

Re Allison

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Lorne Stuart Allison

2024 CIRO 84

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: October 17, 2024 by electronic hearing in Vancouver, British Columbia
Decision and Reasons: November 26, 2024

Hearing Panel:

Nils Preshaw, Chair
Susan Monk, Industry Representative
Tammi Walsh, Industry Representative

Appearances:

Samantha Wu, Enforcement Counsel, CIRO
Eric Chow, Enforcement Counsel, CIRO
Lorne Allison, Respondent (present)

DECISION ON THE MERITS AND REASONS

INTRODUCTION

¶ 1 On or about January 1, 2023, the Mutual Fund Dealers Association of Canada (“MFDA”) merged with the Investment Industry Regulatory Organization of Canada to form the Canadian Investment Regulatory Organization (“CIRO”).

¶ 2 By a Notice of Hearing dated December 18, 2023, CIRO began disciplinary proceedings against Mr. Lorne Stuart Allison (the “Respondent”) alleging that:

Between September 2020 and February 2021, the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Dealer Member, contrary to the Dealer Member’s policies and procedures and Mutual Fund Dealer Rules 1.1.1, 2.1.1, 2.1.4 and 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rules 1.1.1, 2.1.1, 2.1.4, 1.1.2, and 2.5.1).

BACKGROUND

¶ 3 On April 2, 2024, the Respondent consented to the scheduling of a Hearing on the Merits for October 17, 2024, and was ordered to file and serve a Reply to the Notice of Hearing on or before April 22, 2024.

¶ 4 The Respondent did not file a Reply.

¶ 5 As a result, CIRO enforcement counsel (“Staff”) were prepared to proceed with the Hearing on the Merits and make penalty submissions in the Respondent’s absence. However, the Respondent attended the hearing.

¶ 6 The Hearing Panel considered submissions by the parties, filed documents and affidavits, including but not limited to, affidavits by Dealer Member manager, Mr. E. Freifeld and CIRO manager of investigations, Ms. I. Nadarajan (the “Affidavits”).

¶ 7 The Respondent declined to cross examine on the Affidavits.

¶ 8 After considering the Affidavits and the oral and written submissions of the parties, the Hearing Panel also heard penalty and costs submissions.

¶ 9 The Respondent did not take issue with a bill of costs far in excess of the costs sought by Staff, and conceded that the costs sought were fair.

¶ 10 The Hearing Panel reserved decision on the merits, penalty, and costs.

¶ 11 These are the Hearing Panel’s decision and reasons.

FACTS

¶ 12 The Respondent was registered in the securities industry between October 2005 and February 22, 2021. Between January 2012 and February 22, 2021, the Respondent was registered in British Columbia at Royal Mutual Funds Inc., a former member of the MFDA and current CIRO dealer member (the “Dealer Member”).

¶ 13 At all material times, the Respondent was employed by the Dealer Member and conducted business on Vancouver Island, British Columbia, and was registered to advise or trade in mutual funds at the Dealer Member. The Respondent was not registered to trade or advise clients regarding non-mutual fund securities, such as equity securities, options, the foreign exchange market, or exchange-traded funds.

¶ 14 In November 2020, Mr. Freifeld, a manager and compliance officer with the Dealer Member, was advised that the Respondent had asked two of his elderly clients to sign a trading authorization form(s) for online brokerage accounts. These clients had felt uncomfortable with the Respondent’s request and had reported the incident to the Dealer Member.

¶ 15 The Dealer Member’s policies and procedures prohibited its Approved Persons, including the Respondent, from engaging in securities related business outside the Dealer Member, such as advising on securities other than mutual funds and guaranteed investment certificates (“GICs”).

¶ 16 The complaint was subsequently investigated internally by Mr. Freifeld and the Dealer Member before being reported to CIRO.

¶ 17 The Respondent had a number of clients during the relevant time period. While the main affidavit by Ms. Nadarajan filed as Exhibit 4 contains over 2,800 pages of extensive detail and exhibited documentation, to protect the privacy of the Respondent’s clients, these reasons refer to the Respondent’s clients by their initials only.

Clients JE, KE, and LC

¶ 18 During the relevant time period, the Respondent served Dealer Member clients JE, KE, and LC, who ranged in age from 64 to 71 years of age and who were all retired.

