

Notice of Hearing

File No. 202028



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 Kazina

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on August 11, 2020 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Andrew Kazina (“Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 4th day of June, 2020.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
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Toronto, ON M5H 3T9
Telephone: 416-945-5134
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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 February 8, 2002 and October 5, 2017, the Respondent engaged in outside business activities that were not disclosed to and approved by the Member by operating businesses that provided tax and financial planning services to individuals, and marketing, franchising and other consulting services to businesses, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d)¹ [now 1.3.2], 2.1.1, 2.5.1, 2.10 and 1.1.2.

Allegation #2: Between January 2012 and October 5, 2017, the Respondent recommended and accepted approximately \$257,500 for investment in a business that he operated from at least eight clients and at least two non-clients, thereby engaging in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.1.1, 2.1.1, 2.5.1, 2.10 and 1.1.2.

Allegation #3: Between January 2012 and October 5, 2017, the Respondent solicited approximately \$232,500 from at least eight clients that he used to finance and operate his business and commingled the money with his personal savings in bank accounts that he held in his own name or jointly with his wife, thereby engaging in personal financial dealings with clients that gave rise to a conflict of interest that he failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #4: Between no later than 2006 and October 5, 2017, the Respondent provided false or misleading information to the Member in responses to questions on annual compliance questionnaires from the Member, contrary to MFDA Rule 2.1.1.

¹ Effective December 3, 2010, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c). Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.

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 about October 22, 1991 to October 5, 2017, the Respondent was registered in the securities industry.
2. Between January 1, 1992 and October 5, 2017, the Respondent was registered in Manitoba as a mutual fund salesperson / dealing representative ² with Investors Group Financial Services Inc. (“Investors Group” or the “Member”). During this time, the Respondent has also been registered for varying periods in British Columbia, Alberta, Saskatchewan, Ontario, and Nova Scotia.
3. Since February 8, 2002, Investors Group has been a Member of the MFDA and between February 8, 2002 and October 5, 2017, the Respondent was an Approved Person of Investors Group.
4. At all material times, the Respondent conducted business from a branch office of the Member located in Winnipeg, Manitoba.
5. From January 1, 2006 to May 5, 2010, the Respondent was the branch manager of his branch office.
6. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1 – The Respondent Engaged in Undisclosed Outside Business Activities

7. At all material times, the Member’s policies and procedures prohibited its Approved Persons from engaging in business activities other than those involving products and services offered by the Member without prior written authorization from the Member.

² On September 28, 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

8. During the time that the Respondent was an Approved Person of the Member, the Respondent operated a sole proprietorship called Kazina Financial Services (“KFS”). The Respondent provided tax preparation services and financial planning services through KFS. For a few years, the Respondent also offered marketing and other business consulting services through KFS.

9. The Respondent did not provide written disclosure to the Member about KFS or the business activities that he was engaged in through KFS, and he did not receive written authorization from the Member to engage in the outside business activities of KFS.

10. By no later than January 2012, the Respondent began operating a second business that he called Eagle Franchising and Business Consulting (“Eagle Franchising”). At inception, the Respondent was the sole proprietor of Eagle Franchising.

11. According to its website, Eagle Franchising’s business was to “assist in the development and expansion of businesses interested in growing their brand through franchising and increasing market share and profitability” as well as offering “a range of business services” for the management of businesses.

12. The Respondent deposited the revenues that he received from customers for services provided by KFS and Eagle Franchising into bank accounts that he held in his own name or jointly with his wife. He paid expenses incurred for the benefit of the businesses and personal expenses from those same bank accounts.

13. The Respondent did not disclose the existence of Eagle Franchising to the Member, and did not request or obtain written authorization from the Member to engage in the outside business activities of Eagle Franchising.

14. KFS and Eagle Franchising charged fees for services rendered to customers of the businesses that were not disclosed to or approved by the Member. Some of the customers that paid fees for services rendered by KFS and Eagle Franchising were also clients of the Member or businesses owned by clients of the Member.

15. By operating KFS and Eagle Franchising, the Respondent engaged in outside business activities that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(d)³ [now 1.3.2], 2.1.1, 2.5.1, 2.10, and 1.1.2.

Allegations #2 and #3 – The Respondent Recommended and Accepted Money for Investment in his Outside Businesses

16. At all material times, the policies and procedures of the Member prohibited Approved Persons from:

- a) becoming involved with clients in investment arrangements in which the Approved Person and clients invest together;
- b) selling investments or other products that had not been specifically authorized for sale by the Member; and
- c) processing securities related business except for the account of the Member and through the facilities of the Member.

17. Commencing in or about January 2012, the Respondent solicited clients and other investors to purchase ownership interests in KFS and Eagle Franchising.

18. The Respondent promised investors a return on their investment that would be paid annually as a percentage of the gross revenues received by KFS and Eagle Franchising.

19. The Respondent told investors in his outside businesses that they would not lose money on their investment because he would return their principal investment to them in addition to paying them the annual share of revenue that was promised.

