



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

**In the Matter of Staff's Recommendation
To Refuse the Application for Registration
of Marco Tulio Pagoada Vallecillo**

**Opportunity to be Heard by the Director under
Section 31 of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as amended**

Decision

1. For the reasons set out below, following an opportunity to be heard (the **OTBH**) under section 31 of the *Securities Act* (Ontario) (the **Act**), it is my decision that the application for registration of Marco Tulio Pagoada Vallecillo (**Mr. Pagoada Vallecillo** or the **Applicant**) in the category of dealing representative of a mutual fund dealer under the sponsorship of TD Investment Services, Inc. (**TDIS**) be refused.
2. My decision is based on the evidence tendered by both parties. Written submissions were provided by Goksu Gok, Legal Counsel of the Compliance and Registrant Regulation Branch (**CRR**), counsel for staff of the Ontario Securities Commission (**OSC or Commission**) and by Mr. Pagoada Vallecillo who represented himself. The oral submissions from both parties were heard on June 15, 2023 by video conference.

Background

3. Staff of the OSC (**Staff**) has recommended that I refuse the application of Mr. Pagoada Vallecillo on the basis that the Applicant lacks the integrity and proficiency required for registration under the Act and that the Applicant's registration would be otherwise objectionable.
4. On April 16, 2021, the Applicant submitted an initial application for registration under the Act in the category of dealing representative of a mutual fund dealer. In his application, the Applicant responded that he had no outstanding criminal charges in Item 14.1 of Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**) nor any prior criminal conviction in Item 14.2 of Form F4.
5. On April 21, 2021, a Registration Officer in CRR issued a letter to Mr. Pagoada Vallecillo informing him that staff had information that suggested there may be outstanding warrants or criminal charges against him that were not disclosed in his initial application. Staff requested he provide a police information check, if he had no outstanding charges, or contact TDIS to correct the omission through filing a Criminal Disclosure Change notice in the National Registration Database (**NRD**).
6. On November 10, 2022, TDIS submitted an update to Item 14 of Form F4.

7. On February 7, 2023, Mr. Pagoada Vallecillo attended a voluntary interview with Staff.
8. Staff provided the Applicant with a letter setting out the basis for the recommendation to refuse registration on April 11, 2023.

Law and Arguments of the Parties

9. Subsection 27(1) of the Act provides that the Director shall register a person unless it appears to the Director that the person is not suitable for registration under the Act or that the Registration is otherwise objectionable. Subsection 27(2) sets out the test of suitability for registration, by requiring the Director to consider the requirements prescribed in the regulations relating to proficiency, solvency and integrity, and such other factors as the Director considers relevant.
10. Applications for registration are made in a prescribed form, Form F4, that requires the applicant to disclose various items of information that are used to assess the applicant’s suitability for registration. Item 14 of Form F4 deals with criminal disclosure. Specifically, Items 14.1 and 14.2 of Form F4 ask the following questions:

Item 14 Criminal disclosure

The questions below apply to offences committed in any jurisdiction of Canada and any foreign jurisdiction. You must disclose all offences, including:

- a criminal offence under federal statutes such as the *Criminal Code* (Canada), *Income Tax Act* (Canada), the *Competition Act* (Canada), *Immigration and Refugee Protection Act* (Canada) and the *Controlled Drugs and Substances Act* (Canada), even if
 - a record suspension has been ordered under the *Criminal Records Act* (Canada), or
 - you have been granted an absolute or conditional discharge under the *Criminal Code* (Canada), and
- a criminal offence, with respect to questions 14.2 and 14.4, of which you or your firm has been found guilty or for which you or your firm have participated in the alternative measures program within the previous three years, even if a record suspension has been ordered under the *Criminal Records Act* (Canada)

...

1. Are there any outstanding or stayed charges against you alleging a criminal offence that was committed?

Yes _____ No _____

If “Yes”, complete Schedule K, Item 14.1.

2. Have you ever been found guilty, pleaded no contest to, or been granted an absolute or conditional discharge from any criminal offence that was committed?

Yes _____ No _____

If “Yes”, complete Schedule K, Item 14.2.

...

11. Additionally, Item 21 of Form F4 sets out a warning to the Applicant that “It is an offence under securities legislation and derivatives legislation, including commodity futures legislation, to give false or misleading information on this form” and Item 22.1 of Form F4 requires the Applicant to make the following certification:

1. Certification – NRD format

I confirm I have discussed the questions in this form with an officer, branch manager or supervisor of my sponsoring firm. To the best of my knowledge, the officer, branch manager or supervisor was satisfied that I fully understood the questions. I will limit my activities to those permitted by my category of registration. If the business location specified in this form is a residence, I hereby give my consent for the regulator or, in Québec, the securities regulatory authority to enter that residence for the administration of securities legislation and derivatives legislation, including commodity futures legislation.