¶ 19 From September 2020 to February 22, 2021, while the Respondent was registered as a dealing representative with the Dealer Member:

- (a) the Respondent recommended that JE, KE, and LC open online brokerage accounts at financial institutions outside the Dealer Member so that the Respondent could execute trades in non-mutual fund securities on their behalf in exchange for certain fees;
- (b) the Respondent assisted JE, KE, and LC with opening certain online brokerage accounts;
- (c) the Respondent assisted JE, KE, and LC with depositing their monies or transferring their investments to these online brokerage accounts;

- (d) the Respondent repeatedly accessed JE, KE, and LC's online brokerage accounts and used usernames and passwords that JE, KE, and LC had provided to the Respondent to execute trades in non-mutual fund securities;
- (e) JE, KE, and LC met in person with the Respondent to effect trades and/or JE, KE, and LC provided their usernames and passwords to the Respondent so that he could trade in their online brokerage accounts at will; and
- (f) the Respondent charged JE, KE, and LC at least \$18,798 in fees in exchange for executing the above trades.

¶ 20 In total, the Respondent invested \$2,751,391 for clients JE, KE, and LC.

¶ 21 Even after the Respondent resigned from the Dealer Member on February 22, 2021, the Respondent continued to access online brokerage accounts of clients JE, KE, and LC, and execute trades in non-mutual fund securities in their online brokerage accounts in exchange for a fee.

¶ 22 The Respondent also opened additional online brokerage accounts for clients JE and KE even after the Respondent had resigned.

¶ 23 In or about May 2021, LC complained to the Respondent about certain options trading the Respondent had done and instructed the Respondent to cease trading activities on behalf of LC.

¶ 24 After LC's investments were redeemed, LC incurred a loss of \$7,623 on the trades executed by the Respondent. LC also had to pay a total of \$1,527 for borrowing on margin and trading commissions at an online brokerage as a result of the Respondent's trading activity on LC's behalf.

¶ 25 After the Respondent's resignation, clients JE and KE transferred assets out of the online brokerage accounts that the Respondent had helped them establish. Clients JE and KE ended up in a net gain position.

¶ 26 As of the date of Ms. Nadarajan's affidavit at Exhibit 4, the Respondent had, despite his resignation, continued to access JE and KE's online brokerage accounts and execute trades in non-mutual fund securities in exchange for fees.

Clients VL and RL

¶ 27 During the relevant time period the Respondent also served Dealer Member clients VL and RL, also retired and ranging from 79 to 82 years of age.

¶ 28 From October 2020 to February 22, 2021, while the Respondent was registered as a dealing representative with the Dealer Member:

- (a) the Respondent recommended that VL and RL open online brokerage accounts at financial institutions outside the Dealer Member so that the Respondent could execute trades in non-mutual fund securities on their behalf in exchange for certain fees;
- (b) the Respondent assisted VL and RL with opening certain online brokerage accounts; and
- (c) the Respondent assisted VL and RL with depositing their monies or transferring their investments to these online brokerage accounts.

¶ 29 In total, the Respondent caused VL and RL to deposit \$981,046 into online brokerage accounts, however although the Respondent sought to convince VL and RL to enter into an arrangement with the Respondent whereby he would execute trades in non-mutual fund securities on their behalf in exchange for fees, ultimately VL and RL declined to enter into an arrangement with the Respondent.

Clients BL and Company A

¶ 30 During the relevant time period the Respondent also served Dealer Member clients BL and Company A.

¶ 31 From December 2020 to February 22, 2021, while the Respondent was registered as a dealing representative with the Dealer Member:

- (a) the Respondent caused BL to deposit \$5,000 into an online TFSA account, and caused Company A to deposit \$140,000 into a margin account, both with an online brokerage;
- (b) the Respondent repeatedly accessed BL and Company A's online brokerage accounts and used usernames and passwords that BL and Company A had provided to the Respondent to execute trades in non-mutual fund securities, including equity securities, options trading and the foreign exchange market in exchange for \$1,048 in fees.

¶ 32 As of the date of Ms. Nadarajan's affidavit at Exhibit 4, the Respondent had, despite his resignation, continued to access BL and Company A's online brokerage accounts and execute trades in non-mutual fund securities in exchange for fees.

¶ 33 In September 2021, BL and Company A transferred assets out of the online brokerage accounts that the Respondent had helped them establish. Clients BL and Company A ended up in a net gain position.

