

Re Manalang

IN THE MATTER OF:

The Mutual Fund Dealer Rules¹

and

Ryan Rilloraza Manalang

2025 CIRO 02

Canadian Investment Regulatory Organization
Hearing Panel (Saskatchewan District)

Heard: October 30, 2024 and January 9, 2025 by electronic hearing in Saskatoon, Saskatchewan

Decision: October 30, 2024

Reasons for Decision (Penalty): January 16, 2025

Hearing Panel:

Sherri Walsh, Chair

Annette Stephens, Industry Representative

James Samanta, Industry Representative

Appearances:

Jennifer Galarneau, Enforcement Counsel

Ryan Rilloraza Manalang, the Respondent

Reasons for Decision (Penalty)

INTRODUCTION

[1] The Hearing on the Merits of this matter took place on December 12, 2023, January 9, 2024 and March 5, 2024.

[2] In the Hearing Panel's Reasons for Decision issued May 28, 2024 (the "Misconduct Decision") the Hearing Panel found that the Respondent engaged in the following misconduct:

¹ On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada (the "MFDA") were consolidated into CIRO, a single self-regulatory organization recognized under applicable securities legislation. CIRO adopted interim rules that incorporated the pre-amalgamation regulatory requirements contained in IIROC rules and policies and the MFDA By-laws, rules, and policies (the "Interim Rules"). The Interim Rules included the (i) Investment Dealer and Partially Consolidated Rules, (ii) UMIR, and (iii) Mutual Fund Dealer Rules (the "Rules"). These rules were largely based on IIROC rules and certain MFDA By-laws, rules, and policies in force immediately prior to amalgamation. Unless otherwise indicated in these Reasons, the wording of the MFDA by-law, rules, and policies in force at the time of the misconduct have been incorporated into the Rules. Pursuant to transition provisions in Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.

- (a) **#1:** On April 6, 2021, the Respondent photocopied the signature pages from two account forms previously signed by a client and reused the signature pages on two account forms and submitted the forms to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1) (“Contravention #1”)
- (b) **#2:** Between January 18, 2020, and April 6, 2021, the Respondent obtained, possessed, and in some instances used to process transactions, 29 pre-signed account forms in respect of 9 clients, contrary to Mutual Fund Dealer Rule 2.1.1 (formerly MFDA Rule 2.1.1) (“Contravention #2”).

[3] The Panel reconvened on October 30, 2024 to hear the parties’ submissions with respect to penalty (the “Penalty Hearing”).

PROPOSED SANCTION – PARTIES’ POSITIONS

[4] Staff submitted that the appropriate sanction to impose in this matter was:

- (a) a fine of \$25,000 pursuant to Rule 7.4.1.1(b);
- (b) costs of \$7,500 pursuant to Rule 7.4.2; and
- (c) completion of an ethics or industry course acceptable to CIRO Staff within one year of the Hearing Panel’s Sanction decision pursuant to Rule 7.4.1.1(f).

[5] The Respondent’s position was that this sanction was disproportionately high considering all the circumstances of this matter including the potential impact his conduct could have had on clients.

[6] He submitted that the nine clients in question generate minimal commissions amounting to probably less than \$500.00 annually and that the fine Staff was asking for was the equivalent of the total amount that he had earned in commissions from his wealth business dating all the way back to the time he started with the Member.

[7] He also submitted that the amount which was being sought for costs was excessive and that Staff had spent an unreasonable amount of time prosecuting this matter.

[8] Finally, he submitted that there was no need to require him to complete an ethics course since he is now aware of the consequences of the mistakes he made and knows what not to do.

SANCTION – THE PANEL’S DECISION

[9] At the end of the Penalty Hearing the Panel took a recess to deliberate. After considering all of the evidence and the parties’ submissions, both written and oral, the Panel returned to order that the following sanctions be imposed (the “Penalty Decision”):

- (a) A fine in the amount of \$22,000.00, pursuant to Rule 7.4.1.1(b);
- (b) Costs in the amount of \$5,000.00, pursuant to Rule 7.4.2;
- (c) Completion of an ethics or industry course acceptable to CIRO Staff within one year of the Hearing Panel’s Penalty Decision pursuant to Rule 7.4.1.1(f); and

- (d) After making an initial payment, the Respondent may pay the fine and costs based on a payment schedule to be determined between the parties.

