



**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: ASL Direct Inc. and Adrian Samuel Leemhuis**

---

**AMENDED NOTICE OF HEARING**

---

**NOTICE** is hereby given that a first appearance will take place by teleconference before a Hearing Panel (the "Hearing Panel") of the Regional Council of the Central Region of the Mutual Fund Dealers Association of Canada (the "MFDA"), in the hearing room located at 121 King Street, Suite 1000, Toronto, Ontario on Monday, November 24, 2008 at 10:00 a.m. or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against ASL Direct Inc. ("ASL") and Adrian Samuel Leemhuis ("Leemhuis") (collectively referred to as the "Respondents").

**DATED** at Toronto this 17th day of October, 2008.

**"Bernadette Devine"**  
\_\_\_\_\_  
Bernadette Devine  
Assistant Corporate Secretary

Mutual Fund Dealers Association of Canada  
121 King St. West  
Suite 1000  
Toronto, Ontario M5H 3T9

Telephone: (416) 943-7436  
Fax: (416) 361-9781  
E-mail: [corporatesecretary@mfd.ca](mailto:corporatesecretary@mfd.ca)

**NOTICE** is further given that staff of the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

**Allegation #1:**

- (a) Commencing in March 2003, ASL failed to:
- (i) consistently maintain minimum capital and risk adjusted capital required by MFDA Rule 3.1.1; and
  - (ii) consistently maintain the minimum amount of insurance required by MFDA Rules 4.1 and 4.4;
- (b) Commencing in March 2004, ASL failed to:
- (i) consistently maintain risk adjusted capital (“RAC”) to avoid triggering early warning tests set out in MFDA rule 3.4.2(a); and
  - (ii) file monthly and annual financial questionnaires and reports (“FQRs”) on a timely basis as required by MFDA Rule 3.5.1;
- (c) Commencing in April 2008, ASL has failed to:
- (i) comply with early warning requirements that were applicable pursuant to MFDA Rule 3.4.2(b); and
  - (ii) respond to requests for information from the MFDA Compliance Department concerning its financial circumstances, contrary to s. 22 of MFDA By-law No. 1 (the “By-law”).
- (d) Since May 5, 2008 when ASL was informed by MFDA Staff<sup>1</sup> of its increased insurance requirements because ASL was holding nominee name assets, ASL has failed to rectify the deficiency, contrary to MFDA Rule 4.5(b).

---

<sup>1</sup> Following the issuance of a cease trade order by the Ontario Securities Commission against ASL, MFDA Staff were informed on May 5, 2008 that ASL was holding client assets in nominee name.

**Allegation #2:** Commencing in July 2006, the Respondents failed to deal fairly honestly and in good faith with clients of ASL by operating a trailer fee rebate program for which clients were charged monthly fees and failing to pay or re-invest trailer fee rebates owed to clients in the program or to maintain adequate records or take sufficient action to administer the program effectively, contrary to MFDA Rules 2.1.1 and 5;

**Allegation #3:** Between March 2004 and April 2008, Leemhuis conducted securities related business that was not carried out for the account of ASL, contrary to MFDA Rule 1.1.1(a);

**Allegation #4:** Between February 2004 and April 2008, Leemhuis was engaged in outside business activities that were not disclosed in Form 33-109F4 or on the National Registration Database (“NRD”) as required, contrary to MFDA Rules 1.2.1(d), 2.1.1(c) and National Instrument 33-109;

**Allegation #5:** Between May 2006 and April 2008, in response to direct inquiries from MFDA Staff, the Respondents:

- (a) withheld relevant information;
- (b) provided false or misleading information to the MFDA;
- (c) failed to produce certain documents and information requested by MFDA investigators which the Respondents undertook to produce; and
- (d) failed to comply with the requests of MFDA Staff for production of an up to date client list and client account statements,

contrary to s. 22 of MFDA By-law No. 1 (the “By-law”) and MFDA Rules 2.1.1 and 5. Such information was relevant to, among other things, Leemhuis’s involvement with off-shore mutual funds and other companies and ASL’s compliance with its regulatory obligations.