¶ 34 None of the above transactions or fees charged by the Respondent for any of clients JE, KE, LC, VL RL, BL and Company A were carried on for the account of the Dealer Member or through its facilities.

Clients CK, DK and JP

¶ 35 After the Respondent had resigned from the Dealer Member on February 22, 2021, the Respondent conducted trading similar to those trades described above in non-mutual fund securities in online brokerage accounts for clients CK, DK and JP (who was 71 years old and retired).

¶ 36 CK and DK incurred a net loss of \$105,734 on trades executed by the Respondent in their online brokerage accounts. CK and DK also paid a total of \$7,263 in interest for the Respondent's borrowing on margin and trading fees charged by an online brokerage.

¶ 37 By the date of Ms. Nadarajan's Affidavit, the Respondent had paid CK and DK \$1,000 by way of compensation.

¶ 38 Client JP incurred a net loss of \$56,334 on trades executed by the Respondent in her online brokerage accounts. JP also paid a total of \$2,931 in interest for the Respondent's borrowing on margin and trading fees charged by an online brokerage resulting from the trades executed by the Respondent on JP's behalf.

Resignation

¶ 39 The Respondent has not been registered in the securities industry in any capacity since his February 22, 2021 resignation.

¶ 40 Despite his resignation, the Respondent continued to access online brokerage accounts for certain clients and continued executing trades in non-mutual fund securities in exchange for fees.

ISSUES

¶ 41 The issues to be determined by this Hearing Panel include whether the allegation is proven by the evidence and whether, on a balance of probabilities, the Respondent committed the allegation.

¶ 42 Specifically, Staff alleges that the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Dealer Member, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 1.1.1, 2.1.1, 2.1.4 and 1.1.2 (as it relates to Rule 2.5.1).

¶ 43 If the Hearing Panel finds that the allegation is proven on a balance of probabilities, the Panel was also asked to determine an appropriate penalty and costs.

LAW

Standard of Proof

¶ 44 The standard of proof in all regulatory proceedings in the securities industry, is the civil standard of a balance of probabilities. As Justice Rothstein stated in *F.H. v. McDougall*, 2008 SCC 53, at paragraph 40, "...there is only one civil standard of proof at common law and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely

than not that an alleged event occurred.”

Securities Act

¶ 45 Section 1 of the *Securities Act*, R.S.B.C. 1996, c.418, defines “adviser” as a person who engages or holds himself out as engaging in the business of advising others as to investing in or buying and selling securities or trades of derivatives.

¶ 46 Section 1 of the *Securities Act* also defines “trade” as:

- (a) a disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or a transfer, pledge, mortgage or other encumbrance of a security for the purpose of giving collateral for a debt or other obligation,
- ...
- (c) participation as a trader in a transaction in a security or derivative made on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system,
- (d) the receipt by a registrant of an order to buy or sell a security or effect a transaction in a derivative,
- (e) a transfer of beneficial ownership of a security to a transferee, pledgee, mortgagee or other encumbrancer under a realization on collateral given for a debt or other obligation,
 - (e.1) entering into a derivative, materially amending a derivative or terminating a derivative,
 - (e.2) purchase, sale, assignment or novation of a derivative, other than a novation with a clearing agency, and
- (f) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (e.2).

¶ 47 Exercising discretionary control over a client's investments has been found to be “advising” under the *Ontario Securities Act*, R.S.O. 1990, chapter s.5, which defines “adviser” similarly (see *VRK Forex & Investments Inc. (Re)*, 2022 LNONOSC 13; and *Simba (Re)*, 2018 LNONOSC 422).

MFDA Rules of Procedure

¶ 48 ROP 1.6(1) and 1.6(2) relate to a Hearing Panel's power to admit evidence and provides:

1.6 Admissibility of Evidence

(1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and not bound by the technical or legal rules of evidence.

(2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.

Mutual Fund Dealer Rules (the “Rules”)

¶ 49 Section 1 of the Rules defines:

- (a) an “Approved” Person” as being an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of the Member who
 - (i) is registered or permitted, where required by applicable securities legislation, by the securities commission having jurisdiction, or
 - (ii) submits to the jurisdiction of the Corporation;

- (b) a "Corporation" as being "[Name of New SRO]";¹
- (c) a "Member" as a Dealer Member that is registered as a mutual fund dealer in accordance with securities legislation and is not also registered as an investment dealer; and
- (d) "Securities related business" as any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada.

