



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: Gregory James Richard Burner

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 Prairie Regional Council of the Mutual Fund Dealers Association of Canada (the “MFDA”) on April 16, 2010 at 11:00 a.m. (Central), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Gregory James Richard Burner (the “Respondent”). Members of the public who want to listen to the teleconference should contact Marco Wynnyckyj, Hearings Coordinator, at 416-945-5146 or by email at mwynnyckyj@mfd.ca to obtain particulars. The Hearing on the Merits will take place in Winnipeg, Manitoba at a time and venue to be announced.

DATED this 16th day of March, 2010.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario, M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
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 May 2007 and November 2007, the Respondent failed to comply with:

- a) the Member's policies and procedures; and
- b) terms and conditions placed on the Respondent's employment by the Member;

by processing transactions in client accounts directly with mutual fund companies, contrary to MFDA Rules 1.1.2 and 2.5.1 and 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. Between October 2000 and January 2008, the Respondent was registered in Manitoba, Alberta and British Columbia as a mutual fund salesperson with Peak Investment Services Inc. ("Peak") and in Manitoba as the branch manager of the Winnipeg, Manitoba branch of Peak.
2. In January 2008, the Respondent was terminated by Peak as a result of the matters described herein. The Respondent is not currently registered in the securities industry in any capacity.
3. The Respondent is licensed to sell insurance in Manitoba and at the material times did so operating under the trade name Burner and Associates Ltd.
4. Peak became a Member of the MFDA on March 4, 2003.

Allegation #1: Failure to comply with Member's procedures

5. The Respondent was the branch manager of, and a mutual fund salesperson at, the Winnipeg, Manitoba branch of Peak. Approved Persons at the Winnipeg branch were required to ensure that all trade orders were entered into Peak's electronic order entry system for processing and that all documentation in respect of such orders was forwarded to Peak's office in Weyburn, Saskatchewan.

6. In January 2007, the compliance department at Peak noticed an unusual pattern of trading activity in a client account serviced by the Respondent which had resulted in the client incurring substantial deferred sales charge ("DSC") fees.

7. As a consequence, over the following months, Peak's compliance personnel monitored all of the Respondent's trading activity on a daily basis. On the basis of its review, Peak determined that in numerous instances:

- a) the Respondent was processing redemptions in client accounts which resulted in DSC fees being incurred by the clients;
- b) the proceeds of these redemptions were being used to purchase similar DSC mutual funds sold by other mutual fund companies, resulting in the Respondent earning a sales commission on the purchase of the new DSC mutual funds and the client commencing a new DSC schedule in respect of the reinvested redemption proceeds;
- c) the Respondent was not rebating to the clients the DSC fees incurred by the clients on the redemptions; and
- d) the Respondent was processing many of the redemption and re-purchase transactions directly with the mutual fund companies instead of through Peak's electronic order entry system.

8. By processing the redemption and re-purchase transactions directly with the mutual fund companies instead of through Peak's electronic order entry system, the Respondent interfered

with and delayed the ability of Peak to supervise the Respondent's trading activity in a timely manner through its regular supervisory processes.

9. By letter dated May 14, 2007, Peak advised the Respondent of the results of its review of his trading activity and placed the following terms and conditions (collectively, the "Terms and Conditions") on the Respondent's employment:

- a) the Respondent was required to process all transactions in client accounts through Peak's office in Weyburn, Saskatchewan;
- b) the Respondent was not permitted to process any client order directly with a mutual fund company;
- c) the Respondent was not permitted to reinvest the proceeds of a redemption in a client account which resulted in the client incurring a DSC fee into a new DSC mutual fund unless the client received a commission rebate equivalent to 100% of the DSC fees incurred by the client and the Respondent provided the client with appropriate disclosure in respect of the transaction and obtained the client's prior consent to the transaction; and
- d) all transactions submitted by the Respondent would be reviewed by Peak trade processing staff and, if necessary, by Peak compliance staff, prior to being sent to any mutual fund company.

10. In the letter of May 14, 2007, Peak also put the Respondent on notice that:

- a) any breach of the Terms and Conditions would result in the immediate suspension of the Respondent's trading privileges and a possible referral of the matter to the MFDA;
- b) any breach of his business agreement with Peak might result in disciplinary action against him by Peak, including termination; and
- c) any violation of securities law or regulations would result in his termination by Peak.

11. By letter dated May 25, 2007, the Respondent acknowledged placing trades in client accounts directly with mutual fund companies and stated that he would continue to do so “unless I am given some good reason to do otherwise”. The Respondent also stated that no transactions were ever placed in client accounts “without full and informed consent on the part of the client”, including with respect to any fees to be incurred in respect of the transaction.

12. Peak requested that the Respondent provide it with copies of his notes of his meetings with clients which would indicate that the clients were made aware of and consented to the DSC fees incurred by them in respect of the trading activity at issue.

13. On or about July 7, 2007, Peak published its updated Compliance Policies and Procedures manual, dated July 7, 2007, which provided, among other things:

3.6 ...

All transactions processed must be entered in PEAK’s order entry system. External order entry options offered by intermediaries and/or mutual fund companies are not permitted. (bold in original)

14. By letter dated September 10, 2007, entitled “Agreement to Terms and Conditions”, Peak reminded the Respondent of his obligation to comply with the Terms and Conditions and the outstanding request for copies of the Respondent’s notes of his meetings with clients. Peak advised the Respondent that the request for copies of his notes should be considered to be an additional Term and Condition. Peak advised that the Respondent that he was required to sign and return the “Acknowledgement to Terms and Conditions” portion of the letter to Peak by September 30, 2007. The Respondent did not do so.

15. In contravention of the Terms and Conditions and contrary to Peak’s policies and procedures, the Respondent continued to process transactions in client accounts directly with mutual fund companies.

16. In November 2007, the Respondent was advised by Peak that he would be terminated effective January 11, 2008.

17. On January 11, 2008, the Respondent was terminated by Peak.

18. By letter dated June 30, 2008, AB made a complaint to Peak about the conduct of the Respondent. AB was formerly a client of Peak and the Respondent had been the mutual fund salesperson responsible for servicing AB's accounts. (AB had an open account, a RRIF account and a joint open account with her sister).

19. In October and November 2007, AB had authorized the Respondent to process three redemptions in AB's accounts and direct the redemption proceeds to an insurance company to be used to purchase segregated funds. The Respondent processed the redemptions directly with the mutual fund company and not through Peak's electronic order entry system. AB incurred DSC fees in the approximate amount of \$9,872 and realized capital gains in the amount of \$6,971 as a result of the redemptions. The Respondent did not rebate the DSC fees to AB.

20. The basis of AB's complaint was that she had not been made aware of and agreed to incur DSC fees and realize the capital gains that resulted from the redemptions. AB was seeking repayment of the DSC fees.

21. By letter dated July 17, 2008, the Respondent denied the substance of AB's complaint but was unable to produce or refer Peak to any notes or other documentation that he had prepared in respect of his meeting with AB which recorded that he had made AB aware of, and she had consented to, the DSC fees and capital gains that resulted from the trading in her accounts.

22. Peak paid AB \$10,000 to reimburse her for the DSC fees she incurred as a result of the redemptions processed by the Respondent in her accounts.

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;
- 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 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, Ontario
M5H 3T9
Attention: H.C. Clement Wai
Facsimile: 416-361- 9072
Email: cwai@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:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
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 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.