Staff’s Recommendation to Refuse Registration

12. Staff contends that the Applicant failed to provide true and complete disclosures on multiple instances and provided a series of inaccurate and unreasonable explanations for failing to provide true and complete disclosures.
13. Specifically, the Applicant failed to disclose outstanding criminal charges as required by Form F4. Mr. Pagoada Vallecillo was charged with two offences of the Criminal Code on February 21, 2020. He was released on a number of conditions. The charges were not resolved until Mr. Pagoada Vallecillo entered into a peace bond in June 2022 that was approved by the court in July 2022. The initial registration application was submitted while the charges remained outstanding; therefore, these charges were required to be disclosed when the initial application was submitted in April 2021.
14. Staff contends that there was also a failure to disclose a criminal conviction as required by Form F4. On March 2, 2015, Mr. Pagoada Vallecillo was found guilty of Driving under the Influence – Driving with more than 80 mgs of alcohol in blood. This conviction was required to be disclosed when the initial application was submitted in April 2021.
15. On November 10, 2022, TDIS submitted an update to Item 14.2 to disclose the March 2, 2015 criminal conviction that was not previously disclosed when the Form F4 was initially submitted. During the voluntary interview, Mr. Pagoada Vallecillo stated that he was aware of the criminal conviction but failed to disclose it on the initial application.

16. Staff further contends that the Applicant failed to respond to the CRR Branch's correspondence regarding his outstanding criminal charges. Mr. Pagoada Vallecillo responded to the Registration Officer that he would provide more information by June 2021, but failed to provide the OSC with information on his criminal record until November 10, 2022, when TDIS submitted an update to Item 14 of Form F4.
17. Finally, the Applicant made inaccurate and unreasonable statements to Staff during a voluntary interview to consider his suitability for registration. Staff contends that Mr. Pagoada Vallecillo was not truthful with certain details surrounding the events that resulted in the outstanding criminal charges.

Applicant's Position

18. Mr. Pagoada Vallecillo contends that as an employee of TD Canada Trust for more than 12 years, his actions with his clients and colleagues stem from suitability, honesty, integrity and with his constant efforts of keeping clients' best interest at the forefront. Also, he has stated that he has grown and has received distinctions within the company which would not have been possible if there was any indication of his lack of integrity or honest business dealings. The Applicant noted that his TD Canada Trust managers have shown support for Mr. Pagoada Vallecillo's continued employment and this registration. Mr. Pagoada Vallecillo also submitted reference letters to substantiate his character.
19. Mr. Pagoada Vallecillo acknowledged that it was his responsibility to have properly understood the questions on the application, but stated that there was a clear misunderstanding and at no point in the registration process did TDIS, his sponsoring firm, provide him with anyone to assist or designate anyone to aid him in the application process as outlined in Subsection 5.1(1) of National Instrument 33-109 *Registration Information*. He contends that he lacked the understanding of the questions on the registration application and had his sponsoring firm provided support, he would have likely avoided any misstatements. Further, his lack of understanding is not a reflection of a lack of care. Also, he contended that everyone makes mistakes. Therefore, his failure to provide true and complete disclosures was a simple mistake.
20. Mr. Pagoada Vallecillo stated that at the time of submitting the initial registration application he was not aware of any outstanding criminal charges. Mr. Pagoada Vallecillo stated that his court date was cancelled due to the COVID pandemic restrictions which prevented him from attending court on his assigned court date. Also, he stated that the court told him that the court would contact him if follow-up was required. He understood that he would be notified but he did not receive any notifications. As a result, he thought the charges were not outstanding or pending.
21. However, prior to applying for registration, Mr. Pagoada Vallecillo stated that he contacted the court to determine if there were any outstanding charges. He contacted the court again after receiving correspondence from the Registration Officer stating that there may be outstanding charges. Each time the court was not able to locate any charges. The court was only able to locate the charges when Mr. Pagoada Vallecillo provided his full legal name.

22. The Applicant stated that he did not disclose the March 2015 criminal conviction because it occurred long ago and he did not believe it was still on his record. He mistakenly believed that after four or five years, convictions would be automatically removed from his record.
23. At the OTBH, Mr. Pagoada Vallecillo explained why the statements he made at the voluntary interview about details surrounding the outstanding criminal charges were not truthful. He indicated that he did not feel comfortable talking about the outstanding charges because it was extremely sensitive, the outstanding charges had been withdrawn by that time, and he wanted to protect another person.

