



**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: Mark Richard Wagner**

Heard: November 14, 2019 in Vancouver, British Columbia  
Decision and Reasons: December 13, 2019

**DECISION AND REASONS**

Hearing Panel of the Pacific Regional Council:

Robert G. Ward, QC  
Nova Aitchison  
Holly A. Millar

Chair  
Industry Representative  
Industry Representative

Appearances:

Justin Dunphy	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Mark Richard Wagner	)	Respondent, not in attendance or represented by
	)	counsel
	)	

## **Introduction**

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Mark Richard Wagner (the “Respondent”) on June 28, 2019, by issuing a Notice of Hearing under sections 20 and 24 of MFDA By-law No. 1. The allegations against the Respondent are as follows:

**Allegation #1:** Between October 2010 and December 2016, the Respondent altered and, in some instances, used to process transactions, 11 account forms in respect of 7 clients by altering information on the account forms without having the clients initial the alterations, contrary to MFDA Rule 2.1.1.

**Allegation #2:** Between September 2013 and November 2015, the Respondent obtained, possessed, and in some instances, used to process transactions, 8 pre-signed account forms in respect of 7 clients, contrary to MFDA Rule 2.1.1.

**Allegation #3:** In April 2013, the Respondent submitted 2 Limited Trading Authorization forms to the Member for processing with respect to 2 clients on which he falsely indicated that he had witnessed the clients’ signatures, contrary to the Member’s policies and procedures, and MFDA Rules 2.5.1, 1.1.2, and 2.1.1.

2. The facts in support of the allegations are contained in the Notice of Hearing and in the Affidavit of MFDA Investigator Robert Lamshead sworn October 24, 2019. Mr. Lamshead gave evidence in support of the Affidavit in accordance with MFDA *Rule of Procedure* 5.1.

3. The Notice of Hearing was served on the Respondent on July 9, 2019. The said Notice contained particulars of the allegations against the Respondent; particulars of the penalties which might be involved; and the time allowed to the Respondent to file a Reply, if any. While the Respondent is alleged to be generally cooperative in the investigation of the allegations, he has failed to file a Reply, or to take part further in the formal proceedings.

4. Where the Respondent fails to Reply, or otherwise take part in the proceedings, by Rule of Procedure 8.4 the facts alleged in the Notice of Hearing may be taken by the Hearing Panel as proven. Moreover, where the Respondent fails to attend a disciplinary Hearing then, by *Rule of*

*Procedure 13.5* the Hearing Panel may proceed in accordance with Rule 7.3 without further notice, and may accept the allegations of fact as proven.

5. Particulars of the offenses alleged are as follows:

### **Registration History**

6. The Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc.<sup>1</sup> (the “Member”), a Member of the MFDA, as follows:

- In Alberta from February 1998 until December 2015;
- In the Northwest Territories at various times until January 2007; and
- In British Columbia from February 2010 until December 2017.

7. The Respondent resigned from the Member on December 31, 2017, and is not currently registered in the securities industry in any capacity.

8. At all material times, the Respondent conducted business in the Kelowna, British Columbia area.

### **Allegation #1: Altered Account Forms**

9. Between October 2010 and December 2016, the Respondent altered 11 account forms in respect of 7 clients by altering information on the account forms without having the clients initial the alterations.

10. The altered account forms consisted of:

- 1 new account application form;
- 6 Know Your Client (“KYC”) forms;
- 1 order ticket;
- 1 pre-authorized chequing form;

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<sup>1</sup> Commencing February 1998, the Respondent was registered as a mutual fund salesperson with Clarica Investco Inc. In June 2007, Clarica Investco Inc. underwent a name change to Sun Life Financial Investment Services (Canada) Inc.

- 1 private client account linking form; and
- 1 transfer authorization form.

11. The alterations the Respondent made to the account forms included alterations to client signature dates, account investment objectives and risk tolerances, trade amounts, and account numbers.

12. In 8 instances, the Respondent submitted the altered forms to the Member for processing.

13. By altering account forms as described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

#### **Allegation #2: Pre-Signed Account Forms**

14. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining, holding, or using pre-signed account forms.

15. Between September 2013 and November 2015, the Respondent obtained, possessed, and in 5 instances, used to process transactions, 8 pre-signed account forms in respect of 7 clients.

16. The pre-signed account forms consisted of:

- 2 locking-in agreement forms;
- 1 automatic rebalanced service form;
- 1 KYC form;
- 2 order tickets;
- 1 pre-authorized chequing form; and
- 1 signature for electronic application form.

17. By obtaining and using pre-signed account forms as described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

### **Allegation #3: Failure to Witness Signatures for Limited Trading Authorization Forms**

18. At all material times, Sun Life's policies and procedures required that its Approved Persons meet face to face with a client to witness a client's signature on Limited Trading authorization ("LTA") forms.

19. In April 2013, the Respondent submitted 2 LTA forms to the Member for processing with respect to 2 clients on which he falsely indicated that he had witnessed the clients' signature on the forms, without having met the clients in person to witness their signatures.