¶ 50 Section 7.4.1.1(b)(i) of the Rules empowers a Hearing Panel to impose, among other things, a fine of up to \$5,000,000 for each offence.

¶ 51 Section 7.4.2 of the Rules gives a Hearing Panel the discretion to require a Member or Approved Person to pay costs.

¶ 52 For ease of reference, Rules 1.1.1, 1.1.2, 2.1.1, 2.1.4 and 2.5.1 are replicated at Schedule A and attached to the reasons.

¶ 53 Rule 1.1.1 creates a closed system whereby an Approved Person such as the Respondent is only permitted to conduct securities related business for the account of the Dealer Member, sell investment products that have first been approved for sale by the Dealer Member with which the Approved Person is registered, and through its facilities to ensure appropriate review and supervision of trading activity.

¶ 54 Rule 1.1.1 primarily protects the interests of Dealer Member clients, but also the interests of Dealer Members and Approved Persons. When a transaction is done "off the books", the Dealer Member loses its ability to supervise transactions and take responsibility for the suitability of transactions for investors (*Wemple (Re)*, [2017], MFDA File No. 201654; and *Breckenridge (Re)*, [2007], MFDA File No. 200718).

¶ 55 Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 56 Rule 2.1.4 requires that Approved Persons such as the Respondent be aware of the possible conflicts of interest arising between the interests of the Dealer Member, Approved Persons, and the interests of clients. Where an Approved Person becomes aware of a conflict or potential conflict of interest, the Approved Person is obligated to immediately disclose the conflict or potential conflict to the Dealer Member. Where a conflict or potential conflict of interest arises, the Dealer Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and any conflict or potential conflict of interest that arises shall be immediately disclosed in writing to the client by the Dealer Member or by the Approved Person as the Dealer Member directs, prior to proceeding with the proposed transaction (*Gaunt (Re)*, 2013 LNCMFDA 63).

¶ 57 Rule 2.5.1 requires Dealer Members to establish, implement and maintain policies and procedures to ensure compliance with CIRO By-laws and Mutual Fund Dealer Rules and applicable securities legislation. Approved Persons have a corresponding obligation to comply with those policies and procedures pursuant to Mutual Fund Dealer Rule 1.1.2 (*Frank (Re)*, [2015], MFDA File No. 201407).

¶ 58 Other Hearing Panels have held that where an Approved Person engaged in:

- (a) recommending that clients and investors open online brokerage accounts at financial institutions outside the Dealer Member for the purpose of executing trades in non-mutual fund securities on behalf of clients;
- (b) assisting with opening clients and investors' online brokerage accounts;

¹ On June 1, 2023, the NEW SRO changed its name to the Canadian Investment Regulatory Organization.

- (c) assisting with the deposit of clients and investors' monies or transfer of their investments to their online brokerage accounts;
 - (d) repeatedly accessing clients and investors' online brokerage accounts by using usernames and account passwords obtained from clients or while meeting in person with clients; and
 - (e) executing trades in non-mutual fund securities in clients and investors' online brokerage accounts
- was contrary to the Dealer Member's policies and procedures, and that the Approved Person engaged in securities related business outside the Dealer Member thereby contravening Rules 1.1.1, 2.1.1, and 1.1.2 (as it related to MFDA Rule 2.5.1) (*Hsueh (Re)*, 2012 LNCMFDA 39; *Ladha (Re)*, 2012 LNCMFDA 62; and *Conlin (Re)*, 2024 CIRO 54).

¶ 59 Hearing Panels have also held that Approved Persons who receive payments for services from clients, create potential conflicts of interest, and if they had not disclosed their arrangements to the Dealer Member, had contravened Rules 2.1.4 and 2.1.1 (*Ryan (Re)*, 2011 LNCMFDA 54; and *Ventolini (Re)*, 2018 LNCMFDA 57).

Positions of the Parties

¶ 60 Staff proposes a permanent prohibition on the Respondent's authority to conduct securities related business while in the employ of or associated with any Dealer Member of CIRO, pursuant to Rule 7.4.1.1(e); a \$70,000 fine pursuant to Rule 7.4.1.1(b); and costs.

