



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: Clive George Wilkins

NOTICE OF HEARING

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 June 9, 2022 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Clive George Wilkins (the “Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 21st day of March, 2022.

“Michelle Pong”

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

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

Allegation #1: Between August 3, 2011 and July 4, 2018, the Respondent borrowed monies from clients, which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 2.1.1, 2.1.4¹, and 2.5.1.

Allegation #2: Between February and April 2020, the Respondent made false or misleading statements to the Member and the MFDA during the course of investigations into his conduct, contrary to MFDA Rule 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. From September 2007 to November 2, 2021, the Respondent was registered in Ontario as a dealing representative with PFSL Investments Canada Ltd. (the "Member"), a Member of the MFDA.
2. From September 2009 to November 2, 2021, the Member designated the Respondent as a branch manager.
3. On November 2, 2021, the Member terminated the Respondent, and he is not currently registered in the securities industry in any capacity.
4. At all material times, the Respondent conducted business in the St. Catharines, Ontario area.

¹ On June 30, 2021, amendments to MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding pre-dated the amendment to the Rule, the contravention of MFDA Rule 2.1.4 that is addressed in this Notice of Hearing is of the version of MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

Allegation # 1 – Personal Financial Dealings with Clients

5. At all material times, the Member’s policies and procedures prohibited its Approved Persons from borrowing money from clients and other Approved Persons at the Member.

6. In each year between 2011 and 2018, the Respondent completed and submitted to the Member a “General Representative Attestation” in which he answered “yes” to the following statement: *“I understand that I must not and will not accept cash from a client, a recruit or a representative, nor be involved in any kind of borrowing/lending money arrangement with a client, a representative or recruit.”*

7. At all material times, clients GR, SF, MK, PB, and HH (collectively, “the Clients”) were clients of the Member. At all material times, the Respondent was responsible for servicing client MK’s account at the Member.

8. During the material time, the Clients were or became Approved Persons of the Member, and the Respondent was the branch manager responsible for supervising their activities at the Member.

9. In or about October 2015, the Respondent owed monies to the Canada Revenue Agency, which resulted in a Requirement to Pay being issued in respect of the Respondent’s tax arrears that required the Member to pay the CRA monies payable to the Respondent.

10. As a result of the Requirement to Pay described above, on November 16, 2015, the Ontario Securities Commission (the “OSC”) imposed terms and conditions on the Respondent’s registration effective December 1, 2015, which included a period of close supervision by the Member.

11. Between August 3, 2011 and July 4, 2018, the Respondent borrowed a total of approximately \$158,000 from the Clients as follows:

Client	Date	Amount Borrowed
GR	August 3, 2011	\$15,000
	June 15, 2012	\$10,000
	August 14, 2012	\$20,000
	November 30, 2013	\$70,000
	December 15, 2015	\$15,000

Client	Date	Amount Borrowed
SF	May 15, 2017	\$2,500
PB	October 17, 2017	\$15,000
MK	December 12, 2017	\$3,000
	February 17, 2018	\$2,500
HH	July 4, 2018	\$5,000
TOTAL: \$158,000		

12. The Respondent borrowed the monies as described above to pay personal expenses, including to pay his outstanding tax arrears.

13. As reflected in the chart in paragraph 11 above, the Respondent borrowed the monies from clients before the OSC imposed terms and conditions on his registration placing him under close supervision, and he borrowed some amounts after the heightened supervision was required.

14. At the time when the Respondent borrowed the monies described above, clients GR, MK, PB, and HH were clients of the Member. Client SF became a client after the Respondent borrowed monies from her, and the loan remained outstanding when she became a client of the Member.

15. None of the loans that the Respondent obtained from clients SF, MK, PB, and HH were documented in loan agreements. With respect to some of the monies borrowed from client GR, the Respondent provided client GR with promissory notes that listed the principal amount borrowed, the term of the loan, and in some instances the amount or rate of interest payable on the amounts that the Respondent borrowed.

16. The Respondent has repaid all of the amounts that he borrowed from the Clients. The Respondent did not repay the loans that he obtained from clients GR, MK and SF on or before the dates when the Respondent had promised to repay these clients.

17. The Respondent's borrowing of monies from the Clients gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member.

18. By virtue of the foregoing, the Respondent borrowed monies from clients, which gave rise to conflicts or potential conflicts of interest that the Respondent failed to disclose to the Member or otherwise ensure were addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 2.1.1, 2.1.4, and 2.5.1.

Allegation # 2 – False or Misleading Statements to the Member and the MFDA

19. The Member submitted a report on the Member Event Tracking System (METS) to the MFDA reporting allegations the Member received that indicated the Respondent had borrowed monies from “other [Approved Persons registered with the Member] who are also Member clients”.

20. On March 16, 2020, Staff of the MFDA (“MFDA Staff”) wrote to the Member and requested that the Member obtain a written statement from the Respondent addressing, among other things, whether the Respondent had borrowed from clients or other Approved Persons registered with the Member, and the Respondent’s reasons for any such borrowing.

21. On March 16, 2020, the Member informed the Respondent of the information it had received indicating that the Respondent had borrowed monies from clients, and reviewed with the Respondent MFDA Staff’s request for information set out in MFDA Staff’s March 16, 2020 letter described above. At this time, the Respondent told the Member that he had borrowed monies from a client in 2003 that had since been reported to and dealt with by the Member. The Respondent further stated to the Member that he had not borrowed any monies from clients since the incident in 2003.

22. On March 31, 2020, in response to MFDA Staff’s March 16, 2020 letter, the Respondent submitted a written statement to MFDA Staff stating that he had not borrowed monies from Member clients or representatives.

23. On April 6, 2020, the Member conducted a telephone interview with the Respondent, during which the Member informed the Respondent that his statements conflicted with other information the Member had received indicating he had borrowed monies from clients. The Respondent then admitted to the Member that he had borrowed money from GR but stated that he had not borrowed monies from any other Approved Persons or clients of the Member.

24. The Respondent’s statements to the Member on March 16 and April 6, 2020, as well as the Respondent’s statement to MFDA Staff on March 31, 2020, were false or misleading as the Respondent had borrowed monies from the Clients as set out in the chart in paragraph 11 above.

25. On April 9, 2020, the Respondent submitted an updated written statement to MFDA Staff in which he admitted to borrowing money from the Clients.

26. On February 19, 2021, MFDA Staff interviewed the Respondent, during which he stated that his initial statement to MFDA Staff on March 31, 2020 was “not the truth”.

27. By virtue of the foregoing, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of investigations into his conduct when he falsely denied borrowing money from clients, 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: Julie Grajales
Email: jgrajales@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.

DM 879986