

# CAPITAL MARKETS TRIBUNAL

## IN THE MATTER OF ZAHIR HUSSAIN LEHRI

### CONFIDENTIAL APPLICATION OF THE CANADIAN INVESTMENT REGULATORY ORGANIZATION (For Authorization to Disclose Information Under Section 17(2.1) of the *Securities Act*, RSO 1990, c. S.5)

#### A. ORDER SOUGHT

The Applicant, the Canadian Investment Regulatory Organization (“**CIRO**”), formerly the Mutual Fund Dealers Association of Canada (the “**MFDA**”), requests that the Capital Markets Tribunal (the “**Tribunal**”):

1. if required, make an Order pursuant to subsection 17(2.1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the “*Act*”), without notice, authorizing CIRO Staff (“**CIRO Staff**”) to disclose and produce confidential material, as set out in Schedule “A” to this Notice of Application (the “**Confidential Material**”), obtained pursuant to an Order made under section 11 of the *Act*, in connection with a proceeding commenced by Staff of the MFDA (“**MFDA Staff**”) pursuant to MFDA By-law No. 1 (the “**Proceeding**”) against Zahir Hussain Lehri (“**Lehri**”), including disclosing such material to Lehri and producing such material at the hearing on the merits; and
2. such further or other relief as counsel may request and the Tribunal may permit.

#### B. GROUNDS

The grounds for the request are:

##### **Background**

1. On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“**IIROC**”) and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation, CIRO (formerly and temporarily named

the New Self-Regulatory Organization of Canada). 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. Pursuant to Mutual Fund Dealer Rule 1A and section 14.6 of CIRO By-Law No. 1, contraventions of former MFDA regulatory requirements may be enforced by CIRO.

2. Prior to the consolidation, the MFDA was the national self-regulatory organization (“**SRO**”) for the distribution side of the Canadian mutual fund industry. The MFDA was formally recognized as an SRO by provincial securities commissions. In Ontario, the MFDA was overseen by the Ontario Securities Commission (the “**Commission**”) pursuant to s. 21.1 of the *Act*.
3. The MFDA’s mandate, which is now being carried on by CIRO, was the protection of the investing public and the integrity of the capital markets. CIRO achieves this mandate, in part, by conducting regulatory investigations and disciplinary hearings.
4. On October 13, 2022, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Lehri. MFDA Staff alleged a number of contraventions of the MFDA Rules against Lehri, including that he misappropriated or failed to account for money received from a client, contrary to MFDA Rule 2.1.1.

### **MFDA Staff’s Investigation of Lehri**

5. Beginning in April 2019, MFDA Staff began investigating Lehri, a former dealing representative with a mutual fund dealer and Member of the MFDA (an “**Approved Person**”), Shah Financial Planning Inc. (“**Shah Financial**”). MFDA Staff was investigating whether Lehri had facilitated stealth advising by another Approved Person, Muhamad Asghar Sadiq (“**Sadiq**”), and failed to satisfy his Know-Your-Client obligations.

6. In November 2020, MFDA Staff received information that Lehri may have received money from a mutual fund client for purported investments outside of Shah Financial and subsequently misappropriated those funds, potentially conspiring in this conduct with Sadiq.
7. MFDA Staff had power pursuant to MFDA By-law No. 1 to compel present and former MFDA Members and Approved Persons to attend interviews and produce information relevant to MFDA investigations. The MFDA did not have the authority to compel information directly from financial institutions other than mutual fund dealers that are subject to its jurisdiction.
8. Lehri was interviewed by MFDA Staff by videoconference in July and August 2020, prior to MFDA Staff receiving information that Lehri may have misappropriated money from a client. Accordingly, at the time, MFDA Staff did not request Lehri's banking records.
9. In October 2020, MFDA Staff received an email from Lehri's email address, purportedly from his brother-in-law, advising that Lehri had passed away from Covid-19 in Pakistan. MFDA Staff was unable to obtain a death certificate and based on continued posting on Lehri's social media, MFDA Staff had reservations that Lehri's death was factual.
10. When MFDA Staff received the information that Lehri may have engaged in misappropriation, MFDA Staff could no longer contact Lehri to produce any banking records.
11. Following the issuance of the Notice of Hearing described above at paragraph 4, Lehri contacted CIRO Staff, demonstrating that he was in fact alive. However, such contact was only made after MFDA Staff sought assistance from Staff of the Commission ("**Commission Staff**") to obtain Lehri's banking records.

### **The Investigation Order and the Confidential Material**

12. On June 22, 2021, the Commission issued an investigation order (the "**Investigation Order**") after receiving a request from MFDA Staff for assistance from Commission Staff to obtain evidence relevant to MFDA Staff's investigation of Lehri. Information obtained

pursuant to the Order was ordered to be “for the exclusive use of the MFDA and the Commission (inclusive of respective staff).”