¶ 61 Through his submissions the Respondent conceded that he had made "a massive mistake" but claimed that his actions had not been intentional. The Respondent claimed that he had built up a rapport with his clients and had legitimately wanted to help them to save on investment fees.

¶ 62 The Respondent further submitted that while he understood that a permanent trading ban was likely, he urged the Hearing Panel to impose less than a permanent ban and less than a \$70,000 fine based on similar penalty caselaw provided by Staff.

¶ 63 Presumably the Respondent was referring to far less serious cases of *Khalidi*, 2024 CIRO 29 (Penalty Decision) and *Spithoff (Re)*, 2021 LNCMFDA 113. *Khalidi* received a two year prohibition and a \$15,000 fine for giving investment advice to individuals on an online forum. *Spithoff* received a five-year prohibition and a \$15,000 fine for recommending and facilitating the sale of \$1,200,000 worth of promissory notes outside the account and facilities of a Dealer Member to fourteen clients in exchange for no benefit.

ANALYSIS

Dealer Member's policies and procedures

¶ 64 At all material times, the Dealer Member's policies and procedures prohibited its Approved Persons from, among other things, engaging in securities related business outside the Dealer Member, such as advising on securities other than mutual funds and GICs (Exhibit 4, Nadarajan affidavit, at para. 20 and exhibit 8 to that affidavit).

¶ 65 Rule 1.1.1 primarily protects the interests of Member clients, but also the interests of Members and Approved Persons. When a transaction is done "off the books", as in this matter, the Member loses its ability to supervise transactions and take responsibility for the suitability of transactions (*Wemple (Re)*, [2017], MFDA File No. 201654; and *Breckenridge (Re)*, [2007], MFDA File No. 200718).

¶ 66 Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Member and Approved Person deals fairly, honestly, and in good faith with clients; observes high standards of ethics and conduct in the transaction of business; and refrains from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 67 Hearing Panels have also held that Approved Persons such as the Respondent who receive payments for services from clients and who do not disclose those arrangements to their Dealer Member, create potential conflicts of interest in contravention of Rules 2.1.4 and 2.1.1 (*Ryan (Re)*, 2011 LNCMFDA 54; and *Ventolini (Re)*, *supra*).

- ¶ 68 Hearing Panels have also held that where an Approved Person such as the Respondent:
- (a) recommended that clients and investors open online brokerage accounts at financial institutions outside the Dealer Member for the purpose of the Respondent executing trades in non-mutual fund securities on their behalf;
 - (b) assisted with or facilitating opening online brokerage accounts for clients and investors;
 - (c) assisted with or facilitating the deposit of clients and investors' monies or transfer of their investments to online brokerage accounts;
 - (d) repeatedly accessed clients and investors' online brokerage accounts by using user identification and account passwords obtained from clients and investors; and
 - (e) executed trades in non-mutual fund securities in clients and investors' online brokerage accounts,
- this was contrary to the Dealer Member's policies and procedures.

¶ 69 From the Hearing Panel's review of the Affidavits and caselaw provided by Staff, it is evident that the Respondent engaged in securities related business outside the Dealer Member (see *Hsueh (Re)*, 2012 LNCMFDA 39 at paras. 5-10; *Ladha (Re)*, 2012 LNCMFDA 62 at paras. 5-7; and *Conlin (Re)*, 2024 CIRO 54 at paras. 2, 4, 8-25).

¶ 70 Despite the Respondent's candid submissions, it is plain that he intentionally convinced a number of clients, many of whom were vulnerable senior citizens, to move their investments from the Dealer Member to online brokerages where the Respondent engaged in trading in securities other than mutual funds and GICs contrary to his registration.

¶ 71 The Hearing Panel rejects the Respondent's submission that his actions were in any way unintentional mistakes intended to help his clients save money. To the contrary, it is plain that the Respondent deliberately and repeatedly advised his above clients to engage in risky investments and investment strategies they did not fully understand with the intention that the Respondent would profit by collecting fees.

¶ 72 The Respondent acted deliberately and deceptively. There can be no excuse for his actions.

¶ 73 The Respondent also failed to disclose his above-described activities to the Dealer Member even though the Respondent was aware of conflicts or potential conflicts of interest that arose when he charged clients and investors fees for executing trades in their online brokerage accounts and accepted payments from them.