[10] The Panel advised that if the parties were not able to reach an agreement regarding a payment schedule, they could return to the Panel for assistance.

[11] Ultimately the parties advised they were not able to reach such an agreement, and Staff asked the Panel to hold another appearance, on January 9, 2025.

[12] At the end of that appearance, the Panel ordered that the Respondent pay the fine and costs by making an initial payment of \$10,000.00 payable by February 10, 2025 followed by 31 monthly instalments of \$550.00 each, commencing March 10, 2025.

[13] These are the Panel's reasons for the Penalty Decision.

Authority of the Hearing Panel

[14] Pursuant to s. 24.1.1 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1), if in the opinion of the Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA (now CIRO), the Panel can impose any of the penalties set out in sections 24.1.1 (a-f), including a permanent prohibition of the authority of the Approved Person to conduct securities related business, and a fine not exceeding the greater of \$5,000,000 or three times the profit obtained or loss avoided by engaging in the misconduct.

[15] Pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2) a Hearing Panel has the discretion to order that an Approved Person pay all or part of the costs of the proceeding before the Hearing Panel and any investigation relating thereto.

FACTORS CONCERNING THE APPROPRIATENESS OF THE PROPOSED SANCTIONS

[16] The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 and 68.

[17] In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry as a whole.

Pezim supra

Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005 ("*Tonnies (Re)*")

[18] In furtherance of these goals, disciplinary sanctions imposed in the securities regulatory context are intended to restrain future conduct. As the Hearing Panel in *Tonnies (Re)* stated:

The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in Re Mithras Management Ltd. et al (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:

...[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances

may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

Tonnies (Re) supra at p. 22

[19] We also note the comments of the Panel in *Kowalsky (Re)*, [2022] LNCNFDA 31 at para. 11:

“While the primary objective of sanctions is to prevent future misconduct by the Respondent and other industry participants, and not to punish the Respondent, some element of punishment of the Respondent is the inevitable result of any sanctions. But the fact that some punishment of the Respondent may occur, should not inhibit the Panel from imposing sanctions, so long as the primary goal of those sanctions is the prevention of future misconduct.” (emphasis in original text)

[20] To this, we add that any sanction must be proportionate and reasonable having regard to the seriousness of the misconduct and the particular circumstances of the Respondent.

[21] The sanction principles in the cases referred to above have been cited in numerous decisions reached by MFDA and CIRO Hearing Panels. These principles are well established and the Panel has followed them in determining the appropriate sanction in this case.

[22] In particular, when determining the appropriate sanction a Hearing Panel 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 MFDA’s (now CIRO’s) membership; and
- (e) the protection of the integrity of the MFDA’s (now CIRO’s) enforcement process.

Tonnies (Re) supra at p. 22

Nunweiler (Re), [2012] MFDA File No. 201030, Hearing Panel of the Pacific Regional Council, Panel Decision dated May 28, 2012 (“*Nunweiler (Re)*”), at para. 41.

[23] Other factors that Hearing Panels frequently consider when determining the appropriate sanction to be imposed on a Respondent include the following:

- (a) the seriousness of the allegations proved 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.

Tonnies (Re), *supra* at pp. 21-22.

Nunweiler (Re), *supra* at para. 42.

[24] A Hearing Panel may also refer to the CIRO Sanction Guidelines which came into effect on February 1, 2024.

[25] These Guidelines, while not binding on a Hearing Panel, provide a summary of the key factors upon which discretion can be exercised consistently and fairly. The Guidelines describe many of the same factors that are listed above which have been considered in previous decisions of MFDA and CIRO Hearing Panels.

APPLICATION TO THE PRESENT CASE

Seriousness of the Misconduct

Photocopying and Reusing Client Signatures – Contravention #1

[26] The Respondent photocopied the client signature pages from the forms for one account and reused them on two account forms for a completely different account, contrary to Rule 2.1.1. In doing that, he manually altered the account number on the two new forms.

