



**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: Andrew David Tachauer**

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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 February 2, 2023 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 Andrew David Tachauer (the “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 19<sup>th</sup> day of December, 2022.

“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  
Telephone: 416-945-5134  
Email: [corporatesecretary@mfd.ca](mailto: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 December 2019 and February 2020, the Respondent failed to use due diligence to learn and accurately record the essential facts relative to a client, contrary to the Member's policies and procedures and MFDA Rules 2.2.1,<sup>1</sup> 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #2:** Between December 2019 and February 2020, the Respondent failed to use due diligence to ensure that investments that he recommended a client purchase using borrowed monies were suitable for the client, having regard to the client's Know-Your-Client information, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #3:** Between December 2019 and February 2020, the Respondent failed to update a client's Know-Your-Client information when the Respondent became aware of a material change in the client's information, contrary to the Member's policies and procedures and MFDA Rules 2.2.4(b),<sup>2</sup> 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

**Allegation #4:** In February 2020, the Respondent failed to report to the Member that a client used borrowed monies to invest, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1 and 1.1.2 (as it relates to MFDA Rule 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:

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<sup>1</sup> MFDA Rule 2.2.1 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

<sup>2</sup> MFDA Rule 2.2.4 was amended on December 31, 2021. As the conduct addressed in this proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

## **Registration History**

1. Since February 25, 2009, the Respondent has been registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the “Member”), a Member of the MFDA.

2. The Respondent has been registered with the Member since October 7, 2020 in British Columbia and Alberta. The Respondent was registered with the Member from February 8, 2010 to October 1, 2022 in Prince Edward Island.

3. At all material times, the Respondent conducted business in the Etobicoke, Ontario area.

## **Allegations #1 and #2 –Failure to Accurately Record a Client’s KYC Information and Use Due Diligence to Ensure Suitability**

4. At all material times, the Member’s policies and procedures required its Approved Persons to, among other things:

- a) use due diligence to learn the essential facts relative to every client and for every account, recommendation made, or transaction accepted, as well as document their assessment;
- b) carry out the following 3-stage process in sequence:
  - i. conduct due diligence involving collection of data to determine Know-Your-Client (“KYC”) information and accurate assessment of it;
  - ii. apply judgment on suitable investment recommendations; and
  - iii. provide disclosure on recommended investments;
- c) only make leverage recommendations if,
  - i. they were suitable and in the best interest of clients;
  - ii. clients had at minimum fair investment experience as documented on the client application or the KYC update form. Leverage could never be recommended to clients with novice investment experience;
  - iii. clients had a high risk tolerance;
  - iv. clients had a minimum time horizon of 6 to 10 years; and
  - v. Approved Persons fully disclosed all potential risks of leveraged investing to clients, including by providing them with a risk disclosure document and ensuring that they signed a risk disclosure form.

5. On September 19, 2017, the Respondent began servicing client MS's accounts at the Member.
6. At all material times, client MS, had limited investment knowledge and experience, and relied on the Respondent for investment recommendations and advice.
7. At their initial meeting on September 19, 2017, the Respondent obtained information from client MS in order to complete an Account Application and Investor Profile Questionnaire ("IPQ") to facilitate the opening of a Tax Free Savings Account ("TFSA"). The Account Application and IPQ were forms developed by the Member to gather and assess KYC information to ensure suitability of investment recommendations made to the client.
8. In the Account Application and IPQ, the Respondent recorded that, among other things, client MS's primary investment objective was to save for retirement, and her investment time horizon was more than 10 years.
9. By 2019, client MS planned to renovate her house to accommodate her parents, who would be moving into her home. The initial plan was to commence the renovations in September 2019, but ultimately the project was delayed until May 2020.
10. The cost of the renovations were estimated to be approximately \$453,369 plus taxes.
11. On or about September 27, 2019, client MS obtained a second mortgage of \$313,056 which she intended to use to pay for a portion of the renovations.
12. On or about December 16, 2019, client MS informed the Respondent that she wished to invest monies that she would eventually require to pay for renovations to her home, and asked the Respondent for his advice on investing these monies for a period of 3 to 5 months.
13. The Respondent subsequently met with client MS on February 6, 2020 to discuss investing \$380,000, which client MS informed the Respondent included borrowed monies that were the proceeds of a second mortgage, as described above.
14. Client MS also informed the Respondent that she would eventually require all the monies invested to pay for the renovations commencing in March 2020, and that she would need to access the monies that she was investing in order to make monthly payments towards the cost of the renovation until approximately July 2020.

15. During the February 6, 2020 meeting, the Respondent recommended that client MS purchase certain mutual funds (the “Mutual Funds”) in the TFSA that the Respondent already held at the Member, and in a new non-registered account that client MS would open at the Member, as described below:

| <b>Mutual Fund</b>                                | <b>Account</b> | <b>Amount of Purchase</b> |
|---|----------------|---------------------------|
| IG Core Portfolio Income Balanced - Series B Fund | TFSA           | \$65,000                  |
| IG Core Portfolio – Income Focus – Series B Fund  | Non-registered | \$265,000                 |
| IG Core Portfolio – Income – Series B Fund        | Non-registered | \$50,000                  |
|   |                | <b>Total: \$380,000</b>   |

16. According to the Prospectus and Fund Facts, each of the Mutual Funds was suitable for investors who intended to invest their monies for the “long-term”.

17. Client MS’s purchase of the Mutual Fund in her TFSA represented approximately 93% of the account holdings. Before client MS made this purchase on the Respondent’s recommendation, she held investments and cash in her TFSA of approximately \$4,744, as of January 1, 2020.