13. The purpose of the Investigation Order was to obtain Lehri’s bank records. MFDA Staff believed that Lehri’s bank records could help MFDA Staff trace the money allegedly misappropriated by him.
14. Pursuant to the Investigation Order, Commission Staff issued summonses under section 13 of the *Securities Act*, compelling TD Bank to produce financial records associated with Lehri. MFDA Staff received the Confidential Material.
15. The Confidential Material produced by TD Bank does show that Lehri received \$31,000USD from a client, transferred \$30,000USD to an account held with a U.S. based trading platform, and transferred \$1,000USD to his spouse’s bank account and then withdrew the money in cash.

**It is in the Public Interest to Grant the Order**

16. It is in the public interest to grant the requested section 17 Order to CIRO Staff. The allegations against Lehri are serious and CIRO Staff seeks to use the Confidential Material for the purpose of a disciplinary proceeding to address potential contraventions of the regulatory obligations of a registrant. The primary objective of CIRO disciplinary proceedings, as with disciplinary proceedings brought by the Commission, is to protect the investing public by deterring conduct that is harmful to the capital markets.
17. Authorizing CIRO to make use of the Confidential Material in the course of a disciplinary proceeding is consistent with the Commission’s fundamental principle, set out in section 2.1(4) of the *Act*, to “subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations.”
18. Granting the Order requested is also consistent with the objectives of the *Act* set out in section 1.1, including: “(a) to provide protection to investors from unfair, improper or

fraudulent practices; [and] (b) to foster fair, efficient and competitive capital markets and confidence in capital markets”.

19. Indeed, pursuant to the Investigation Order, the Confidential Material was for the exclusive use of the MFDA (now CIRO) and the Commission. If Commission Staff were to have commenced a proceeding against Lehri, use of the Confidential Material would be permitted under section 17(6) of the *Act* without a further order. There is little principled difference between Commission Staff and CIRO Staff in this context, where the two regulators cooperated during an investigation in furtherance of a common purpose to obtain information relevant to allegations of misconduct. Accordingly, by analogy, it would be appropriate to permit CIRO Staff to make use of the Confidential Material in a regulatory proceeding.
20. CIRO Staff also has a disclosure obligation arising from the Proceeding. Rule 10.1 of the Mutual Fund Dealer *Rules of Procedure* requires CIRO Staff to provide Lehri with copies of all documents that CIRO Staff intends to rely on at the Hearing on the Merits. Rule 10.4 further states that nothing in Rule 10 derogates from CIRO Staff’s obligation to make disclosure as required by common law, as soon as reasonably practicable after service of the Notice of Hearing.
21. In order to ensure that respondents to CIRO disciplinary proceedings can make full answer and defence to allegations of misconduct that CIRO Staff intends to prove at a hearing, CIRO Staff has an obligation to disclose to a respondent all documents in its possession that are not clearly irrelevant or privileged. It would be inconsistent with CIRO Staff’s disclosure obligations and Lehri’s right to procedural fairness in the disciplinary proceeding against him to withhold disclosure of documents that could be relevant to the allegations of misconduct that CIRO Staff has made, on the basis that those documents were obtained pursuant to the *Act* and the *Act* does not permit CIRO Staff to disclose those documents to respondents to its proceedings.

### **It is in the Public Interest to Grant the Order Without Notice**

22. Pursuant to section 17(2.1) of the *Act*, where the Tribunal considers it to be in the public interest, the Tribunal may order disclosure of material obtained under a section 11 Order to a self-regulatory organization, like CIRO, without notice to any other party.
23. Although the Confidential Material was obtained from TD Bank, it is only Lehri who has a true interest in the Confidential Material, which is comprised of his personal banking records. However, the very purpose of this application is, in part, to permit CIRO Staff to disclose the Confidential Material to Lehri.
24. Further, Lehri has no legitimate basis to deny CIRO Staff's use of the Confidential Material in a disciplinary proceeding, which is itself being conducted in the public interest.
25. By becoming registered as a dealing representative, Lehri agreed to be subject to the MFDA By-law, Rules and Policies. As noted above, pursuant to section 22.1 of MFDA By-law No. 1, had Lehri not claimed to have passed away, he would have been required to provide the Confidential Material at MFDA Staff's request, which MFDA Staff would have been permitted to use for the purpose of a disciplinary proceeding pursuant to section 22.5 of MFDA-By law No. 1.
26. In addition, when Lehri became an Approved Person, he provided the following consent:

I acknowledge and consent that the MFDA may obtain any information whatsoever from any source, as permitted by law in any jurisdiction of Canada or elsewhere.
27. TD Bank could have no legitimate objection to CIRO Staff's use of the Confidential Material beyond those that might be asserted by Lehri. This is particularly so given that, as described above, Lehri would have been required to provide the very Confidential Material at issue to the MFDA had he not claimed to have passed away.

