



CIRO · OCRI

Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Notice of Hearing

File No. 202326

IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
Carren Kwok Wah Au

NOTICE OF HEARING

NOTICE is hereby given that a disciplinary proceeding has been commenced by the Canadian Investment Regulatory Organization (“**CIRO**”) against Carren Kwok Wah Au (the “**Respondent**”). The first appearance will take place electronically by videoconference before a hearing panel of the Ontario District Hearing Committee of CIRO (the “**Hearing Panel**”) on November 21, 2023, at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held. The Hearing on the Merits will take place at a time and venue to be announced. Members of the public who would like to attend the first appearance by videoconference as an observer should contact hearings@mfd.ca to obtain particulars.

DATED this 18th day of September, 2023.

“Michelle Pong”

Michelle Pong
Director, District Hearing Committees,
Mutual Fund Dealer Division

Canadian Investment Regulatory Organization
121 King Street West, Suite 1000
Toronto, Ontario M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfd.ca

NOTICE is further given that CIRO alleges the following violations of the Mutual Fund Dealer Rules:¹

Allegation #1: Between 2009 and 2021, the Respondent misappropriated or failed to account for monies that the Respondent obtained from clients and other individuals, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1).

Allegation #2: Beginning November 2022, the Respondent failed to cooperate with an investigation into the Respondent's conduct by MFDA Staff, contrary to Mutual Fund Dealer Rule 6.2.1 (formerly section 22.1 of MFDA By-law No. 1).

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by CIRO at the hearing:

Registration History

1. Between February 17, 1997 and June 11, 2021, the Respondent was registered as a dealing representative with HSBC Investment Funds (Canada) Inc. (the “**Dealer Member**”), a Dealer Member of CIRO (formerly a Member of the MFDA).
2. On June 11, 2021, the Dealer Member terminated the Respondent as a result of the conduct that is the subject of this proceeding, and the Respondent is not currently registered in the securities industry in any capacity.
3. At all material times, the Respondent was also an employee of HSBC Bank Canada (the “**Bank**”), which is affiliated with the Dealer Member.
4. At all material times, the Respondent conducted business in the Toronto, Ontario area.

¹ Staff alleges that, at the time of the misconduct, the Respondent contravened MFDA Rule 2.1.1 and section 22.1 of MFDA By-law No. 1, which are now incorporated into Mutual Fund Dealer Rules 2.1.1 and 6.2.1 referred to in this proceeding.

Allegation #1 – Misappropriation or Failure to Account for Monies

5. Between 2009 and 2021, the Respondent misappropriated or failed to account for at least CAD\$3,042,305 and US\$842,593, which the Respondent obtained from at least five clients of the Dealer Member, who held bank accounts at the Bank (the “**Clients**”), and at least seven other individuals, who only held bank accounts at the Bank (the “**Other Individuals**”).

6. The Clients and Other Individuals were seniors and/or resided outside of Canada, and did not make regular use of their accounts with the Dealer Member or the Bank.

7. The Respondent obtained monies from the Clients and the Other Individuals, without their knowledge or authorization, by:

- (a) opening an account with the Bank in the Respondent’s brother-in-law’s name, FY, who did not reside in Canada and did not authorize the Respondent to do so, which the Respondent controlled (the “**Fake Account**”) and from which the Respondent paid personal expenses and made cash withdrawals;
- (b) processing unauthorized redemptions of mutual funds from the Dealer Member accounts of four of the Clients by signing the Clients’ signatures on trade tickets, and directing that the proceeds totaling approximately CAD\$510,302 and US\$402,933 be paid to the Clients’ Bank accounts;
- (c) processing unauthorized redemptions of term deposits totaling approximately CAD\$499,300.61 and US\$419,304.39 from the Bank accounts of three of the Other Individuals;
- (d) changing the mailing address associated with the Bank and mutual fund accounts belonging to some of the Clients and Other Individuals to either the address of a third party known to the Respondent or to a P.O. Box that the Respondent controlled;
- (e) ordering cheque books for the Bank accounts belonging to the Clients and Other Individuals, which were delivered to the P.O. Box controlled by the Respondent;

(f) issuing bank drafts and writing cheques from the Bank accounts of the Clients and Other Individuals that were payable to:

- i) FY, in whose name, as described above, the Respondent had opened the Fake Account;
- ii) the Respondent's spouse, with whom the Respondent held a joint bank account at another financial institution;
- iii) a numbered company owned and controlled by the Respondent's spouse, which held a bank account that the Respondent had access to or control over;
- iv) and other third parties who were known to the Respondent; or

(g) withdrawing cash from the accounts of the Clients and Other Individuals that were held at the Bank.

8. The Respondent concealed the conduct described above from being detected by:

- (a) recording false client notes with respect to the redemptions described above at paragraph 7(b) to state that the Respondent had received instructions from the Clients when the Respondent had not received such instructions;
- (b) transferring some or all of the monies of the Clients or Other Individuals between different Bank accounts belonging to the same Client or Other Individual or to Bank accounts that belonged to different Clients or Other Individuals, thereby obscuring the trail of the money, and increasing the likelihood that the Bank would not detect that these unauthorized transactions were being processed at the direction of the Respondent and for the Respondent's benefit;
- (c) booking and redeeming term deposits in some or all of the Bank accounts of the Clients and Other Individuals, permitting the Respondent to generate statements that made it appear that the misappropriated monies of the Clients and Other Individuals were still in their accounts; and

(d) directing the monies to one of the recipients set out above at paragraph 7(f), or withdrawing the monies in cash, thereby obscuring that the Respondent was ultimately receiving and misappropriating the monies.

