



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: Brent Michael Polischuk

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 July 12, 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 Brent Michael Polischuk (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 7th day of April, 2022.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between November 2018 and March 16, 2020, the Respondent engaged in personal financial dealings with clients which gave rise to conflicts or potential conflicts of interest that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4¹, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2: On or about March 11, 2020, the Respondent made false or misleading statements to the Member during the course of its investigation into his conduct, contrary to MFDA Rule 2.1.1.

Allegation #3: Commencing approximately June 16, 2020, the Respondent failed to cooperate with an investigation by MFDA Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 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. From January 14, 2002 to March 16, 2020, the Respondent was registered in British Columbia as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the “Member”), a Member of the MFDA.
2. On March 16, 2020, the Member terminated the Respondent as a result of the conduct described below and the Respondent is no longer registered in the securities industry in any capacity.
3. At all material times, the Respondent conducted business in the Victoria, 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, Allegation #1 concerns the alleged contravention of the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

Allegation #1 – Personal Financial Dealings with Clients

4. At all material times, the Member’s policies and procedures prohibited Approved Persons from borrowing from clients.

5. As described in further detail below, between November 2018 and March 16, 2020, the Respondent borrowed a total of \$155,000 from three clients and accepted monies from two additional clients.

6. As described below, the Respondent has failed to cooperate with the investigation of this matter by Staff of the MFDA (“Staff”). As a result, the current balance of monies that the Respondent owes to the clients is not fully known.

Client SH

7. At all material times, client SH was a client of the Member whose accounts were serviced by the Respondent.

8. On or about November 9, 2018, the Respondent borrowed \$100,000 from client SH.

9. On or about November 9, 2018, the Respondent and client SH signed a promissory note (the “Promissory Note”) acknowledging that the Respondent had borrowed \$100,000 from client SH and would pay client SH an annual interest rate of 4.45% on the unpaid principal. The Promissory Note provided that:

- a) the Respondent would make repayment in full to client SH on January 11, 2019 in the amount of \$111,250;
- b) the Respondent would grant client SH, as collateral, the right to 25% of the revenue stream arising from the Respondent’s book of business; and
- c) the current value of the 25% revenue stream was \$249,000.

10. Contrary to the terms of the Promissory Note, the Respondent did not repay client SH by January 11, 2019, and the parties signed additional addendums to the Promissory Note, all of which deferred the repayment date.

11. On or about April 26, 2019, the Respondent and client SH signed a document entitled “Promissory Note - Final Addendum #2”, which provided that:

- a) by June 1 or 15, 2019, the Respondent would fully repay client SH the amount of \$120,000; and
- b) the Respondent would pay an increased rate of interest of 8.95% on \$25,000 of the loan.

12. Contrary to the terms of the “Promissory Note - Final Addendum #2”, the Respondent did not repay client SH by June 15, 2019.

Client JN

13. At all material times, client JN was a client of the Member whose accounts were serviced by the Respondent. In December 2019, client JN was approximately 74 years of age, and by virtue of his age was a vulnerable client.

14. In or about December 2019, the Respondent requested a \$25,000 loan from client JN. The Respondent obtained the monies from client JN and told client JN that he would repay the loan by the end of January 2020.

15. The Respondent did not repay the \$25,000 loan in January 2020.

16. Instead, in or about January 2020, the Respondent requested an additional loan from client JN in the amount of \$15,000. Client JN declined the Respondent’s request for an additional loan.

17. Client JN became concerned that the Respondent would not repay the \$25,000 loan and demanded repayment of the loan.

18. On February 25, 2020, the Respondent paid the amounts that he owed to client JC with interest.

Client DN

19. At all material times, client DN was a client of the Member whose accounts were serviced by the Respondent.

20. In or about February 2020, the Respondent requested two loans from client DN in the total amount of \$30,000 and, in late February, the Respondent obtained \$30,000 from client DN. The Respondent told client DN that he would repay the amounts owed no later than March 20, 2020.

21. The Respondent did not repay the \$30,000 loan in March 2020. Subsequently, the Respondent repaid client DN at least \$13,500 of the loan amount.

Clients RM and BT

22. At all material times, clients RM and BT were clients of the Member whose accounts were serviced by the Respondent.

23. On or about April 17, 2019, client RM transferred \$400 via e-transfer to the Respondent's bank account.

24. On or about July 30, 2019, client BT transferred \$1,700 via e-transfer to the Respondent's bank account.

25. Due to the Respondent's failure to cooperate with Staff's investigation described below, the reasons why the payments described above were received by the Respondent from clients RM and BT could not be determined.