28. Requiring CIRO Staff to give notice to TD Bank or Lehri would only serve to delay this application and therefore CIRO Staff's prosecution of Lehri. It is in the public interest that securities regulatory disciplinary proceedings be conducted expeditiously in order to protect investors and foster confidence in the capital markets.

29. CIRO Staff requests that this application be heard together with the two other section 17 applications In the Matter of Muhamad Asghar Sadiq.

30. Subsection 17(2.1) of the *Securities Act* and Rules 12 and 22 of the *Capital Markets Tribunal Rules of Procedure and Forms*.

31. Such further and other grounds as counsel may advise the Tribunal may permit.

### **C. EVIDENCE**

The Applicant intends to rely on the following evidence at the hearing:

1. Affidavit of Stephen Davis, sworn August 16, 2023.
2. Such further and other evidence as counsel may advise the Tribunal may permit.

**DATED** this 16<sup>th</sup> day of August 2023.

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## Schedule “A”

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated July 6, 2021

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated November 5, 2021

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated June 22, 2021

<b>Account Holder: Zahir Hussain Lehri</b>	<b>Information (MM/DD/YYYY)</b>	<b>Records Provided Associated with Account</b>
TD Personal Deposit Account 6249958-2085	Opened Account 06/18/2018 Closed Account 02/26/2019	<ul style="list-style-type: none"> <li>• Signature Card</li> <li>• Deposit Account History 05/01/2017 – 07/06/2021</li> </ul>
TD Personal Deposit Account 7119660-2085	Opened Account 12/29/2015 Closed Account 05/14/2018	<ul style="list-style-type: none"> <li>• Customer Information Enquiry</li> <li>• Enquiry Preferred Name/Gender</li> <li>• Employment Information Enquiry</li> <li>• Other Customer Information Enquiry</li> <li>• Customer Identification Enquiry</li> <li>• Signature Card</li> <li>• Deposit Account History 05/01/2017 – 07/06/2021</li> <li>• Deposit Account Transaction Enquiry</li> <li>• WPS Daily Journal</li> <li>• Letter from Judy Franklin to Dale Victoria</li> </ul>

		<p>Grybauskas, dated November 8, 2021</p> <ul style="list-style-type: none"> <li>• Affidavit of Authenticity</li> <li>• Letter from Judy Franklin to Dale Victoria Grybauskas, dated November 30, 2021</li> <li>• Deposit Account History 06/05/2017 – 06/05/2017</li> <li>• Deposit Account Transaction Enquiry</li> <li>• TD Canada Trust Receipt, dated June 3, 2017</li> <li>• Affidavit of Authenticity</li> </ul>
TD Personal Deposit Account 7160499-1878	Opened Account 08/23/2016 Closed Account 01/24/2017	None
TD Personal Deposit Account 6522741-1878	Opened Account 08/23/2016 Closed Account 01/24/2017	None
TD Personal Line of Credit 4198439-2124	Opened Account 03/21/2012 Closed Account 05/22/2019	<ul style="list-style-type: none"> <li>• Iron Mountain Records Management Retrieval Packing Slip</li> <li>• TD Canada Trust Amending Agreement to Line of Credit</li> <li>• Deposit Account History 05/01/2017 – 07/06/2021</li> </ul>
TD Personal Loan LON 3199490-00 2085 LON -01 2085	No Activity	None
TD Personal Credit Card 4520050009542395	Opened Account 01/10/2014 Closed Account 01/10/2014	None

<b>Account Holder: 2417334 Ontario Inc.</b>	<b>Information (MM/DD/YYYY)</b>	<b>Records Provided Associated with Account</b>
TD Business Deposit Account 5310190-1275	Opened Account 05/16/2014 Closed Account 03/31/2020	<ul style="list-style-type: none"> <li>• Customer Information Enquiry</li> <li>• Other Customer Information Enquiry</li> <li>• Offices and Directors Enquiry</li> <li>• Account Ownership Enquiry</li> <li>• Deposit Account History 05/01/2017 – 07/06/2021</li> </ul>
<b>Account Holder: Unknown</b>	<b>Information (MM/DD/YYYY)</b>	<b>Records Provided Associated with Account</b>
ACCOUNT DOES NOT EXIST 6305100-1275	N/A	N/A