9. Further, in circumstances where a Client or Other Individual wished to receive and review their Bank account statements, the Respondent falsified Bank statements which the Respondent provided to them to make it appear as if their monies were still held in their accounts.

10. The Bank, on behalf of itself and the Dealer Member, paid compensation to the Clients and Other Individuals for the amounts that they lost as a result of the Respondent's conduct.

11. By engaging in the conduct described above, the Respondent acted contrary to Mutual Fund Dealer Rule 2.1.1.

Allegation #2 – Failure to Cooperate with Staff's Investigation

12. On June 18, 2021, MFDA Staff (now Staff of CIRO) ("**Staff**") commenced an investigation into the Respondent's conduct after the Dealer Member reported to Staff that it had discovered that the Respondent had misappropriated monies from Clients.

13. On December 8, 2021, Staff sent a letter to the Respondent, requesting that he provide a written statement in response to the allegations that he had misappropriated monies from Clients by December 16, 2021. Staff further requested that the Respondent provide various documents, including the Respondent's bank statements. The Respondent did not respond to Staff's December 8, 2021 email.

14. On December 17, 2021, Staff sent a letter to the Respondent, reiterating its request for the information and documents as set out in the December 8, 2021 letter, and advised the Respondent of the potential for a proceeding for failure to cooperate if the Respondent did not comply with regulatory obligations by providing the documents and information requested by Staff. Staff set a deadline of January 2, 2022 for the Respondent's response to its request.

15. On December 17, 2021, the Respondent responded to Staff's letter and advised that he had retained counsel.

16. On January 26, 2022, Staff had a telephone call with the Respondent's counsel and advised of the outstanding requests described above. Following the telephone call, Staff did not receive any response or documents from the Respondent or counsel.

17. On March 9, 2022, April 4, 2022, April 18, 2022, and May 6, 2022, Staff sent emails and a letter to the Respondent's counsel seeking the information and documents previously requested in its December 8, 2021 letter. Neither the Respondent nor counsel responded to Staff's requests.

18. In Staff's May 6, 2022 letter, Staff again advised the Respondent that Staff would consider commencing a disciplinary proceeding to address the Respondent's failure to cooperate with Staff's investigation should the Respondent continue to not provide Staff with the documents and information that it had requested.

19. On June 24, 2022, Staff sent a letter to the Respondent's counsel again requesting the documents and information sought in Staff's prior correspondence described above. Staff also requested the Respondent's attendance at an interview. Staff requested that the Respondent provide the requested documents and information and contact Staff to arrange an interview by July 10, 2022.

20. The Respondent did not provide the requested documents or information or contact Staff to arrange an interview by the requested date.

21. On July 20, 2022, Staff followed up with the Respondent's counsel by email, requesting that the outstanding documents be provided by July 22, 2022.

22. On August 4, 2022, the Respondent's counsel wrote to Staff advising that the Respondent would not be providing the requested documents and would not attend an interview requested by Staff.

23. On August 30, 2022 and October 7, 2022, Staff wrote to the Respondent's counsel again seeking the outstanding documents and information and to arrange an interview. Staff again advised the Respondent of the potential for a proceeding for failing to cooperate with Staff's investigation should the Respondent continue to fail to satisfy Staff's requests and not attend an interview. In the letter dated October 7, 2022, Staff advised that if the Respondent did not respond to Staff, an interview would be scheduled for November 23, 2022.

24. On October 7, 2022, the Respondent's counsel wrote to Staff, stating again that the Respondent declined to produce the requested documents and information and would not attend an interview.

25. The Respondent did not provide the statement or the documents requested by Staff, and did not attend the interview scheduled for November 23, 2022.

26. As a result of the Respondent's failure to cooperate, Staff is unable to determine the full nature and extent of the Respondent's conduct, including whether the Respondent engaged in the same or similar conduct with other clients or other individuals.

27. By virtue of the foregoing, the Respondent failed to cooperate with Staff's investigation, contrary to Mutual Fund Dealer Rule 6.2.1.

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 pursuant to Mutual Fund Dealer Rule 1A that any person subject to the jurisdiction of the Mutual Fund Dealers Association of Canada prior to January 1, 2023 remains subject to the jurisdiction of CIRO in respect of any action or matter that occurred while that person was subject to the jurisdiction of the Mutual Fund Dealers Association of Canada at the time of such action or matter.

NOTICE is further given that the Mutual Fund Dealer Rules provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with CIRO;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Dealer Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of the Mutual Fund Dealer Rules of CIRO;
- has engaged in any business conduct or practice which such Hearing Panel 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 Office of the Corporate Secretary, Mutual Fund Dealer Division within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Canadian Investment Regulatory Organization
Mutual Fund Dealer Division
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Alan Melamud
Email: amelamud@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Office of the Corporate Secretary, Mutual Fund Dealer Division by personal delivery, mail or courier to:

Canadian Investment Regulatory Organization
Mutual Fund Dealer Division
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting 1 electronic copy of the **Reply** to the Office of the Corporate Secretary, Mutual Fund Dealer Division 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 CIRO in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by CIRO 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 CIRO 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 CIRO in the Notice of Hearing as having been proven and may impose any of the penalties described in the Mutual Fund Dealer Rules.

End.

DM 907637

iM# 1076558

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and

Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.