Findings and Reasons

24. As codified in subsection 27(2) of the Act, the three pillars of registration (i.e., integrity, proficiency and solvency) are considered when determining if an applicant is suitable for registration. The question before me is whether the Applicant lacks the integrity and proficiency required for registration under the Act and whether the Applicant's registration would be otherwise objectionable.
25. CSA Staff Notice 33-320 *The Requirement for True and Complete Applications for Registration (CSA Staff Notice 33- 320)* identifies the application process, including the Form F4, as an integral part of the registration regime. As such, CSA Staff Notice 33-320 alerts stakeholders to the serious problem of false or misleading applications for registration. It references an earlier case of the OSC that said:

The keystone to the registration system is the application form. A desire and an ability to answer the questions in it with candour in many respects can be said to be the first test to which the applicant is put.¹

26. The Commission has stated in *Re John Doe* (2010), 33 OSCB 1371, a case which also involved the non-disclosure of a criminal record in an application for registration, at 1377:

In my view, one false statement is enough to discredit the Applicant's credibility and raise an issue as to his integrity. In other words, one false statement is sufficient to result in the Applicant's application for registration being denied on the basis that the Applicant lacks the requisite integrity required of a securities industry professional and is, therefore, not suitable for registration.

and later:

Moreover, even if the Applicant somehow was honestly mistaken in the chain of inaccurate disclosure he provided to OSC staff (which I doubt) I agree with the statement in *Re Doe* [(2007), ABASC 296] that integrity is broader than dishonesty and encompasses a certain duty of care in one's work product. The Applicant had a duty to carefully complete documents relating to his registration,

¹ Re Thomas, (1972) OSCB 118 at p. 120

including his initial application for registration. In my view, he did not meet this duty.

27. In *Re Couto* (2012), 35 OSCB 4105 at 4107, the Commission stated:

The *John Doe* standard calls for due diligence, not perfection. Minor inaccuracies may be excused, but significant errors that reflect a failure to exercise a reasonable degree of care in the completion of the application will not be.

28. At the voluntary interview, Mr. Pagoada Vallecillo stated that he was not aware of the February 21, 2020 outstanding charges at the time he submitted his initial registration application. I do not find this statement credible. Mr. Pagoada Vallecillo signed a Release Order on February 22, 2020 that provided conditions that he was to comply with after his release while the charges remain outstanding. Section 7 of the Release Order specifically provides that the conditions remain in effect until the conditions are cancelled or changed or until he is discharged, sentenced, or otherwise detained by the court. The plain reading of the section in the Release Order means that Mr. Pagoada Vallecillo was required to take, or participate in, some action before the conditions of the Release Order cease to be in effect and the outstanding charges would be resolved. Mr. Pagoada Vallecillo's lack of care in reading and referring to the continuing conditions of the Release Order created a mistaken belief that the outstanding charges would be resolved without him taking any action.

29. In further support, Mr. Pagoada Vallecillo stated that his court date was cancelled due to the COVID pandemic restrictions which prevented him from attending court on his original assigned court date. Prior to submitting his initial application, he stated that he contacted the court to determine the status of the outstanding charges, but since he did not provide his full legal name, the court was not able to find any charges. Based on incomplete information, he surmised that there were no outstanding charges against him. Mr. Pagoada Vallecillo is aware that he uses a name other than his full legal name and the Release Order clearly stated the full legal name of the Applicant. Had Mr. Pagoada Vallecillo exercised due care and provided his full legal name which is the name that was on the Release Order, he would have received accurate information regarding the outstanding charges. Mr. Pagoada Vallecillo responded to Item 14.1 of Form F4 and submitted his application based on unreasonable assumptions. The Applicant's lack of care and due diligence is inconsistent with the duty expected of an applicant for registration and the duty set out in *Re John Doe*.

30. As for the failure to disclose the March 2015 criminal conviction, Mr. Pagoada Vallecillo thought it was not relevant given the date of the conviction. Additionally, he was under the misconception that criminal charges are automatically removed after four or five years. However, Mr. Pagoada Vallecillo did not take any steps to verify either presumption. Regardless of his beliefs, the fact remains that the Applicant failed to disclose the required information. The language set out in Item 14.2 of Form F4 is very clear. It states "Have you *ever* been found guilty... from any criminal offence that was committed." [emphasis added]