**Allegation #6:** The Respondents have failed to operate ASL in a compliant manner in accordance with its regulatory obligations, as particularized below:

- (a) The Respondents failed to maintain adequate records of trade supervision, contrary to MFDA Rules 2.5 and 5 and MFDA Policy No. 2;
- (b) The Respondents permitted trading by mutual fund clients of ASL without first obtaining appropriately completed and approved New Account Application Forms (“NAAF”) for such clients, contrary to MFDA Rule 2.2;
- (c) Between the summer of 2004 and September 2007, the Respondents permitted an unregistered individual named Anil Jain to conduct securities related business for clients of ASL, contrary to MFDA Rule 1.1.5(a);
- (d) The Respondents failed to implement a system to properly distribute on a cash basis, interest earned in the Member’s mutual fund trust account contrary to MFDA Rule 3.3.2(h), MFDA Policy No. 4 and National Instrument 81-102;
- (e) ~~A referral arrangement~~ Referral arrangements engaged in by the Respondents did not comply with MFDA Rule 2.4.2(b); and
- (f) The Respondents failed to process trade orders on a timely basis, contrary to National Instrument 81-102 and MFDA Policy No. 2.

## **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. The Respondent, ASL, has been registered as a mutual fund dealer in Ontario since November 1999, in British Columbia since August 30, 2004, and in Alberta since December 5, 2005. ASL has been a Member of the MFDA since March 4, 2003. The Respondent's registration was suspended by the Ontario Securities Commission ("OSC") on May 1, 2008 as a result of a temporary cease trade order issued against the Member. Subsequently, British Columbia suspended ASL's registration effective August 7, 2008 and Alberta suspended ASL's registration effective August 25, 2008.

2. The Respondent, Leemhuis, has been registered as a mutual fund salesperson and as an officer and director of ASL in the Province of Ontario since November 18, 1999. He has been registered as a mutual fund salesperson, trading officer and director in the Provinces of British Columbia and Alberta since August 2004 and December 2005 respectively. Leemhuis has been the owner and President of ASL since it became a mutual fund dealer. Leemhuis's registration was also suspended by the OSC on May 1, 2008 as a result of a temporary cease trade order issued against him on April 22, 2008. Leemhuis's registration was suspended in British Columbia effective August 7, 2008 and in Alberta effective August 25, 2008.

### **Financial Compliance Deficiencies**

3. Since ASL became a Member of the MFDA in 2003, ASL has sustained continuous losses and a consistently increasing retained deficit. ASL has only been able to continue operations from a financial perspective as a result of continual subordinated loans from Leemhuis which totaled \$766,705 as of March 31, 2008.

4. Since April 30, 2004, ASL has frequently failed to maintain sufficient RAC to avoid triggering early warning tests set out in MFDA Rule 3.4.2(a). Consequently, ASL has been designated in early warning during the following periods:

(a) from April 30, 2004 to June 27, 2006;

(b) from August 3, 2006 to July 31, 2007; and

(c) from December 14, 2007 to the present.

5. Between June 30, 2003 and April 2008, ASL failed to file its FQRs on a timely basis 15 times, contrary to MFDA Rules 3.5.1 and 3.4.2(b)(ii)(B). During the same period, ASL was required to correct and re-submit FQRs on 18 occasions because the FQRs were not appropriately completed.

6. On April 18, 2008, ASL submitted its audited FQR for the year ended December 31, 2007, 12 business days late. The audited FQR indicated that ASL had overstated its RAC by \$53,962 when it filed its unaudited FQR for the month ended December 31, 2007 and that as a result of the audit adjustments, ASL had a previously unreported RAC deficiency of approximately \$42,562 as of December 31, 2007. As of July 3, 2008 when ASL submitted its most recent FQR filing, this capital deficiency had not been rectified. Consequently, ASL has failed to maintain RAC greater than zero, contrary to MFDA Rule 3.1.1.

7. On April 24, 2008, MFDA Staff discovered an unresolved balance in the amount of \$45,629 in ASL's "trading" trust account. Since that time, ASL has failed to explain this unresolved balance in its trust account. ASL is required to charge the amount of this unresolved balance against regulatory capital which increases its capital deficiency.