¶ 74 The Respondent's misconduct breached the Dealer Member's policies and procedures described above, as well as the prescribed standard of conduct. Accordingly, the Respondent's misconduct contravened Mutual Fund Dealer Rules 1.1.1, 2.1.1, 2.1.4, and 1.1.2 (as it relates to Mutual Fund Dealer Rule 2.5.1) (formerly MFDA Rules 1.1.1, 2.1.1, 2.1.4, 1.1.2, and 2.5.1).

Determining Penalty

¶ 75 As explained above, if in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule, or Policy of CIRO, a Hearing Panel can impose any of the penalties set out in Rule 7.4.1.1(a) to (f).

¶ 76 In *Pezim v British Columbia (Superintendent of Brokers)*, the Supreme Court of Canada held that the goals of securities regulation include the protection of investors and ensuring public confidence in the industry. Disciplinary sanctions imposed in a securities regulatory context are therefore intended to restrain future misconduct in furtherance of these goals. Sanctions should also be preventative, protective and prospective (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at paras. 59 and 68; and *Tonnies (Re)*, MFDA File No. 200503).

¶ 77 As explained in *Tonnies (Re) supra*, in order to determine whether a proposed penalty is appropriate, Hearing Panels should consider:

- (a) the protection of the investing public;

- (b) the integrity of the securities market;
- (c) specific and general deterrence;
- (d) the protection of the CIRO's membership; and
- (e) the protection of the integrity of the CIRO's enforcement process.

¶ 78 As further explained in *Tonnies (Re) supra*, Hearing Panels frequently consider other factors when determining an appropriate penalty including:

- (a) the seriousness of the allegations proven against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience and level of activity in the capital markets;
- (d) whether the Respondent recognizes the seriousness of the improper activity;
- (e) the harm suffered by investors as a result of the Respondent's activities;
- (f) the benefits received by the Respondent as a result of the improper activity;
- (g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) previous decisions made in similar circumstances.

¶ 79 Hearing Panels have considered the totality of circumstances, including conduct that occurred before or after a respondent was registered, in the course of determining an appropriate penalty (See *Cox (Re)*, 2016 LNCMFDA 24 at paras. 58, 81; *Lam (Re)*, 2019 LNCMFDA 23 at paras. 23-24, 27; and *Brauns (Re)*, 2014 LNCMFDA 9 (Penalty Decision) at paras. 10-11, 14).

¶ 80 The Respondent's misconduct in this matter involved multiple contraventions of the Mutual Fund Dealer Rules and vulnerable elderly clients. The Respondent's misconduct was serious and warrants a permanent prohibition from conducting securities related business as well as a significant fine.

¶ 81 The comments of the Hearing Panel in *Qi (Re)*, 2013, MFDA File No. 201253, Panel Decision (Penalty) at para. 11, are worth repeating:

Conducting securities related business ... without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even legitimate investments. The misconduct may bring the Member or the mutual fund industry into disrepute.

¶ 82 By engaging in the trading of securities outside the Dealer Member the Respondent subverted the Dealer Member's ability to supervise his activities and exposed his clients to harm and brought the mutual fund industry into disrepute (*Simmons (Re)*, 2019 LNCMFDA 1).

¶ 83 By charging clients fees for executing trades in their online brokerage accounts and accepting payments from them, raising potential conflicts of interest that were not disclosed to the Dealer Member, the Respondent also committed serious misconduct (*Ventolini (Re)*, *supra* at para. 15).

¶ 84 The Respondent's failure to comply with the Dealer Member's policies and procedures described above was also serious misconduct. When Approved Persons disregard their obligations to comply with a Dealer Member's policies and procedures, the Dealer Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined (*Franco (Re)*, [2011] MFDA File No. 201016).

Deterrence

¶ 85 The proposed sanctions satisfy the goals of both specific and general deterrence.

¶ 86 A permanent prohibition specifically deters the Respondent from engaging in similar misconduct and protects the public interest. Given his conduct even after resignation there is a significant risk that the Respondent would continue misconduct outside a CIRO dealer member if he were permitted to ever reregister (*Cox (Re)*, *supra* at paras. 58 and 81; *Lam (Re)*, *supra* at paras. 23-27; and *Brauns (Re)*, 2013 LNCMFDA 68 (Misconduct Decision)).

