with the Clients; and
 - (b) did not obtain any investment directions directly from the Clients.

25. On August 15, 2022, the Respondent emailed six Account Forms to KH's personal email address so that KH could obtain the Clients' signatures on the Account Forms and return them to the Respondent.

26. Three of the Account Forms contained client TC's KYC information. In order to complete the Account Forms, the Respondent relied on KYC information that was already on file at the Dealer Member for client TC. The Respondent never contacted client TC to confirm whether the KYC information was accurate.

27. The Account Forms contained the Clients' personal and financial information including their names, addresses, telephone numbers, account numbers and KYC information. The Respondent failed to obtain the consent of any of the Clients to send their personal and financial information to KH, which was contrary to the Dealer Member's policies and procedures.

28. On August 18, 2022, KH returned all but one of the Account Forms containing the purported signatures of clients TC and RD to the Respondent.¹

29. The Respondent then signed the Account Forms and submitted them to the Dealer Member.

30. Unbeknownst to the Respondent at the time, KH had falsified the signatures of clients TC and RD on the Account Forms.

31. By processing the Transactions and submitting the Account Forms to the Dealer Member without having met or communicated with any of the Clients, the Respondent failed to:

(a) learn the essential facts relative to the Clients; and

(b) ensure that the Transactions were properly authorized by the Clients.

Additional Factors

32. Through the Dealer Member's investigation into the Respondent's conduct, it was determined that the transactions processed by the Respondent described above were authorized by the Clients, but they did not sign the Account Forms.

¹ One of the Account Forms pertained to a joint account held by clients RD and SD, and accordingly it did not require client SD's signature.

33. The Respondent did not receive any financial benefit as a result of the conduct described herein.

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

35. By entering into the Settlement Agreement, the Respondent has saved CIRO the time, resources and expenses associated with conducting a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

36. 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.

37. 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.

38. 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.

39. 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 CISO 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 facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and 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.

40. 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.

41. 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.

42. 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.

43. 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 12th day of November, 2024.

“Jennifer Nicole Somers”
Jennifer Nicole Somers

“Witness”
Witness - Signature

“Witness”
Witness - Print name

“Paul Blasiak”
Staff of the Canadian Investment Regulatory Organization
Paul Blasiak, Senior Enforcement Counsel

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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.