

CAPITAL MARKETS TRIBUNAL

IN THE MATTER OF MUHAMAD ASGHAR SADIQ

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

File No. 2023-18

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 Staff of CIRO (“**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.

MFDA Staff’s Proceeding Against Lehri

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. Lehri is a former dealing representative (an “**Approved Person**”) with a mutual fund dealer and Member of the MFDA, Shah Financial Planning Inc. (“**Shah Financial**”). MFDA Staff alleged a number of contraventions of the MFDA Rules against Lehri, including misappropriation of client monies, stealth advising, and failure to cooperate with the MFDA’s investigation.
5. As set out in the Notice of Hearing, MFDA Staff alleged that Lehri facilitated stealth advising by another Approved Person, Muhamad Asghar Sadiq (“**Sadiq**”), who was a dealing representative with Sterling Mutuals Inc. (“**Sterling Mutuals**”). Lehri opened

accounts and processed transactions for four clients that he met briefly or not at all. It was Sadiq who made investment recommendations and dealt with those four clients.

6. Sadiq also recommended that these four clients invest in his “trading business”. He told one client that in order to invest, monies would need to be transferred to Lehri, who Sadiq described as his business partner. That one client transferred USD\$31,000 to Lehri. With respect to the three other clients, they too invested in the trading business but, as described further below, paid the money directly to Sadiq.

MFDA Staff’s Proceeding Against Muhamad Asghar Sadiq

7. Beginning in April 2019, MFDA Staff began investigating Sadiq. Among other concerns, MFDA Staff was investigating whether Sadiq had misappropriated or failed to account for client monies.
8. Although MFDA Staff had power pursuant to section 22.1 of 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, Sadiq could not be located or contacted during the investigation. Accordingly, MFDA Staff was unable to compel Sadiq to produce any financial records. 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.
9. On December 18, 2019, the Commission issued an investigation order (the “**Investigation Order**”) after receiving a request from MFDA Staff for assistance from Staff of the Commission (“**Commission Staff**”) to obtain evidence relevant to MFDA Staff’s investigation of Sadiq. Information obtained pursuant to the Order was ordered to be “for the exclusive use of the MFDA and the Commission.”
10. The purpose of the Investigation Order was to obtain Sadiq’s bank records. MFDA Staff believed Sadiq’s bank records could help MFDA Staff trace monies that several clients

claimed they had paid to Sadiq in connection with a trading business that Sadiq told the clients he would be starting.

11. Pursuant to the Investigation Order, Commission Staff issued summonses under section 13 of the *Act*, compelling TD Bank to produce financial records associated with Sadiq, including the Confidential Material.
12. The Confidential Material shows Sadiq's receipt of monies from the three clients described above who paid money directly to him, and show that he used those monies to pay personal expenses. The Confidential Material therefore supports CIRO Staff's contention that there was no "trading business".
13. On September 14, 2021, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Sadiq. MFDA Staff alleged a number of contraventions of the MFDA Rules against Sadiq, including that Sadiq misappropriated or failed to account for money received from clients, contrary to MFDA Rule 2.1.1.
14. After issuing the Notice of Hearing against Sadiq, MFDA Staff continued to be unable to locate Sadiq. Sadiq was prosecuted in absentia, after a Hearing Panel concluded he had been appropriately served with the Notice of Hearing under the MFDA *Rules of Procedure*.
15. On November 2, 2022, a MFDA Hearing Panel made findings of misconduct against Sadiq, including finding that he misappropriated monies from several clients. The Hearing Panel ordered penalties including a permanent prohibition on Sadiq's authority to conduct securities related business while in the employ of or in association with a MFDA Member, a fine in the amount of \$750,000, and costs in the amount of \$49,662.50.

It is in the Public Interest to Grant the Order

16. It is in the public interest to grant the requested Order to CIRO Staff. The allegations against Lehri are serious and CIRO Staff seeks to use the Confidential Material for 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. The Confidential Material is relevant because it establishes that Sadiq used money he received from clients, purportedly to invest in the trading business, to pay personal expenses. As described above, Sadiq also directed a client to pay USD\$31,000 to Lehri in order to invest in this same trading business.
18. Authorizing CIRO to make use of the Confidential Material in the course of 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."
19. 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".
20. 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.