¶ 87 A significant fine is also necessary to ensure specific and general deterrence. The fine should act to disgorge the \$19,846 benefit that the Respondent obtained by charging clients fees for executing trades in their online brokerage accounts. It is hoped that this fine will send a message to the mutual fund industry that significant penalties will result for misconduct of this nature.

¶ 88 Disgorgement is a tool to ensure specific and general deterrence (See *Mutual Fund Dealers Assn. (Re)*, 2021 ONSEC 24 at paras. 30-31; *Poonian v. British Columbia Securities Commission*, [2017] B.C.J. No. 1029; *David Michael Michaels (Re)*, 2014 LNBCSC 375 (Penalty Decision); and *Zhong (Re)*, 2015 BCSECCOM 165 at paras. 50, 54-55).

¶ 89 The Hearing Panel is of the view that in addition to disgorgement, a substantial fine is also appropriate in these circumstances to serve as a true deterrent by imposing a cost on the Respondent for his misconduct (*Northern Securities Inc. (Re)*, 2014 LNONOSC 581 at para. 215; and *Fauth (Re)*, 2019 LNABASC 90 at para. 97).

¶ 90 The Respondent's misconduct placed vulnerable clients and investors' assets worth approximately \$3,877,437 at significant risk and resulted in client LC sustaining a loss of \$7,623.

¶ 91 The \$70,000 fine sought by Staff is appropriate in this case given:

- (a) the seriousness of the Respondent's actions;
- (b) assets valued at over \$3,700,000 were transferred out of five client accounts at the Dealer Member, placing them at risk;
- (c) the Respondent executed trades in equity securities, options, the foreign exchange market, and exchange-traded funds which he was not registered to advise or trade in; and
- (d) one client sustained a loss.

(*Kowalsky (Re)*, 2022 LNCMFDA 31 at paras. 23-24; and *Gable (Re)*, 2024 CIRO 41 at paras. 67-70).

¶ 92 The Respondent was experienced, having been registered in the securities industry since 2005. He knew that he was only permitted to conduct securities related business for the account of the Dealer Member and through its facilities.

¶ 93 The Respondent also should have known that charging clients fees for executing trades in online brokerage accounts and accepting payments from those clients raised potential conflicts of interest, requiring disclosure to the Dealer Member.

Similar Cases

¶ 94 Staff provided a number of cases to the Hearing Panel which they argued were similar and supportive of the penalties sought.

¶ 95 In particular, *Cheung (Re)*, 2019, LNCMFDA 17, wherein the respondent received a permanent prohibition, a \$75,000 fine and \$10,000 in costs after engaging in securities related business outside a Dealer

Member by recommending, selling, facilitating the sale of syndicated mortgage investments to five clients totaling approximately \$244,300 and receiving \$12,305 in fees; and *Piett (Re)*, 2012 LNCMFDA 84, where the respondent received a permanent prohibition, a \$175,000 fine and \$7,500 in costs after engaging in securities related business outside the Dealer Member by selling three non-mutual fund investment products to at least ten clients earning \$157,000 in fees. *Piett* reimbursed two clients \$38,233.

¶ 96 As urged by the Respondent, the Hearing Panel also considered *Khalidi*, 2024 CIRO 29 (Penalty Decision), and *Spithoff (Re)*, 2021 LNCMFDA 113, however we found them far less serious than the matter at hand and accordingly of little assistance.

Costs

¶ 97 As indicated above, Rule 7.4.2 grants a Hearing Panel the discretion to require an Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to that proceeding. Here, Staff provided a bill of costs totaling \$26,894.75, but quite appropriately sought only \$10,000 in costs.

¶ 98 In his submissions to the Hearing Panel the Respondent did not take issue with the costs sought by Staff, calling them “fair”.

¶ 99 We agree.

CONCLUSION

¶ 100 We order the following sanctions:

- (a) the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of CIRO registered as a mutual fund dealer, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);
- (b) the Respondent shall pay a fine of \$70,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), an amount sufficient to disgorge \$19,846, being the amount obtained by the Respondent from his contravention of the MFDA Rules and a fine of \$50,154 on account of the allegation; and
- (c) the Respondent shall pay costs in the amount of \$10,000 which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent.

Dated at Vancouver, British Columbia this 26th day of November 2024.