20. Between March 26, 2012 and August 29, 2016, as described in the chart below, the Respondent:

- a) recommended and obtained investments in KFS and Eagle Franchising totaling at least \$232,500 from at least eight clients whose investment accounts at the Member were serviced by the Respondent;

³See Note 1.

- b) deposited the money that he received from clients for the purpose of investing in KFS and Eagle Franchising into bank accounts that he held in his own name or jointly with his wife; and
- c) in many cases, recommended that the clients finance the purchase of their investments in KFS and Eagle Franchising by redeeming mutual funds held in their investment accounts with the Member:

Client	Date of Payment to the Respondent	Investment Amount	Redemption of Mutual Funds by Client (Yes/No)
MG and JG	March 26, 2012 August 29, 2016	\$10,000 \$5,000	Yes Yes
CP and DP	July 15, 2012 March 22, 2013	\$10,000 \$9,000	Yes Yes
SK	August 9, 2012 September 6, 2012	\$5,000 \$5,000	Yes Yes
DK	March 3, 2013 December 9, 2013 December 11, 2013 February 24, 2014	\$10,000 \$16,000 \$15,000 \$91,000	No No Yes Yes
GT	June 1, 2013	\$5,000	No
RW & JW	June 27, 2013	\$5,500	No
GC	April 12, 2014 April 27, 2015 May 15, 2015	\$5,000 \$20,000 \$19,000	Yes Yes Yes
GA	May 3, 2015	\$2,000	No
TOTAL		\$232,500	

21. In addition to soliciting investments in his outside businesses from the clients listed in paragraph 20 above, the Respondent also solicited and obtained investments in KFS and Eagle Franchising from at least two other investors who were not clients of the Member:

Non-Client Investor	Date of Payment to the Respondent	Investment Amount
HW	May 29, 2012	\$10,000
# Manitoba Inc.	September 19, 2012	\$15,000
TOTAL		\$25,000

22. The Respondent drafted investment contracts and provided them to investors documenting their investments in KFS and Eagle Franchising and the share of the business revenue that they were promised.

23. The Respondent did not disclose to the Member that he:

- a) had recommended and accepted investments in KFS and Eagle Franchising from clients and other investors;
- b) had accepted trading instructions from clients MG and JG, CP and DP, DK and GC, and SK to redeem mutual fund investments that the clients had held in their investment accounts with the Member to fund their investments in KFS and Eagle Franchising; and
- c) accepted at least \$232,500 from at least eight clients and an additional \$25,000 from at least two other investors, which he deposited into bank accounts that he held in his own name or jointly with his wife.

24. The Respondent commingled the money that he received from clients in bank accounts from which he paid personal expenses and debts and otherwise funded his lifestyle.

25. The Respondent made his own calculations of the revenues that KFS and Eagle Franchising received and the expenses that KFS and Eagle Franchising paid for purposes of determining how much money investors were entitled to receive each year according to the terms of their investment contracts with him. He did not provide investors in KFS and Eagle Franchising with detailed or audited financial statements showing the revenue received and expenses paid KFS and Eagle Franchising. As a result, investors had no way of knowing whether they were receiving the share of the business revenue that they had been promised.

26. Since 2017, the Respondent has not repaid or otherwise accounted for the principal amounts that he received from some investors who have asked to redeem their investments in KFS or Eagle Franchising.

27. By recommending and accepting investments totaling approximately \$232,500 in KFS and Eagle Franchising from at least eight clients and investments totaling approximately \$25,000 from at least two other investors, the Respondent engaged in securities related business that was not

carried on for the account of the Member or processed through the facilities of the Member, contrary to the policies and procedures of the Member and MFDA Rule 1.1.1, 2.5.1, 2.10 and 1.1.2.

28. In addition, the Respondent:

- a) solicited money from at least eight clients for investment in his outside businesses, including in some cases, the proceeds of redemptions from mutual funds that clients previously held in investment accounts with the Member; and
- b) commingled the money that he received for investment in his outside businesses in bank accounts from which he paid personal debts and expenses;

thereby engaging in personal financial dealings that gave rise to conflicts of interest that he failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

Allegation #4 – False or Misleading Responses To Compliance Questionnaires

29. Between 2006 and 2017, the Respondent submitted responses to annual compliance questionnaires from the Member.

30. Among other things, the compliance questionnaires required the Respondent to confirm:

- a) whether he was engaged in any outside business activities;
- b) that any outside business activities that he was engaged in had been approved by senior compliance management of the Member and had been recorded on the national registration database;
- c) that he had not recommended or effected trades or sales of any investments that were not offered or sponsored by the Member.

31. Between 2006 and 2017, the Respondent falsely denied on each compliance questionnaire, among other things, that he was engaged in any outside business activities and failed to disclose to the Member that he was operating KFS and Eagle Franchising, sold investments in KFS and

Eagle Franchising to clients and other investors, and otherwise engaged in the conduct described above.

32. The Respondent therefore provided false or misleading responses to the Member that undermined its efforts to supervise his conduct and ensure compliance with regulatory requirements, contrary to MFDA Rule 2.1.1.

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: Francis Roy
Email: froy@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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