8. In May 2008, MFDA Staff discovered that ASL was holding some securities in nominee name for the benefit of some of its clients. Pursuant to MFDA Rule 3.1.1, only Level 4 dealers are permitted to hold securities for clients in nominee name. As ASL was not maintaining the \$200,000 in minimum capital required of a Level 4 dealer, ASL is capital deficient contrary to MFDA Rule 3.1.1. ASL has also failed to obtain the

minimum amount of insurance coverage that a Level 4 dealer is required to maintain, contrary to MFDA Rules 4.1 4.4 and 4.5(b).

9. Since April 21, 2008 when the MFDA was informed by ASL's auditors that ASL was RAC deficient as at the December 31, 2007 year-end, ASL has failed to:

- (a) rectify its capital deficiency according to its most recently filed FQR;
- (b) comply with early warning requirements imposed by the MFDA pursuant to MFDA Rule 3.4.2(b)(ii), (v) and (vii);
- (c) confirm in writing, its willingness to comply with restrictions applicable to it pursuant to MFDA Rule 3.4.3 during its designation in early warning; and
- (d) provide information concerning its financial circumstances in response to requests from MFDA Compliance Staff, contrary to s. 22 of the By-law.

10. On July 3, 2008, ASL submitted its FQR for the month ended April 30, 2008, 29 business days late. Since that time, ASL has failed to respond to questions from MFDA Staff concerning its April 30, 2008 FQR submission and ASL has not filed any FQRs to the MFDA for the months following April 2008, contrary to MFDA Rule 3.5.1.

### **The Trailer Fee Rebate Program**

11. ASL offers its clients the opportunity to participate in a trailer fee rebate program (the "TFRP") by paying a monthly fee of approximately \$29.95 regardless of the size of their investment account at ASL and in return, ASL promised to pay to them or reinvest all trailer fees received by ASL for investments in their accounts (which would ordinarily be compensation for the Member and Approved Person). Since approximately July 2006, without written notice to the clients, ASL has ceased payment and reinvestment of the trailer fees that its clients are entitled to receive, but ASL has continued charging the clients the monthly fees to participate in the TFRP, contrary to MFDA Rule 2.1.1.

12. Since July 2006, ASL has not paid trailer fee rebates to participants in the TFRP except in some cases to resolve client complaints.

13. Prior to the fall of 2007 when MFDA Staff first discovered ASL's failure to pay trailer fee rebates to clients, ASL had not:

- (a) provided its clients with written notification or an explanation concerning its failure to pay or reinvest trailer fee rebates;
- (b) maintained records with respect to:
  - (i) the administration of the TFRP
  - (ii) its accumulating liability to clients;
  - (iii) interim payments of trailer fees to clients who complained to ASL; and
  - (iv) the basis and accuracy of calculations used to determine the amount of interim trailer fee rebate payments that were made to clients;
- (c) deposited some of the cheques received from fund companies in respect of trailer fees on a timely basis and some cheques became stale-dated; or
- (d) taken steps to retain required expertise or by other means develop a way to calculate its existing liability to clients and resume regular payment or reinvestment of trailer fees owed to clients in the TFRP;

contrary to MFDA Rules 2.1.1 and 5.

14. In December 2007, ASL entered into an Agreement and Undertaking with the MFDA to secure trailer fees received by ASL in a solicitor's trust account until ASL's liability to clients could be accurately calculated and a system could be implemented to regularly and reliably pay or reinvest trailer fee rebates for clients in the TFRP. Despite the Agreement and Undertaking, to date, ASL has failed to demonstrate its ability to accurately calculate its TFRP liability to clients or to reliably fulfill its trailer fee rebate obligations to clients in the future.

#### **Securities Related Business That Was Not Carried Out For The Account of ASL**

15. Commencing not later than March 2004, Leemhuis engaged in securities related business in connection with the Future Growth Funds as described below. Transactions

in the Future Growth Funds were not carried out for the account of ASL or processed through the facilities of ASL, contrary to s. 1.1.1(a).

16. Leemhuis and members of his family including his wife, his parents and his sister have been involved with the operations, management and distribution of units of at least three off-shore mutual funds which are called the Future Growth Fund Limited, the Future Growth Global Fund Limited and the Future Growth Market Neutral [Equity] Fund Limited (collectively, the three funds are referred to as the “Future Growth Funds”).