18. When client MS informed the Respondent that she intended to invest her monies in her TFSA for a brief period of 3 to 5 months and that she required the monies invested to pay the costs of renovations, the Respondent became aware that client MS’s time horizon was no longer more than 10 years, and her primary investment objective was no longer retirement savings. This information amounted to a material change that required the Respondent to update client MS’s KYC information in respect of her existing TFSA that was on file since 2017, as described above at paragraphs 7 and 8, which was no longer accurate.

19. As described above, the Respondent recommended that client MS also purchase Mutual Funds in a new non-registered account. The Respondent recorded in the Account Application, among other things, that client MS had a 1 to 3 years investment time horizon.

20. The Respondent’s recording of the client’s time horizon for the new non-registered account was inaccurate because client MS had informed the Respondent that she intended to use the invested money to pay renovation costs less than 1 year from the date of the investment.

21. As a result, the purchases of the Mutual Funds by client MS in her TFSA and non-registered account appeared to be suitable for her when they were inconsistent with her actual investment objective and KYC information.

22. As described above, client MS used borrowed monies to invest in the Mutual Funds described above. The Respondent failed to explain to client MS the risks of using borrowed monies to purchase mutual funds, including:

- a) the risk that the value of the investments could fall below the amount that she had borrowed, and consequently, she could have insufficient monies to pay the anticipated renovation costs;
- b) the risk that interest costs payable on the second mortgage could exceed the returns received from investments purchased with the borrowed monies; and
- c) magnification of investment risk.

23. The Respondent failed to provide client MS with a risk disclosure document respecting leveraged investments, and ensure that she signed any risk disclosure form prior to processing the mutual fund purchases that he recommended, as described above, contrary to the policies and procedures of the Member.

24. The Respondent received \$2,849 in commissions from client MS's purchases of the Mutual Funds.

25. On February 26, 2020, approximately three weeks after purchasing the Mutual Funds, client MS raised concerns with the Respondent about the decline in value of her investments, asked about other investment options to preserve her capital, and reminded the Respondent that she required monies shortly to begin paying her anticipated renovation costs. The Respondent reassured her that the market downturn would be short-term.

26. On March 12, 2020, client MS redeemed one of the Mutual Funds that she had purchased in her non-registered account to pay some of her renovation costs.

27. On March 30, 2020, client MS complained to the Member about the decline in value of her investments in the Mutual Funds, and that the Respondent's investment recommendations were unsuitable and inconsistent with her investment objective and time horizon, and sought compensation for her investment losses.

28. On April 3, 2020, client MS redeemed the balance of her investments in her non-registered account and TFSA, incurring a loss of \$34,007.05 due to market decline.

29. The Respondent failed to use due diligence to ensure that investments that he recommended that client MS purchase using borrowed monies were suitable and consistent with the Member's policies and procedures given that:

- a) the Respondent's recommendations were inconsistent with her investment objectives and client MS's actual KYC information, including: her time horizon of 3 to 5 months, her intention to use all the invested monies to pay for the renovation, her limited investment knowledge and experience, and her low risk tolerance; and
- b) he failed to fully and adequately explain to client MS the risks of using borrowed monies to purchase mutual funds, as described above at paragraph 22.

30. By virtue of the foregoing, the Respondent failed to use due diligence to learn and accurately record the essential facts relative to client MS, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

31. By virtue of the foregoing, the Respondent failed to use due diligence to ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

### **Allegation #3 - Failure to Update Material Changes on KYC Update Forms**

32. At all material times, the Member's policies and procedures required its Approved Persons to:

- a) keep KYC information up-to-date and accurate to ensure that investment recommendations and portfolios of clients are suitable;
- b) be aware of material changes in client circumstances that resulted in changes to time horizon or investment objective;
- c) re-assess, including by using an IPQ, and update KYC information upon becoming aware that a material change in client circumstances has arisen that could result in a change to time horizon or investment objective; and
- d) complete a KYC update form to update KYC information.

33. As described above, in December 2019 and February 2020, client MS informed the Respondent that she wished to invest her monies for 3 to 5 months, and she required these monies, commencing in March 2020, to pay for her renovation.

34. The Respondent did not arrange for client MS to complete a new IPQ or complete a KYC update form in respect of her TFSA.

35. By virtue of the foregoing, the Respondent failed to update a client's Know-Your-Client information when the Respondent became aware of a material change in the client's information, contrary to the Member's policies and procedures and MFDA Rules 2.2.4(b), 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

#### **Allegation #4 – Failure to Report Investment of Borrowed Monies**

36. At all material times, the Member's policies and procedures required its Approved Persons to report clients' investment of borrowed monies to enable the Member to identify leveraged client accounts by:

- a) labeling client accounts with leverage indicators; and
- b) indicating on investment instruction forms that clients were investing using borrowed monies.

37. As described above, in February 2020, client MS informed the Respondent that the monies that she intended to invest included proceeds from a second mortgage on her home.

38. The Respondent failed to report to the Member that client MS was investing borrowed monies, or label the account with leverage indicators as the Member's policies and procedures required. This affected the Member's ability to ensure that regulatory obligations that are applicable to leveraging recommendations were complied with and to ensure the suitability of the account and the holdings for client MS.

39. By virtue of the foregoing, the Respondent failed to report to the Member a client's investment of borrowed monies, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1, and 1.1.2 (as it relates to MFDA Rule 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: Samantha Wu  
Email: [swu@mfd.ca](mailto:swu@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.**

DM 900157