21. 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.
22. 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

23. 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.
24. Although the Confidential Material was obtained from TD Bank, it is only Sadiq who has a true interest in the Confidential Material, which is comprised of his personal banking records.
25. MFDA Staff, however, was unable to locate or establish on-going contact with Sadiq during the course of the investigation or the proceeding. Following Sadiq's resignation

from Sterling Mutuals, he appears to have left Canada and moved to Pakistan. Sadiq did not leave any contact details or have his address information or other contact details updated on the National Registration Database (“**NRD**”).

26. During the course of the investigation and the proceeding, MFDA Staff attempted to contact Sadiq and to serve him with the Notice of Hearing by:

- (a) sending regular and registered mail and a process server to his home address, as recorded on NRD and on his driver’s license (the “**Home Address**”);
- (b) sending regular and registered mail to the address for his income tax preparation service, as recorded on NRD (the “**Business Address**”)
- (c) sending emails to his personal email address;
- (d) calling him at his personal telephone number, as recorded on NRD;
- (e) calling him at the telephone number for his income tax preparation service; and
- (f) sending a text message to him using WhatsApp using contact details that were provided to MFDA Staff by Sadiq’s former clients.

27. All attempts by MFDA Staff to contact Sadiq failed. Specifically,

- (a) MFDA Staff was informed by the resident at the Home Address that Sadiq does not reside there;
- (b) Sadiq has never replied to several emails that were sent to his last known e-mail address from MFDA Staff;
- (c) both Sadiq’s personal telephone number and the telephone number for his income tax preparation service are out of service;
- (d) registered mail sent to the Business Address, containing the Notice of Hearing, was delivered and signed for by an individual with the initials “MA”. However, neither Sadiq, nor anyone on Sadiq’s behalf, attended the first appearance in the proceeding or contacted MFDA Staff; and

- (e) MFDA Staff's attempts to contact the Respondent over WhatsApp, where MFDA Staff has been informed by three complainants that Sadiq is active, went unanswered and it appears that he subsequently "blocked" MFDA Staff from contacting him through WhatsApp after receiving the message.
28. Pursuant to an Order dated November 22, 2022, a MFDA Hearing Panel validated service of the Notice of Hearing on Sadiq and Sadiq was prosecuted in absentia.
29. In any event, even if Sadiq could be located, he would have 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.
30. By becoming registered as a dealing representative, Sadiq agreed to be subject to the MFDA By-law, Rules and Policies. Pursuant to section 22.1 of MFDA By-law No. 1, had MFDA Staff been able to locate Sadiq, 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 purposes of a disciplinary proceeding pursuant to section 22.5 of MFDA By-law No. 1.
31. In addition, when Sadiq 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.
32. TD Bank could have no legitimate objection to CIRO's use of the Confidential Material beyond those that might be asserted by Sadiq. This is particularly so given that, as described above, Sadiq would have been required to provide the very Confidential Material at issue to the MFDA had he not left Canada.
33. Requiring CIRO Staff to give notice to TD Bank or make further efforts to locate Sadiq 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.

34. CIRO Staff requests that this application be heard together with the other section 17 application In the Matter of Muhamad Asghar Sadiq and the section 17 application In the Matter of Zahir Hussain Lehri.

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

36. 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 11, 2023.
2. Affidavit of Sofi Vasiliadis, sworn November 10, 2021.
3. Supplementary Affidavit of Stephen Davis, sworn September 25, 2023,
4. Such further and other evidence as counsel may advise the Tribunal may permit.

DATED this 11th day of August 2023.

25th day of September 2023.

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Schedule “A”

Account Holder: Muhamad Asghar Sadiq	Information (MM/DD/YYYY)	Records Associated with Account
TD Personal Deposit Account 6211071-1650	08/05/2016 – 11/01/2016 <u>07/04/2017 – 09/19/2017</u>	<ul style="list-style-type: none"> • Account Transactions • Account Ownership Enquiry • <u>Account Transactions</u>
TD Personal Deposit Account 7160499-1878	08/23/2016 – 11/14/2016	<ul style="list-style-type: none"> • Account Transactions
<u>TD Personal Deposit Account</u> <u>7135261-1275</u>	<u>05/31/2017 – 10/31/2017</u>	<ul style="list-style-type: none"> • <u>Account Transactions</u>