17. Since at least 2005, Leemhuis has been the sole owner of the shares of corporations that owned and operated the Future Growth Funds and has been a director of the Future Growth Funds. Leemhuis has personally exercised the power to select and appoint the portfolio advisor and the British Virgin Island (“BVI”) based Fund Administrator that manage the day to day operations of the Future Growth Funds. Leemhuis has also served as the President and as a director of some or all of the funds.

18. Leemhuis engaged in the following conduct on behalf of the Future Growth Funds:

- (a) Corresponding with investors and potential investors in the Future Growth Funds with respect to:
  - (i) inquiries about the Future Growth Funds;
  - (ii) inquiries about the status of investors’ holdings in the funds; and
  - (iii) orders for the purchase or sale of units in the Future Growth Funds.
- (b) Liaising with the Fund Administrator with respect to outstanding client purchases and redemptions;
- (c) Advertising and soliciting investors to engage in trading of the Future Growth Funds using promotional materials such as the Future Growth Group website;
- (d) Monitoring each of the Funds’ equity holdings;

- (e) Occasional involvement in the process of arranging for or selecting investments to be made by the Future Growth Funds;
- (f) Corresponding with the BVI business and securities regulator, the BVI Financial Services Commission to attend to registration and other regulatory requirements on behalf of the Future Growth Funds;
- (g) Entering into a custodian agreement and liaising with the custodian of the Future Growth Funds to address any outstanding settlement concerning the investment portfolios managed by the Future Growth Funds;
- (h) Meeting personally with all of the Managers of the Future Growth Funds on a bi-monthly basis;
- (i) Meeting with the custodians of the Future Growth Funds on a monthly basis; and
- (j) Meeting with the administrators of the Future Growth Funds on a monthly basis.

19. Leemhuis regularly carried on business relating to the operation of the Future Growth Funds from the office of ASL. The mailing address, e-mail address, fax numbers and telephone numbers associated with the operations of the Future Growth Funds were received by Leemhuis at the office of ASL.

20. In January 2005, Leemhuis arranged for FundSERV Inc. to set up “FGG” as a fund manufacturer code for the Future Growth Funds so that purchases and sales of units of the Future Growth Funds could be processed on behalf of Canadian investors electronically within Canada.

21. At one time, the Future Growth Funds were owned by more than 200 Canadian investors including 52 investors in Ontario and 165 investors in Quebec. The Future Growth Funds were also held by investors in at least 4 other Canadian provinces and by residents of more than 15 other countries including the United States, the United Kingdom and Australia.

22. In recent years, many investors who previously held units of the Future Growth Funds have redeemed their accounts in full. During the same period, a few individuals have invested in the Future Growth Funds for the first time.

23. Leemhuis received compensation for the securities related business that he conducted on behalf of the Future Growth Funds in the form of monthly management fees paid to him by the funds. From time to time, Leemhuis directed the fund administrator to process redemptions from his Future Growth Funds investment account and pay the proceeds to his wife.

24. On April 22, 2008, the OSC issued a temporary cease trade order against Leemhuis and the Future Growth Funds on the basis that, among other reasons, the Future Growth Funds were “neither reporting issuers nor registrants in Ontario” and it appeared that “the respondents have traded in securities and participated in unlawful distributions of securities, contrary to” the Ontario Securities Act. The temporary cease trade order has been extended multiple times since April 22, 2008 with the consent of the respondents and remains in effect.

25. On May 1, 2008, the OSC issued a temporary cease trade order against ASL. The temporary cease trade order against ASL has been extended multiple times since April 22, 2008 with the consent of ASL and remains in effect.

### **Outside Business Activities**

26. At various times after he became registered as an Approved Person of ASL, Leemhuis was engaged in business conducted on behalf of the following companies and in some cases served as an officer and/or director of such companies:

- (a) International Financial Capital Limited;
- (b) International Capital Partners Limited;
- (c) Amsterdam Management International Limited; and
- (d) Future Growth Group.