[27] Reusing a client's signature, which is a form of signature falsification, is serious misconduct. As the Hearing Panel in *Barnai (Re)* stated:

6. Falsifying client signatures or initials is serious misconduct. Signature falsification (like the use of pre-signed forms) adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

7. As a Hearing Panel of the Investment Dealers Association (now IIROC) stated in *Bell (Re)*:

“Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole.”

Bell (Re), [2005] LD.A.C.D. No. 15, Alberta District Council, Panel Decision March 21, 2005, at para. 35.

8. *Lamontagne (Re)* reiterated the principle set out in *Bell (Re)*, but went on to state that, where warranted, hearing panels may distinguish between serious and less egregious instances of falsification:

“Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry ... forgery often attracts severe sanctions. While there is no such thing as a "minor case" of forgery, hearing panels may distinguish between more and less egregious examples of forgery.”

Lamontagne (Re), [2009] IIROC No. 6, Alberta District Council, Panel Decision dated January 27, 2009, at paras. 14 and 45. *Wise (Re)*, 2012 LNCMFDA 79.

Barnai (Re) [2015] MFDA File No 201325, Hearing Panel of the Central Regional Council, Panel Decision dated March 17, 2015, at paras. 6-8.

Pre-signed Forms – Contravention #2

[28] The Respondent obtained, possessed and in some instances used to process transactions, 29 pre-signed account forms in respect of 9 clients, contrary to Rule 2.1.1. He did this by emailing his clients only the last and signature pages of the account forms for the clients to sign. At no time prior to the clients signing these pages did he provide them with any of the other pages of the forms.

[29] The Respondent’s position at the Penalty Hearing, consistent with the admissions he made in his Reply to the Notice of Hearing and his testimony at the Misconduct Hearing was that he was unaware that this conduct constituted a breach of the Rules.

[30] He submitted that because he did not receive any information from the Member that any of the forms he submitted for processing were “not in good order”, he believed there was nothing wrong with the process which he had followed to collect client signatures. He also submitted that the reason for his conduct was to support the convenience of his clients during the unprecedented time of COVID restrictions.

[31] His position was that overall, his conduct amounted to an administrative oversight and he had no ill intention or motive except to serve his clients well.

[32] Regardless of the Respondent’s intentions, the Panel finds that the misconduct he engaged in with respect to his use of pre-signed forms is very serious.

[33] The Rule relating to pre-signed forms should not be difficult to comprehend or apply.

[34] A pre-signed form includes a form signed in blank and retained on the client file for future use, as well as a form signed in blank to which information is added after delivery of the form by the client to the Approved Person whether or not the client has authorized insertion of the information.

Wong (Re), [2021] MFDA File No. 201943, Hearing Panel of the Pacific Regional Council, Panel Decision dated February 22, 2021, at para. 26

[35] Among other things, altering account forms without obtaining a client's initials or signature adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

[36] As the Hearing Panel explained in *Wong (Re)*:

The reason for the stringency associated with the rules regarding pre-signed and altered forms is clear. Approved persons may not engage in discretionary trading. Moreover, the preparation and preservation of an audit trail is essential in the securities and mutual fund industries. An approved person must be able to support the claim that trades or transactions were based on client instructions.

Any departure from the required standard will result in a determination that the dealing representative has contravened the MFDA Rules and will result in penalty. Ignorance of the rule, negligence, or mere carelessness affords no defence. The breach is much like a simple speeding ticket: travelling in excess of the posted limit is an offence. No excuse exonerates the speeder. Likewise, no excuse exonerates a dealing representative who obtains a pre-signed form from a client and then completes and uses it, or who alters a properly executed form without the alteration being initialed [sic] by the client. (emphasis added)

Wong (Re), *supra*, at paras. 27 & 28

[37] Similarly, in this case we found that the process the Respondent followed with respect to obtaining client signatures on the relevant documents rendered those signatures meaningless. Dealer Members rely on the diligence of Approved Persons to obtain clients' signatures in order to confirm the clients' instructions. The Respondent's conduct prevented the Member in this case from receiving such confirmation.

[38] As we noted in our Misconduct Decision, the Respondent acknowledged that there was nothing that prevented him from scanning and providing all of the pages of each form to the clients rather than simply sending the signature page, when asking them to sign the forms.