20. By virtue of the foregoing, the Respondent failed to comply with the Member's policies and procedures, and failed to observe high standards of ethics and conduct in the transaction of business and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

### **Effect of Termination of Employment**

21. The evidence is clear that the Respondent has terminated his employment relationship with his former employers and is no longer working in the industry. By section 24.1.4 of MFDA Bylaw No. 1, having been an Approved Person, he is subject to the jurisdiction of the MFDA in respect of disciplinary proceedings.

*Taub v. Investment Dealers Association of Canada, 2009 ONCA 628.*

### **Misconduct**

22. The Respondent obtained and in some cases used altered account forms and 8 pre-signed account forms, and as such the Respondent is in breach of Rule 2.1.1, which Rule generally sets forth the high standards of ethics in the transaction of business in a manner which adequately protects the public; he also failed to comply with the employer's signature witnessing requirements.

MFDA Rule 2.1.1 states:

**Standard of Conduct.**

Each Member and each Approved Person of a Member shall:

- a) Deal fairly, honestly and in good faith with its clients;
- b) Observe high standards of ethics and conduct in the transaction of business;
- c) Not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- d) Be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the corporation.

23. The conduct of obtaining and/or using 19 pre-signed and altered account forms is clearly a breach of Rule 2.1.1 as found by numerous Hearing Panels. Approved Persons have been warned for years about the misuse of pre-signed account forms, and the reasons behind the policy against their use.

MFDA Staff Notice #MSN-0066, dated October 31, 2007 (updated March 4, 2013)

MFDA Bulletin # 0661-E, dated October 2, 2015.

24. It is well known, and has been for many years, that obtaining or using the same have been in contravention of the standard of conduct required under the Rules.

*Re Byce, MFDA File No. 201311, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 4, 2013*

*Re Price, MFDA File No. 208814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011*

25. The offences herein threaten the integrity and reliability of account documents; they threaten completely the existence of the audit trail. As explained by the Panel in *Re Price*, supra, pre-signed documents lead potentially to unauthorized trading, fraud, and misappropriation.

26. In *Re Botha*, the Respondent breached Rules 2.1.1, 2.5.1 and 1.1.2 respecting the exact LTA signature witness requirement which has been breached in the present case.

*Re Botha, MFDA File No. 201841, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated July 10, 2019, paragraph 115*

27. MFDA Staff has sought the following penalties against the Respondent, a fine of \$12,500 - \$17,500, pursuant to section 24.1.1(b) of the MFDA By-law No. 1; and costs of \$7,500.

28. We recognize that the penalties being imposed here are at the low end of the recommendations of the MFDA Staff. We say that bearing in mind that the costs award is completely justified and we have no difficulty with that.

29. The Staff of the MFDA have made a submission, which is compelling, that the penalty should be towards the high end of the proposed range. They say, which is accepted, that the primary goal of securities regulation is the protection of investors.

*Pezim v British Columbia (1994) 2 SCCR 557*

*Re Breckenridge MFDA File No. 200708*

*Re Tonnie, MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005*

30. We agree that these allegations are serious. However, we are influenced by the following factors:

- There is no loss to the clients and nor is there any gain by the Respondent as a result of the breaches. There are no complaints made against the Respondent as a result of his conduct.
- In his lengthy registration history, he has not before been subject to prior disciplinary matters.
- There is not a great deal of money involved in this matter.
- The Respondent cooperated in the investigation into the impugned conduct.

31. Under these circumstances, we are convinced that payment of \$20,000 is reasonable and proportionate. We are also of the view that that amount sufficiently addresses the issues of general and specific deterrence, and maintains confidence in the integrity of the MFDA and the regulatory process.

32. We were also provided with a bill of costs. We have considered the case of *Warren v. MFDA* 2017 BCSECCOM 289 where the Panel stated that it was an error in law for the Panel to make an award of costs on no basis whatever. The Hearing Panel in that case did not refer specifically to a bill of costs but referred to the lack of evidentiary support for the costs claimed. In the within case, we were fortunate to be provided with a bill which sets forth the costs claimed and also specifies a number of items which could have been claimed but were not. The bill provided in this case provides evidence in support of the claim for costs, which is consistent with the facts as we understand them. We considered the very substantial work necessitated including not only the history as it affects the Respondent (procedural and registration history), the deficient forms and the evidence respecting the efforts and policies of the employer (Member) but also the very significant diligence in investigation including the report or prior warnings by the MFDA, the follow up interviews with the clients and a consideration of the potential harm to the clients (the investors) and benefits to the Respondent. Finally, we considered all the work required to finalize the evidence, and to take the steps necessary to bring the case to the Hearing.

33. In our view, the claim for costs is a reasonable one and is entirely consistent with the evidence.

34. We therefore order that the Respondent pay forthwith to the MFDA the sum of \$12,500 by way of penalty, and \$7,500 in costs.

**DATED** this 13<sup>th</sup> day of December, 2019.

“Robert G. Ward”

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Robert G. Ward, QC  
Chair

“Nova Aitchison”

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Industry Representative

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