



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: Matthew James Ewonus

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 December 6, 2022 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 Matthew James Ewonus (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 9th day of September, 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 March 23, 2020 and March 24, 2020, the Respondent offered compensation to a client in response to a complaint without the prior written consent of the Member, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.1.4¹, 1.1.2 (as it relates to Rule 2.5.1), and MFDA Policy No. 3.

Allegation #2: Between March 23, 2020 and March 24, 2020, the Respondent provided a guarantee to a client of a specific result that she would receive from her investments, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.1.4, and 1.1.2 (as it relates to Rule 2.5.1).

Allegation #3: Between March 30, 2020 and October 9, 2020, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct, contrary to the Member's policies and procedures and MFDA Rule 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 November 8, 2001, the Respondent has been registered in British Columbia as a dealing representative with Sun Life Financial Services Inc. (the "Member"), a Member of the MFDA.
2. At all material times, the Respondent conducted business in the Kelowna, British Columbia, area.

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Notice of Hearing pre-dated the amendment to this Rule, all allegations set out in this Notice of Hearing that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

The Member's Policies and Procedures

3. At all material times, the Member's policies and procedures provided:

Non-monetary benefits such as gifts or charitable donations cannot be used to circumvent guidelines and rules. For example, they may be used by an advisor to negotiate a private monetary or non-monetary settlement aimed at concealing a breach of MFDA requirements on their behalf. Any compensation to a client for a client referral must flow through [the Member]. Therefore, all monetary and non-monetary benefits provided directly or indirectly to or from clients must flow through the ["Member"]; and

...All financial result strategies, market-related information and forward-looking projections that advisors use for communication purposes, whether verbal or written, should come out of one of Sun Life Financial and its subsidiaries approved statements...

Allegations #1 and #2 – Offering Compensation to a Client Without Member Consent and Providing a Guarantee to a Client of a Specific Investment Result

4. At all material times, client CM was a client of the Member, and the Respondent was the Approved Person responsible for servicing her account.

5. On March 19, 2020, client CM sent an email to the Respondent in which she instructed him to “cash out” all of her accounts “immediately”. Later on March 19, 2020, client CM contacted the Respondent by telephone and instructed him to switch her holdings to a high interest savings cash fund (the “Switch”).

6. Client CM's order could not be processed by the Member immediately because the Respondent had not updated her KYC information within the past 24 months, as required by the Member's policies and procedures. As the Respondent had not updated client CM's KYC information since January 26, 2018, the Member's order entry system would not allow the processing of trades in the client's accounts until the KYC information applicable to such accounts was updated.

7. On Friday, March 20, 2020, the Respondent updated client CM's KYC information with client CM and processed the trade that client CM had requested on the previous day. The Respondent submitted for processing the trade in client CM's account after the cut-off time for same-day transactions, and, consequently, the transaction could not be processed until the next business day, Monday, March 23, 2020.

8. On March 20, 2020, after submitting the trade for processing as requested by client CM, the Respondent sent an email to client CM advising her that the transaction would only be settled on March 23, 2020.

9. On March 20, 2020, in response to the Respondent's email, client CM sent an email to the Respondent complaining that the Respondent:

- a) had not processed the trade on the day that she had given him trade instructions;
- b) had not previously advised her that the Member could not process her trade instructions until her KYC information was updated;
- c) had not arranged for her to receive the KYC Update Form until the morning of March 20, 2020; and
- d) had not called her for further instructions when he found out that he could not process the trade that she had requested until a later date.

10. The Respondent did not report to the Member that he had received the complaint from client CM.

11. On March 20, 2020, the Respondent responded to client CM's complaint by email, expressing his view that there had been a miscommunication and informing her that he would "look into" the matter and contact her on March 23, 2020.

12. On March 22, 2020, client CM sent a further email to the Respondent, complaining that she had instructed the Respondent to sell her accounts to cash on March 19, 2020, and he had not done so. Client CM advised the Respondent that she expected the settlement of her account to result in a closing balance equal to the March 19, 2020 closing balance (approximately \$128,000).

13. The Respondent did not report to the Member that he had received a second complaint and a request for compensation from client CM on March 22, 2022.

14. By March 23, 2020, the value of client CM's portfolio had declined in value by approximately \$5,000. On that day, the transaction which client CM had instructed the Respondent to complete, as described in paragraph 5 above, was processed, and her investment holdings were switched to a high interest savings cash fund.

15. On March 23, 2020, in response to client CM's complaint, the Respondent emailed client CM stating that he would "make sure" that she would receive "exactly what [she] need[ed]".