“Nils Preshaw”

Nils Preshaw, Chair

“Susan Monk”

Susan Monk, Industry Representative

“Tammi Walsh”

Tammi Walsh, Industry Representative

Schedule A

Selected Mutual Fund Dealer Rules

1.1.1 Members

No Member or Approved Person (as defined in Rule 1A) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in Rule 1) except in accordance with the following:

- (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:
 - (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
 - (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the Bank Act (Canada) and the regulations thereunder, or as an employee of a credit union or caisse populaire and in accordance with applicable legislation governing such credit union or caisse populaire, and in each case, in accordance with applicable securities legislation.
- (b) all revenues, fees or consideration in any form relating to any business engaged in by the Member is paid or credited directly to the Member and is recorded on the books of the Member;
- (c) the relationship between the Member and any person conducting securities related business on account of the Member is that of:
 - (i) an employer and employee, in compliance with Rule 1.1.4,
 - (ii) a principal and agent, in compliance with Rule 1.1.5, or
 - (iii) an introducing dealer and carrying dealer, in compliance with Rule 1.1.6;
 (d) the business or trade or style name under which such securities related business is conducted is in accordance with Rule 1.1.7.

1.1.2 Compliance by Members and Approved Persons

- (a) Each Member shall comply with:
 - (i) the By-laws,
 - (ii) the Rules, and
 - (iii) applicable securities legislation relating to the operations, standards of practice and business conduct of Members.
- (b) Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with:
 - (i) the By-laws,
 - (ii) the Rules, and
 - (iii) applicable securities legislation relating to:
 - (A) the operations, standards of practice and business conduct of each Member; and
 - (B) such Approved Person's operations, standards of practice and business conduct.

...

2.1.1 *Standard of Conduct.*

Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;*
- (b) observe high standards of ethics and conduct in the transaction of business;*
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and*
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.*

...

2.1.4 (1) *Identifying, addressing and disclosing material conflicts of interest – Member*

- (a) A Member must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable,*
 - (i) between the Member and the client, and*
 - (ii) between each individual acting on the Member's behalf and the client.*
- (b) A Member must address all material conflicts of interests between a client and itself, including each individual acting on its behalf, in the best interests of the client.*
- (c) A Member must avoid any material conflict of interest between a client and the Member, including each individual acting on its behalf, if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.*
- (d) A Member must disclose in writing all material conflicts of interest identified under Rule 2.1.4(1)(a) to a client whose interests are affected by the conflicts of interest if a reasonable client would expect to be informed of those conflicts of interest.*
- (e) Without limiting subsection (d), the information required to be delivered to a client under that subsection must include a description of each of the following:*
 - (i) the nature and extent of the conflict of interest;*
 - (ii) the potential impact on and risk that the conflict of interest could pose to the client;*
 - (iii) how the conflict of interest has been, or will be, addressed.*
- (f) The disclosure required under subsection (d) must be presented in a manner that, to a reasonable person, is prominent, specific and written in plain language.*
- (g) A Member must disclose a conflict of interest to a client under subsection (d)*
 - (i) before opening an account for the client if the conflict has been identified at that time, or*
 - (ii) in a timely manner, upon identification of a conflict that must be disclosed under subsection (d) that has not previously been disclosed to the client.*
- (h) For greater certainty, a Member or Approved Person does not satisfy Rule 2.1.4(1)(b) or requirements under Rule 2.1.4(2)(c) solely by providing disclosure to the client.*

(2) Identifying, reporting and addressing material conflicts of interest – Approved Person

- (a) An Approved Person must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that are reasonably foreseeable, between the Approved Person and the client.*
- (b) If an Approved Person identifies a material conflict of interest under Rule 2.1.4(2)(a), the Approved Person must promptly report that conflict of interest to their Member.*
- (c) An Approved Person must address all material conflicts of interest between the client and the Approved Person in the best interest of the client.*
- (d) An Approved Person must avoid any material conflict of interest between a client and the Approved Person if the conflict is not, or cannot be, otherwise addressed in the best interest of the client.*
- (e) An Approved Person must not engage in any trading or advising activity in connection with a material conflict of interest identified by the Approved Person under Rule 2.1.4(2)(a) unless*
 - (i) the conflict has been addressed in the best interest of the client, and*
 - (ii) the Approved Person's Member has given the Approved Person its consent to proceed with the activity.*

...

2.5.1 Member Responsibilities

Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

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