31. The Applicant's failure to answer Items 14.1 and 14.2 of Form F4 truthfully and completely either through intentional misstatements or a lack of care and due diligence leads me to find that the Applicant lacks integrity.
32. At various stages of the registration and OTBH processes, Mr. Pagoada Vallecillo was informed that he was permitted to have a lawyer present and may seek legal advice at any time. He reaffirmed that he was attending on his own. Also, he was informed that it was an offence of section 122 of the Act to make misleading and untrue statement to the Staff of the OSC and that the answers must be truthful and complete, to best of his knowledge, to which he acknowledged his understanding. Form F4, which Mr. Pagoada Vallecillo completed, also contained a similar warning.
33. Prior to the OTBH, Staff learned information that contradicted a statement Mr. Pagoada Vallecillo made at the voluntary interview. At the OTBH, Mr. Pagoada Vallecillo explained why the statement he made at the voluntary interview was not truthful. I understand that disclosure of criminal charges and the circumstances giving rise to those charges may be personal or embarrassing, but the regulators require this information to determine an applicant's suitability for registration and the Applicant was required to answer truthfully and completely. Since Mr. Pagoada Vallecillo was informed that it would be an offence to make untrue statements to Staff and he proceeded to do so, I find that Mr. Pagoada Vallecillo's statement was intentionally misleading which impugns his integrity.
34. While Mr. Pagoada Vallecillo acknowledged that it was his responsibility to properly understand the questions on the application, he failed to exhibit remorse by indicating that his misstatements or lack of care were simple mistakes that everyone makes. However, Mr. Pagoada Vallecillo's misstatements and lack of care pertained to his criminal conviction and outstanding charges, and reflect a failure to meet the duty of care expected of applicants such that they were not minor inaccuracies but significant errors as set out in *Re Couto*.
35. Mr. Pagoada Vallecillo also redirected some of the responsibility for his misstatements to his sponsoring firm. The Applicant stated that he did not receive any support from TDIS, his sponsoring firm, when completing his initial registration application (despite the certification to Form F4 in which Mr. Pagoada Vallecillo confirmed that he had discussed the questions in the form with an officer, branch manager or supervisor of TDIS) or throughout the remainder of this OTBH. There is evidence that the TDIS Registration Department, as early as May 18, 2021, was aware that corrections to Mr. Pagoada Vallecillo's application needed to be submitted. Those corrections were submitted in November 2022. Also, the chief compliance officer for TDIS was notified by Staff on November 7, 2022 that it appeared that Mr. Pagoada Vallecillo's application did not fully disclose the criminal conviction nor the outstanding criminal charges.
36. While I do not know the extent to which TDIS did or did not support the Applicant through the registration process, ultimately, it is the Applicant's responsibility to provide true and complete answers to the questions. The importance of truth and candour in the application process is emphasized by the inclusion of the warning in Item 21 of Form F4. The information being solicited in Items 14.1 and 14.2 of Form F4 is clear by plain reading and the response required is either "yes" or "no". If the Applicant had questions

or was unsure of how to respond, he should have sought further clarification from his sponsoring firm or the regulator. The fact that he did neither further demonstrates his lack of care.

37. Based on the foregoing, I find that Mr. Pagoada Vallecillo lacks the integrity required for a securities industry professional. Any one of these instances would be sufficient to refuse registration; therefore, his repeated failures to provide true and complete disclosures, along with providing false statements to Staff means that he is not suitable for registration and his registration would be otherwise objectionable.

Conclusion

38. Based on the foregoing, I accept Staff's recommendation to refuse Mr. Pagoada Vallecillo registration in the category of dealing representative of a mutual fund dealer and I direct Staff to take the necessary steps to implement this decision.
39. While I have decided that Mr. Pagoada Vallecillo's application should be refused, I do not think he should be barred from re-applying for registration in the future. If Mr. Pagoada Vallecillo applies for registration at some point in the future, he will need to demonstrate through his actions that he has rehabilitated his integrity and is suitable for registration. In the Director's decision *Re Sawh* (2016), 39 OSCB 2477, there are six factors that must be considered in making a determination on the applicant's suitability for registration after a finding by the Director or the Commission that the applicant was not suitable for registration. If Mr. Pagoada Vallecillo can provide evidence to support these factors, then his suitability for registration can be reassessed at that time.
40. Last, I note that in this particular case, it is the Applicant's lack of disclosure and misstatements relating to the outstanding charges and convictions, and not the nature and circumstances of the outstanding charges and convictions, that impugned his integrity. The Form F4 questions relating to criminal disclosure are clear in that criminal charges and convictions must be reported, no matter how long ago it was and even if a record suspension has been ordered or an absolute or conditional discharge has been granted with respect to the offence.

Debra Foubert

Debra Foubert, J.D.
Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission

July 7, 2023