[39] With respect to the Respondent's position that he was not aware that his conduct amounted to a breach of the Rules, we stress that the Respondent had a responsibility to be aware of both his regulatory requirements and of the Member's policies and procedures. Ignorance is no defence.

Botha (Re), 2021 ABASC11

Wong (Re) supra at para. 28

[40] It bears repeating that in our Misconduct Decision we found that the Respondent's apparent failure to understand the significance of ensuring that a client is provided with a complete opportunity to review all of the information contained in a document before they put their signature to it, was concerning.

[41] In determining the appropriate sanction, the Panel also considered the fact that the Respondent's misconduct occurred after Staff had issued notices advising that altered and pre-signed forms were prohibited. In fact, Staff has been cautioning Members and Approved Persons

since 2004 about the prohibition relating to altering and using pre-signed forms, including the rationale for this prohibition.

MSN-0035, MFDA Staff Notice Recording and Maintaining Evidence or Client Trade Instructions, December 10, 2004.

MR-0066, Member Regulation Notice, Prohibition on Use of Pre-Signed Forms, October 31, 2007.

[42] Staff issued a Bulletin and update to MR-0066 which reiterated and clarified the prohibition on altered and pre-signed account forms. It also warned Members and Approved Persons that Staff would seek enhanced sanctions for conduct occurring after October 2, 2015.

MFDA Bulletin #0661-E, October 2, 2015

[43] We find therefore, that the Respondent's misconduct is aggravated by the fact that some of the account forms were obtained after the MFDA had issued Bulletin #0661-E on October 2, 2015.

[44] In reaching our decision, we were mindful that Hearing Panels have increasingly emphasized the need to impose penalties which will dissuade Approved Persons from engaging in the type of misconduct which is the subject of these proceedings.

Kachur (Re), [2022] MFDA File No. 202201, Hearing Panel of the Prairie Regional Council, Panel Decision dated July 6, 2022, at para. 36.

Respondent's Experience in the Capital Markets

[45] The Respondent has been registered as a dealing representative since 2005 and therefore ought to have known that the conduct which is the subject of these proceedings was not permissible. While the unprecedented circumstances relating to the pandemic may explain his intentions at the time, they do not provide an excuse for his actions.

[46] As the Hearing Panel in *Kachur (Re)* said about the Respondent in that matter, the Respondent "was experienced in the securities industry and ought to have known that the conduct which is the subject of these proceedings was a clear violation of his regulatory obligations."

Kachur (Re) supra at para. 37

[47] The Member's Compliance and Policy & Procedures Manual clearly prohibited the conduct which is the subject of these proceedings and the Member's Code of Professional Conduct required that the Respondent read, understand and comply with any internal policies.

[48] The Respondent acknowledged that he was bound by the Dealer Member's Code of Professional Conduct and said he had completed both an annual Code Acknowledgement and the Code of Professional Conduct online course for the years 2019–2021.

[49] Therefore, aside from being required to know his regulatory obligations, the Respondent ought to have been aware through the Member's internal policies that the conduct which is the subject of these proceedings was prohibited.

Past Conduct

[50] The Respondent has no previous disciplinary history.

Recognition by the Respondent of the Seriousness of the Misconduct

[51] As we set out earlier in these Reasons and in the Misconduct Decision, while the Respondent did not dispute the existence of the underlying facts for the two allegations which have ultimately been established against him, he did dispute that his actions amounted to misconduct.

[52] In his submissions before the Penalty Hearing, he repeatedly stated that he is now aware that his conduct was a violation. He submitted that once he became aware of that fact, he immediately stopped the process and he will never make the same mistake again.

[53] The Panel believes that the Respondent is remorseful and has listened to and hopefully learned from these proceedings. Nonetheless, we remain of the view that he can benefit from further training and for that reason have included that requirement in the sanction we have ordered.

Harm Suffered by Investors and Benefits Received by the Respondent

[54] There is no evidence that the transactions processed by the Respondent pursuant to the altered and pre-signed forms resulted in any client financial loss or that the transactions were unauthorized. Nor do we find evidence that the Respondent benefited from the misconduct.