16. On March 23, 2020, the Respondent left a voicemail for client CM in which he stated the following:

[The Respondent] calling, it's about 10:05 on Monday. I'm touching base about your transaction and wanted to let you know we'll be sure that we get back to the number that you wanted. The transactions are going to go through on a different date, the amount you get initially is going to be different, but I'll find a way to make that --- help to make it back to that 128 number for you. I guess I'm just working through the logistics, but rest assured, I will personally guarantee that to be the case. But do give me a holler, you can reach me on my cell probably until around 5:30, but yes, I guess I will make sure we get it exactly where you wanted, make sure you feel good about that. And then we'll work on building stuff for you. And we should chat about your insurance stuff as well. Hope you had a good weekend, talk to you soon. [emphasis added]

17. In his voicemail message of March 23, 2020, the Respondent personally guaranteed that client CM would be compensated, even though he had not informed the Member that he had received two complaints from client CM and had not obtained authorization from the Member to pay compensation to client CM in order to restore the balance of her account to its value on March 19, 2020, as described above at paragraph 12.

18. On March 24, 2020, the Respondent left two additional voicemails for client CM in which he stated the following:

1st Voicemail Message

Hey, [client CM], [the Respondent] calling it's about 9:45-ish on Tuesday morning. Just getting back to you about your portfolio. As you saw, you saw the final transaction come through around 123 and personally I think we timed that perfectly on the bottom, but we'll find out, time will tell. We had a big bounce today, we're up about 8 percent. For those that are in the market, but like I had said, I'll make sure that your portfolio, the balance is at 128. I want to make sure that you're not down. How I do that is going to have to be a little sneaky because there's a rule about me basically comping you back. So what I'm going to do is personally put money into your portfolio, but --- so we'll make sure you're at 128. But what I will ask is that once you put your money back in, you give me one year to make you more --- that \$5,000 and more, above what the market would normally do. So if the market normally gives you 5, I will get you an additional 5 on top of that. And after that --- [emphasis added]

2nd Voicemail Message

“Hey, [client CM], [the Respondent] calling back. Sorry for the lengthy messages. So, the quick version, I'm guaranteeing you the 5 grand that you're down, roughly, I will put it in after you start investing again. If we haven't earned above the average, above what you would have got as a regular investor, [inaudible] earned an additional 5 grand after 12 months, I will cut you a cheque and put it right back in myself. Give me a call when you get a chance, you've got my cell phone, [#]. And, yes, again, I'm doing this over the phone because

I'm trying to find creative ways to make this happen for you. So phone is better than email or text. At any rate, give me a call. Cheers." [emphasis added]

19. In the two voicemail messages that the Respondent left for client CM on March 24, 2020, the Respondent promised client CM that:

- 1) he would personally put \$5,000 in her account to restore the value of her account to approximately \$128,000 (which was the value of the account at the time when she instructed the Respondent to switch her into cash); and
- 2) he guaranteed client CM that, if she continued to invest in accounts that he serviced for a full year and the value of her accounts did not exceed an average market return by at least \$5,000, he would top up her account to that value.

20. On March 25, 2020, in response to the Respondent's voicemail messages, client CM emailed the Respondent to, among other things:

- a) express her disappointment with his voicemail messages; and
- b) demand compensation for her losses.

21. By virtue of the foregoing, the Respondent offered compensation to a client in response to a complaint without the prior written consent of the Member, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.1.4, 1.1.2 (as it relates to Rule 2.5.1), and MFDA Policy No. 3.

22. By virtue of the foregoing, the Respondent provided a guarantee to a client of a specific result that she would receive from her investments, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.1.4, and 1.1.2 (as it relates to Rule 2.5.1).

Allegation #3 - False or Misleading Statements to the Member and the MFDA

23. On March 25, 2020, client CM sent an email to the Respondent and the Member in which she complained that he had only liquidated her holdings on March 23, 2020, despite her instructions that he do so on March 19, 2020, and provided the Member with copies of her prior written complaints.

24. The Member then commenced an investigation into client CM's complaint.

25. On March 30, 2020, the Member requested that the Respondent provide information concerning the content of client CM's complaints and, in particular, requested a response to her allegation that he had offered to pay compensation to client CM in the amount of \$5,000. The Respondent denied that he had offered to compensate the client.

26. On June 12, 2020, the Member interviewed the Respondent and asked him again whether he had offered to pay \$5,000 in compensation to client CM. The Respondent again denied that he had offered to pay compensation to client CM.

27. On October 7, 2020, the Member sent an email to the Respondent in which it advised him that Staff of the MFDA ("Staff") was seeking information concerning client CM's complaints and requested his response.

28. On October 9, 2020, the Respondent provided a written statement to the Member in response to the queries from Staff. In his written statement, the Respondent again denied that he had offered to compensate client CM in response to her complaint.

29. The Respondent provided false or misleading responses to the queries from the Member and from Staff. Specifically, in the Respondent's written statement to the Member, dated March 30, 2020, in his oral statement to the Member on June 12, 2020, and in his written response to questions from Staff, dated October 9, 2020, the Respondent falsely denied that he had paid compensation to client CM. As set out in paragraph 19 above, on March 24, 2020 the Respondent offered to pay \$5,000 in compensation to client CM in response to her complaint.

30. By virtue of the foregoing, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct, contrary to the Member's policies and procedures and MFDA Rule 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; 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
800 - 6th Avenue SW, Suite 850
Calgary, AB T2P 3G3
Attention: Jennifer Galarneau
Email: jgalarneau@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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