The Respondent Solicited Additional Loans from a Client

26. In or about October 2019, the Respondent solicited loans on three occasions from client JG, who at all material times was a client of the Member whose accounts were serviced by the Respondent. Initially, the Respondent requested a \$160,000 loan, which client JG refused to provide. The Respondent then approached client JG approximately two weeks later and requested that client JG lend him \$80,000, which client JG again refused to provide. Shortly thereafter, the Respondent solicited a loan from client JG in the amount of \$50,000, which client JG again refused to provide.

27. Borrowing monies from clients SH, JN, and DN, and accepting monies from clients RM and BT as described above, gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member.

28. By virtue of the foregoing, the Respondent engaged in personal financial dealings with clients which gave rise to conflicts or potential conflicts of interest that he failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2 – Misleading the Member

29. On or about March 5, 2020, client SH complained to the Member alleging that the Respondent borrowed \$100,000 from him for a real estate investment but failed to repay this amount by the agreed upon repayment date. In response to the complaint, the Member commenced an investigation into the Respondent's conduct.

30. On March 11, 2020, the Member conducted a telephone interview ("Interview") of the Respondent in respect of the complaint from client SH, during which the Respondent stated that client SH was the only client with whom he had a loan agreement, and that he did not have loans with other clients.

31. The Respondent's statement to the Member was false or misleading because, as set out above, by the date of the Interview the Respondent had an outstanding loan with client DN.

32. Prior to the date of the Interview, the Respondent had also borrowed \$25,000 from client JN and repaid the loan. The Respondent did not inform the Member about his loan from client JN during the Interview.

33. By stating to the Member that client SH was the only client with whom he had a loan agreement and that he did not have loans with other clients, the Respondent made false or misleading statements to the Member during the course of an investigation into his conduct, contrary to MFDA Rule 2.1.1.

Allegation #3 – Failure to Cooperate with Staff's Investigation

34. Staff commenced an investigation into the Respondent's conduct after receiving a report from the Member alleging that the Respondent borrowed \$100,000 from client SH. Subsequently, Staff received a report from the Member alleging that the Respondent had also borrowed \$30,000 from client DN.

35. By letters dated April 13, 2020 and May 22, 2020, Staff wrote to the Respondent requesting that he respond to inquiries regarding the loans that he was alleged to have obtained from clients and that he produce information and documentation relating to these loans, including copies of agreements and promissory notes related to any monies he borrowed from other clients, his personal and business bank statements, and other information, correspondence, and documentation related to the allegations.

36. On June 15, 2020, Staff wrote to the Respondent reminding him of his obligation to provide a response to its previous requests for information and documentation in letters dated April 13, 2020 and May 22, 2020, and advising him that, should he fail to provide a response, disciplinary proceedings might be commenced against him for failing to cooperate with an investigation by Staff.

37. On June 16, 2020, the Respondent sent a response to the June 15, 2020 e-mail from Staff. In his e-mail, the Respondent admitted that he had borrowed money from clients SH and DN but failed to produce to Staff the additional documentation and information requested in its communications described above.

38. By letter dated November 17, 2020, Staff requested that the Respondent contact Staff to schedule an interview with Staff to give information relevant to the matters under investigation.

39. By e-mail dated November 24, 2020, the Respondent responded to Staff's request, advised that he did not want to attend an interview with Staff due to the COVID-19 pandemic, and offered to answer its questions by e-mail.

40. By e-mail dated November 25, 2020, Staff informed the Respondent that the interview would proceed by way of video conference and asked the Respondent to provide his availability during the week of January 25, 2021.

41. Between November 30, 2020 and April 12, 2021, Staff continued to request that the Respondent schedule an interview with Staff. The Respondent indicated that he would not attend an interview without counsel and repeatedly failed to cooperate with Staff's attempts to facilitate an interview. In particular:

- a) On January 5, 2021, Staff informed the Respondent that he was required to attend an interview on January 28, 2021. The Respondent failed to attend the interview.
- b) On January 29, 2021, Staff informed the Respondent that he was being provided with an additional opportunity to attend an interview on February 12, 2021. Again, the Respondent failed to attend the interview.

42. As a result of the Respondent's failure to cooperate with Staff's investigation, Staff has not been able to determine the full nature and extent of the personal financial dealings that the Respondent has engaged in with clients.

43. By virtue of the foregoing, the Respondent failed to cooperate with an investigation by Staff into his conduct, contrary to section 22.1 of MFDA By-law No. 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
650 West Georgia Street, Suite 1220
Vancouver, BC V6B 4N9
Attention: Zaid Sayeed
Email: zsayeed@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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