27. Leemhuis managed the business operations of the Future Growth Funds in his capacity as the sole or substantial shareholder and in some cases as an officer and/or director of International Financial Capital Limited, International Capital Partners Limited, Amsterdam Management International Limited and the Future Growth Group. Specifically:

- (a) International Financial Capital Limited served as the Investment Manager of the Future Growth Market Neutral [Equity] Fund Limited;
- (b) International Capital Partners Limited served as the Investment Manager of the Future Growth Fund Limited.
- (c) Amsterdam Management International Limited served as the Investment Manager of the Future Growth Global Fund Limited; and
- (d) Leemhuis identified himself as the President of the Future Growth Group which had responsibility for the management of each of the Future Growth Funds and possibly other fund companies such as the Future Growth Group Hedge Fund.

28. The Respondents failed to report Leemhuis's involvement with any companies other than ASL to Canadian securities regulators, including on NRD, and provided false answers to questions on the Form 33-109F4 document that was submitted in respect of his registration, contrary to their obligations under National Instrument 33-109.

29. The Respondents also failed to properly document information about the involvement of Leemhuis in outside business activities on the books and records of ASL contrary to MFDA Rules 1.2.1(d) and 2.1.1(c).

30. The failure of the Respondents to report Leemhuis's involvement in outside business activities prevented earlier detection by securities regulators of Leemhuis's involvement with the Future Growth Funds.

## **Failure To Provide Truthful Answers And Co-operate With MFDA Staff**

31. In May 2006, during a compliance examination by MFDA Staff, the Respondents withheld information about Leemhuis's involvement with the Future Growth Funds and other businesses and provided false answers to multiple questions inquiring about:

- (a) whether Leemhuis was involved with, provided services to, or had an ownership interest in any business entities other than ASL;
- (b) whether Leemhuis received remuneration from any source other than ASL; and
- (c) whether ASL was related to any fund manager.

32. On September 6, 2007, during an interview with MFDA Enforcement Staff, Leemhuis falsely stated that he was not an officer or director of any business other than ASL. He failed to report his involvement with the Future Growth Funds and the businesses listed in paragraph 26 above.

33. On April 25, 2008, during an interview with MFDA and OSC Enforcement Staff, Leemhuis denied that he was an officer or director of any private company other than ASL and initially denied that he was an officer or director or exercised any beneficial ownership, direction or control over any companies other than ASL.

34. Since September 2007, the Respondents have failed to produce information and documentation that the Respondents undertook to provide to MFDA Staff during interviews in connection with the investigation of their conduct.

35. The Respondents failed to produce a client list or copies of client account statements when requested by MFDA Staff during an attendance at the offices of ASL on December 10, 2007, contrary to MFDA Rule 5.5.

36. By providing false or misleading answers to questions from MFDA Staff, withholding information and documentation requested by MFDA Staff and failing to

provide information and documentation requested by MFDA Staff during an enforcement investigation, the Respondents have contravened s. 22 of the By-law.

## **Compliance Deficiencies**

### *Trade Supervision*

37. Between January 2004 and May 2006, ASL failed to maintain evidence of trade supervision contrary to MFDA Rules 2.5 and 5 and MFDA Policy No. 2 including in particular, records of any inquiries made, responses received or follow up action taken in connection with trade supervision.

38. Prior to August 7, 2007, ASL did not have a qualified alternate branch manager or compliance officer to conduct trade supervision when Leemhuis was absent.

39. During the 2006 MFDA Sales Compliance Examination of ASL, MFDA Compliance Staff reviewed ASL records covering the period from January 2004 to May 2006. Among the 60 ASL daily trading summary reports that were reviewed:

- (a) 21 contained no evidence of daily trade supervision and suitability review;
- (b) 22 of the trading summary reports were signed by a compliance officer but were not dated;
- (c) None contained evidence of inquiries made, responses received or follow up action taken in connection with trading shown on the reports.

40. Similar deficiencies were identified in the 2003 Sales Compliance Examination of ASL but the Respondents failed to correct the deficiencies.

*New Accounts*

41. During the 2006 MFDA Compliance Examination of ASL, MFDA Compliance Staff examined 60 client files in which trading had occurred between January 2004 and May 2006 and identified:

- (a) 13 client accounts for which there was no NAAF on file;
- (b) 24 client files with missing or incomplete KYC information; and
- (c) 4 NAAFs that had not been signed and dated by the client,

contrary to MFDA Rules 2.2.1 and 2.2.2; and

- (d) 6 NAAFs that contained no evidence of review or approval by a compliance officer, contrary to MFDA Rules 2.2.3 and 5 and MFDA Policy No. 2.