Deterrence

[55] Hearing Panels have followed the Supreme Court of Canada's authority that deterrence is an appropriate factor to be taken into account when determining a penalty.

Cartaway Resources Corp. (Re), [2004] 1 SCR 672 (SCC) at paras. 52-62

[56] Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*:

The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.

Cartaway Resources Corp. (Re), 2004 SCC 26, at para. 61.

[57] In advocating for a lesser penalty, the Respondent impressed upon the Panel the negative impact these proceedings have had on him. He said that having gone through this experience he is clearly deterred from ever repeating similar conduct.

[58] While the Panel accepts the Respondent's sincerity regarding his specific situation, we

must impose a penalty that also achieves general deterrence.

[59] In our view the penalty we have imposed satisfies the goal of achieving both specific and general deterrence.

Dealer Member Discipline

[60] The CIRO Sanction Guidelines state that one of the key factors for Hearing Panels to consider in determining sanctions is whether an individual Respondent was subject to internal discipline by the Dealer Member for the same misconduct.

CIRO Sanction Guidelines Part II (12)

[61] In determining the appropriate sanction in this matter, the Panel has taken into account the fact that the Dealer Member imposed a \$2,500.00 fine on the Respondent and required him to review its Policies and Procedures and Code of Conduct.

Previous Decisions Made in Similar Circumstances

[62] Staff submitted the sanction it was proposing was consistent with the sanctions imposed by Hearing Panels in the following cases.

Contravention #1

[63] With respect to cutting and pasting and reusing signatures, Staff provided us with the following cases:

Cutting, Pasting and Re-using Signatures

- *Comrie (Re)* [2023] File No. 202262, Hearing Panel of the Ontario District Hearing Committee, Panel Decision dated June 6, 2023
- *Kwak (Re)* [2022] MFDA File No. 202204, Hearing Panel of the Pacific Regional Council, Panel Decision dated April 26, 2022

[64] Both of these cases involved two instances of cutting and pasting. Both involved Settlement Agreements. The fines were \$10,000.00 and \$11,000.00 respectively and costs in both cases were awarded at \$2,500.00. In *Comrie (Re)*, the Respondent was also terminated. The conduct in both cases was post-MFDA bulletin conduct.

Contravention #2

[65] With respect to pre-signed forms Staff provided the Panel with the following cases:

Re-used, Altered and Pre-signed Forms

- *Rana (Re)*, 2023 CIRO 40
- *Moody (Re)*, [2023] File No. 202242, Hearing Panel of the Alberta District Hearing Committee, Panel Reasons dated December 1, 2023
- *Perrault (Re)*, [2023] File No. 202254, Hearing Panel of the Ontario District Hearing Committee, Panel Decision dated February 13, 2023
- *McTavish, William*, [2022] MFDA File No. 202233, Hearing Panel of the Central Regional Council, Panel Decision dated October 12, 2022

[66] The fines imposed in these cases ranged from \$18,000.00 to \$22,000.00 with costs ranging from \$2,500.00 to \$3,000.00.

[67] The number of forms used in the cases ranged from 18 to 33. Member discipline in the cases also ranged from issuing a warning letter to, adding a fine of \$7,200.00. All of the cases involved either Settlement Agreements or an Agreed Statement of Facts.

[68] Having carefully considered all of these cases we are satisfied that the sanction we have imposed is consistent with the decisions reached in the comparator cases Staff has provided.

Totality Principle

[69] For multiple contraventions, the total or cumulative sanction should appropriately reflect the totality of the misconduct.

[70] CIRO's Sanction Guidelines state:

Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive. Depending on the facts and circumstances of a case, however, multiple contraventions may be treated individually such that a sanction is imposed for each contravention so long as the total sanction is proportionate to the overall misconduct.

In addition, numerous, similar contraventions may warrant higher sanctions since the existence of multiple contraventions may be treated as an aggravating factor.

CIRO Sanction Guidelines, Part I – Sanction Principles, No. 4

[71] In determining the appropriate penalty, we have taken into account the totality of the seriousness of the Respondent's misconduct and all the circumstances of this matter.

