

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, as amended**

AND

IN THE MATTER OF JOHN RICHARD WOLFENDEN

AND

**IN THE MATTER OF A DECISION OF A HEARING PANEL OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA
DATED OCTOBER 2, 2017**

APPLICATION FOR A HEARING AND REVIEW

The Applicant, the Mutual Fund Dealers Association of Canada (the “MFDA”), applies to the Ontario Securities Commission (the “Commission”) pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) for a hearing and review of the decision on penalty of the Hearing Panel dated October 2, 2017, *In the Matter of John Richard Wolfenden* (the “Penalty Decision”).

1. **THE APPLICANT REQUESTS** that the Commission make an order pursuant to section 21.7 and subsection 8(3) of the Act:

(a) imposing the following penalties on John Richard Wolfenden (the “Respondent”), in addition to the costs imposed by the Hearing Panel in the Penalty Decision:

(i) a prohibition of at least 3 years on the Respondent’s authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member; and

(ii) a fine in the amount of at least \$50,000.

(b) alternatively, remitting the question of appropriate penalties in this matter to the Hearing Panel for reconsideration in light of the Commission’s decision; and

(c) granting such further and other relief as counsel may request and the Commission may order.

2. **THE GROUNDS FOR THE APPLICATION** are:

(a) in the decision on the merits of the Hearing Panel dated January 5, 2017 (the “Merits Decision”), the Hearing Panel found that the Respondent:

(i) borrowed \$20,000 from client MP and \$80,000 from client JM, thereby engaging in personal financial dealings with clients which gave rise to a conflict or potential conflict of interest between the Respondent and the clients that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.1 and 2.1.4;

(ii) failed to report to the Member client MP’s complaint regarding the Respondent’s failure to repay the monies he borrowed from client MP which constituted a complaint in respect of personal financial dealings with a client, contrary to MFDA Policy No. 6, subsection 4.1(b)(v); and

(iii) misled the Member with respect to his personal financial dealings with client MP and client JM, thereby interfering with the Member’s ability to conduct a reasonable supervisory investigation of the Respondent’s activities and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1.

(b) in the Penalty Decision, the Hearing Panel imposed the following penalty and costs on the Respondent:

(i) a fine in the amount of \$5,000; and

(ii) costs in the amount of \$5,000.

(c) the Hearing Panel did not impose any period of prohibition (i.e., suspension) on the Respondent’s ability to conduct securities related business with a Member of the MFDA;

(d) the Hearing Panel erred in law and proceeded on an incorrect principle by imposing a sanction that was unfit and inappropriate having regard to the seriousness of the Respondent’s misconduct;

- (e) the Hearing Panel erred in law and proceeded on an incorrect principle by imposing a sanction which failed to place sufficient weight on the principle of general deterrence;
- (f) the Hearing Panel erred in law and proceeded on an incorrect principle by imposing a sanction that is inconsistent with the approach of other Hearing Panels and/or securities authorities when addressing conduct of a similar nature;
- (g) the Hearing Panel proceeded on an incorrect principle and overlooked material evidence when it concluded that the Respondent's failure to understand the MFDA's rules regarding conflicts of interest, and his Member's policies which expressly prohibited him from borrowing monies from clients, was a mitigating factor with respect to penalty. Participants in the securities industry are expected to know and abide by their regulatory obligations;
- (h) the Hearing Panel proceeded on an incorrect principle and overlooked material evidence when it treated the Respondent's admission that he had borrowed monies from client JM as a mitigating factor with respect to penalty, notwithstanding that the Respondent withheld this information from the Member contrary to his obligations;
- (i) the Hearing Panel overlooked material evidence when it determined that the loan that the Respondent obtained from client MP was repaid prior to the agreed-upon renewal date for the loan;
- (j) the Hearing Panel proceeded on an incorrect principle and overlooked material evidence when it determined that "the Respondent has already effectively suffered a suspension of 4 years" when the Respondent was not prohibited or suspended from conducting securities related business during this time;
- (k) the sanction imposed by the Hearing Panel is inconsistent with the public interest in light of the seriousness of the Respondent's misconduct;
- (l) the Hearing Panel erred in law and proceeded on an incorrect principle by adopting a restrictive approach to the role of prohibitions in determining

appropriate disciplinary sanctions. This restrictive approach is inconsistent with the public interest;

(m) sections 8 and 21.7 of the Act;

(n) Rules 2.2 and 14 of the *Ontario Securities Commission Rules of Procedure* (the OSC Rules of Procedure”); and

(o) such further and other grounds as counsel may advise.

3. **THE DOCUMENTARY EVIDENCE** to be used at the hearing of this application is:

(a) the record of the proceeding before the Hearing Panel as provided in Rule 14.3 of the OSC Rules of Procedure, including:

(i) the Notice of Hearing dated June 18, 2015;

(ii) the documentary evidence presented to the Hearing Panel;

(iii) the transcripts of the oral evidence before the Hearing Panel;

(iv) the Merits Decision;

(v) the Penalty Decision; and

(vi) such further and other evidence as counsel may advise and the Commission may permit.

November 1, 2017

**MUTUAL FUND DEALERS
ASSOCIATION OF CANADA**
121 King Street West, Suite 1000
Toronto, ON M5H 3T9

Charles A. Toth
Direction, Litigation
Tel: (416) 943-4619
Email: ctoth@mfd.ca

Paul Blasiak
Enforcement Counsel
Tel: (416) 943-4618
Email: pblasiak@mfd.ca

TO: JOHN RICHARD WOLFENDEN

AND TO: ONTARIO SECURITIES COMMISSION
20 Queen St. West, 22nd Floor
Toronto, ON M5H 3S8

Grace Knakowski
Secretary to the Commission
Tel: (416) 596-4252