



**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: Nicholas Andrew Rivet**

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**NOTICE OF HEARING**

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**NOTICE** is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on January 11, 2022 at 11:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Nicholas Andrew Rivet (“Respondent”). Members of the public who would like to listen to the teleconference should contact [hearings@mfd.ca](mailto:hearings@mfd.ca) to obtain particulars.

**DATED** this 16<sup>th</sup> day of November, 2021.

“Michelle Pong”

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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 approximately December 2017 and January 2018, the Respondent misappropriated or failed to account for monies obtained from a client, contrary to MFDA Rule 2.1.1.

**Allegation #2:** On or about April 12, 2018, the Respondent created and provided a fictitious document to a client in order to conceal from the client that the Respondent had misappropriated the client's monies, contrary to MFDA Rule 2.1.1.

**Allegation #3:** On December 18, 2017 and January 4, 2018, the Respondent processed two trades in the accounts of a client without first obtaining instructions from the client with respect to all elements of the trades, contrary to the Member's policies and procedures and MFDA Rules 2.3.1(b), 2.1.1, 1.1.2, and 2.5.1.

### **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. Commencing in October 2014, the Respondent was registered in the securities industry.
2. From November 7, 2016 to May 4, 2018, the Respondent was registered in Ontario as a dealing representative with CIBC Securities Inc. ("CIBC Securities"), a Member of the MFDA.
3. During this time, the Respondent was also employed with CIBC bank (the "Bank"), which is affiliated with CIBC Securities.
4. From September 17, 2018 to November 8, 2018, the Respondent was registered with Investors Group Financial Services Inc. ("IG"), a Member of the MFDA.
5. On November 8, 2018, the Respondent resigned from IG, and he is not currently registered in the securities industry in any capacity.
6. At all material times, the Respondent conducted business in the North Bay, Ontario area.

## **Allegation #1 – Misappropriated or Failed to Account for Client Monies**

7. At all material times, client DT was a client of CIBC Securities whose accounts were serviced by the Respondent.

8. In December 2017, client DT was 75 years old, and by virtue of his age was a vulnerable client.

9. Without client DT's knowledge or authorization:

- a) on December 7, 2017, the Respondent issued and maintained possession of a bank card in client DT's name;
- b) between December 7, 2017 and January 19, 2018, the Respondent transferred monies from one bank account in client DT's name (the "Bank Account #1") to another bank account in client DT's name (the "Bank Account #2") in the total amount of \$16,200; and
- c) between December 7, 2017 and January 19, 2018, on 12 occasions, the Respondent used the bank card that he had obtained in client DT's name to withdraw a total of \$16,180 in cash from Bank Account #2.

10. On or about April 5, 2018, client DT met with the Respondent and questioned him about the withdrawals from client DT's chequing account. At the time, client DT told the Respondent that he believed that approximately \$600 was missing from his bank account.

11. In order to conceal the unauthorized transactions that he had processed in the bank accounts of client DT, the Respondent created a fictitious letter that purported to be from "CIBC Security Inc." responding to the concerns that client DT had reported to the Respondent.

12. In the fictitious letter, the Respondent reported information to client DT which was false, including that:

- a) a review was conducted of client DT's accounts;
- b) all transactions had been verified and approved by "CIBC Security Inc."; and
- c) the bank had concluded that client DT's accounts had not suffered any losses due to unauthorized transactions.

13. On or about April 12, 2019, the Respondent provided this fictitious letter to client DT, along with \$550 in cash in order to make it appear to client DT that his concerns had been

investigated and addressed and to conceal from client DT and the bank that he had misappropriated monies from client DT's accounts, as described above at paragraph 9.

14. The \$550 in cash that the Respondent provided to client DT with the fictitious letter was monies that the Respondent had previously misappropriated from client DT.

15. On or about May 7, 2018, client DT complained to the Bank about the unauthorized withdrawals from his bank account.

16. On or about July 20, 2018, the Bank reimbursed client DT the amounts that had been misappropriated by the Respondent.

17. Subsequently, the Respondent paid the Bank the amounts that he had misappropriated from client DT.

18. By virtue of the foregoing, the Respondent misappropriated or failed to account for monies that he obtained from client DT, contrary to MFDA Rule 2.1.1.

#### **Allegation #2 – Created and Provided a Fictitious Document to a Client**

19. As described above at paragraphs 11 to 13, the Respondent created a fictitious letter purportedly from "CIBC Security Inc." that he provided to client DT after client DT raised concerns to the Respondent that unauthorized withdrawals had been taken from his account.

20. The Respondent provided the fictitious letter to client DT in order to conceal from him that the Respondent had misappropriated monies from the client by way of unauthorized withdrawals from client DT, as described above at paragraph 9.

21. By virtue of the foregoing, the Respondent engaged in conduct that was contrary to MFDA Rule 2.1.1.

#### **Allegation #3 – Processed Trades Without Discussing Elements of the Trades With the Client**

22. At all material times, the policies and procedures of CIBC Securities prohibited discretionary trading and required Approved Persons to obtain a client's prior approval for every transaction processed in the client's account.

23. In or about December 2017, the Respondent recommended that client DT implement a RRIF meltdown strategy to avoid incurring a high tax liability on his RRIF upon his death. As part

of this strategy, the Respondent recommended that client DT withdraw from his Registered Retirement Income Fund (“RRIF”).

24. On or about December 7, 2017, the Respondent had client DT sign a Personal Portfolio Services Account Change form in order to withdraw \$30,000 from client DT’s RRIF, and submitted the signed form for processing.

25. The compliance department rejected the request because the Respondent had not submitted the Personal Portfolio Services Account Change form 15 days in advance of the prospective withdrawal date as required by CIBC Securities.

26. Without communicating with client DT, on December 18, 2017, the Respondent completed another Personal Portfolio Services Account Change form in order to withdraw \$20,000 from client DT’s RRIF on December 20, 2017. The Respondent purported to rely upon a Limited Trading Authorization (the “LTA”) that had been signed by client DT authorizing the acceptance of verbal instructions rather than a signed account form to process transactions in client DT’s account. The Respondent failed to obtain authorization from client DT to prepare and submit a new form to process a different withdrawal amount on December 20, 2017. The Respondent submitted the form dated December 18, 2017 and indicated that the proceeds of redemption should be deposited into Bank Account #1.

27. On January 4, 2018, without discussing the proposed transaction with Client DT, the Respondent completed another Personal Portfolio Services Account Change form, and again purported to rely upon the LTA to withdraw a further \$25,000 from Client DT’s RRIF, and had the proceeds deposited into Bank Account #1.

28. The Respondent did not discuss with client DT the elements of the two withdrawals from client DT’s RRIF on December 20, 2017 and January 4, 2018 as described above, including the amount or timing of the withdrawals.

29. As a result of the withdrawals from client DT’s RRIF, as described above, client DT incurred a tax liability of approximately \$5,000.

30. On or about January 29, 2019, client DT complained to the Bank about the Respondent’s conduct, and requested compensation for the tax liability that he incurred as a consequence of the withdrawals from his RRIF. The Bank compensated client DT to address his complaint.

31. By virtue of the foregoing, the Respondent processed two trades in the accounts of a client without discussing all the elements of the trades with the client, contrary to the policies and procedures of CIBC Securities and MFDA Rules 2.3.1(b), 2.1.1, 1.1.2, and 2.5.1.

**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  
121 King Street West, Suite 1000  
Toronto, ON M5H 3T9  
Attention: Brendan Forbes  
Email: [bforbes@mfd.ca](mailto:bforbes@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](mailto: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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