42. Similar deficiencies were identified in the 2003 MFDA Sales Compliance Examination of ASL but the Respondents failed to correct the deficiencies.

*Securities Related Business Conducted By A Non-Registrant*

43. Between the summer of 2004 and September 2007, ASL permitted an individual named Anil Jain to conduct securities related business for clients of ASL without registration contrary to MFDA Rule 1.1.5(a).

*Trust Account Interest*

44. The Respondents have failed to implement a system to calculate or pay interest earned on client money held in ASL's mutual fund trust account contrary to MFDA Rule 3.3.2(h), MFDA Policy No. 4 and National Instrument 81-102.

45. This deficiency was identified during the 2003 and 2006 MFDA Sales Compliance Examinations of ASL but the Respondents failed to correct the deficiencies. The Respondents also failed to fulfill their undertaking to MFDA Enforcement Staff in September 2007 to correct the deficiency by October 2007.

### *Referral Arrangements*

46. ASL entered into referral arrangements with third party entities such as ~~CMC Markets Canada Inc. (“CMC”)~~ Maypoint Investments Inc. and Kenartha Oil & Gas which were not permitted arrangements because the companies were not licensed, registered or regulated entities eligible to be parties to a referral arrangement with an MFDA Member according to MFDA Rule 2.4.2(b)(i).

### *Timely Processing Of Trades & Approval Of New Accounts*

47. Between June and December 2007, on at least 15 occasions, ASL failed to process trades for its clients to purchase securities in a timely manner contrary to National Instrument 81-102 and MFDA Policy No. 2. 12 of the 15 purchase orders were processed between 7 and 17 days after the order was placed and in one of those cases, the note offering closed before the purchase order was processed.

48. Between July 2007 and January 2008, on at least 6 occasions, ASL failed to process redemptions for its clients on a timely basis contrary to National Instrument 81-102 and MFDA Policy No. 2. These redemption requests were processed between 5 and 17 days after the requests were made.

**NOTICE** is further given that the Respondents shall be entitled to appear and be heard and be represented by counsel or agent(s) 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, a Member:

- has failed to carry out any agreement with the MFDA;
- has failed to meet any liabilities to another Member or to the public;
- has engaged in any business conduct or practice which the Hearing Panel in its discretion considers unbecoming a Member or not in the public interest;

- has ceased to be qualified as a Member by reason of the ownership, integrity, solvency, training or experience of the Member or any of its Approved Persons or other employees or agents, or any person having an ownership interest in the capital or indebtedness of the Member;
- has failed to comply with or carry out the provisions of any of the By-laws, Rules or Policies of the MFDA; or
- has failed to comply with or carry out the provisions of any applicable federal or provincial statute relating to its business or of any regulation or policy made pursuant thereto;

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 the Member as a result of committing the violation;
- (c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease conducting securities related business) for such specific period and upon such terms as such Hearing Panel may determine, or, if the rights and privileges have already been suspended under Section 24.3, the continuation of such suspension (including a prohibition on the Member conducting securities related business) for such specified period and upon such terms as such Hearing Panel may determine;
- (d) termination of the rights, privileges and Membership of the Member;
- (e) expulsion of the Member from the MFDA;
- (f) such terms and conditions on Membership of the Member as may be considered appropriate by the Hearing Panel;
- (g) imposition of a monitor to oversee and/or report on the Member's activities; and

(h) directions for the orderly transfer of client accounts from the Member.

**NOTICE** is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, an Approved Person:

- 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;
- (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 Respondents or either 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 each Respondent must **serve** a **Reply** on Enforcement Counsel and any other party named in the Notice of Hearing and **file** a **Reply** with the Corporate Secretary within twenty (20) 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: Shelly Feld  
Fax: (416) 361-9073  
Email: sfeld@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to 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 1 copy of the **Reply** to the Corporate Secretary by fax to fax number (416) 361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to 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 either 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 that 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 to the extent that such allegations concern that Respondent and may impose on that Respondent any of the penalties described in the By-Laws.

**End.**

Doc 198505