THE RESPONDENT'S PERSONAL CIRCUMSTANCES AND INABILITY TO PAY

[72] The Sanction Guidelines state that inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a Respondent but it should not be considered a predominant or determining factor. It may be relevant depending on the circumstances and the nature of the misconduct and consideration of other applicable factors such as general and specific deterrence and the need to ensure public confidence in the disciplinary process.

CIRO Sanction Guidelines – Part I – Sanction Principles

[73] The Guidelines go on to say that the burden is on the Respondent to raise the issue and provide evidence of financial hardship in the form of sworn affidavits or declarations, along with standard or commonly accepted documents such as tax returns, bank and investment account statements, audited financial statements or other externally verified financial statements.

CIRO Sanction Guidelines, *supra*

[74] At the beginning of the Penalty Hearing Staff advised that the Respondent had recently provided them with a series of documents regarding his personal circumstances.

[75] The Panel admitted these documents into evidence. They consisted of:

- bank statements for the period of September 15, 2023 to October 15, 2024;
- the Respondent's sworn statement of his income, assets and liabilities dated October 25, 2024;
- an RBC credit line statement for the period of September 4 to October 1, 2024;
- an investment statement dated 2024; and
- T4A statements for the period of 2021-2023.

[76] The Respondent also testified and he was therefore sworn in to do so.

[77] Based on the Respondent's evidence, the Panel agrees with Staff that the Respondent has not demonstrated impecuniosity but we find he has demonstrated that he has limited financial resources.

[78] For example, he has been and apparently continues to earn a modest income, and he has some investments including an investment in cryptocurrency.

[79] We did not rely on the evidence regarding the Respondent's personal financial circumstances as a reason to reduce the amount of the fine.

[80] We did, however, use them as the basis for our determination that the Respondent be allowed to pay the fine in instalments after making one initial payment up front.

COSTS

[81] Staff provided the Panel with a Bill of Costs totalling \$12,626.00. which, they said reflected only a portion of the total amount of time spent on these proceedings.

[82] In determining the award of costs, the Panel took into consideration the comparator cases which Staff had presented, noting that in those cases the awards of costs ranged from \$2,500.00 to \$3,000.00.

[83] While we recognize that the comparator cases all involved Settlement Agreements or in one case an Agreed Statement of Facts, Staff has acknowledged that the Respondent did not dispute the factual allegations made against him nor any of the facts that Staff adduced in this matter.

[84] The Panel appreciated the time and effort that Staff took at the Misconduct Hearing to fully explain the nature of the misconduct which occurred, however, that does not change the fact that the Respondent did not dispute that the conduct occurred exactly as Staff set it out.

[85] While we do not fault Staff in any way for the manner in which they put the case before the Panel, we believe it is fair to require the Respondent to pay costs in the amount of \$5,000.00 rather than the amount of \$7,500.00 that Staff was seeking.

PAYMENT SCHEDULE

[86] As noted earlier in these Reasons, after the Penalty Hearing concluded the parties were not able to reach an agreement regarding a schedule for payment of the fine and costs as ordered by the Panel on October 30, 2024 and Staff therefore requested that the Panel reconvene to address that issue.

[87] Accordingly, on January 9, 2025 the Panel convened a further appearance.

[88] The Respondent failed to attend that appearance, however, Staff provided the Panel with an Affidavit of Service sworn January 8, 2025 which identified that the Respondent was personally served on January 8, 2025 with correspondence confirming the date of the appearance and information about how to attend to participate remotely.

[89] The Panel was satisfied, therefore, that the Respondent was properly notified and reminded about the appearance and that it was appropriate to proceed in his absence.

[90] At the outset of the appearance Staff told the Panel that the Respondent sent them an email on December 17, 2024 advising that he was no longer employed by the Member. They also advised that the Canadian Securities Administrators National Registration Database showed that he ceased to be registered with CIRO as of December 27, 2024.

[91] The Panel did not rely on this information because it was not before us when we made our Penalty Decision on October 30, 2024, which included the decision that after making an initial payment, the Respondent be allowed to pay the fine and costs based on a payment schedule.

[92] Staff asked that the Respondent be required to make an initial payment of \$10,000.00 within 1 month of January 9, 2025, followed by 12 monthly instalments of \$1,416.67 each.

[93] In support of their position Staff provided the Panel with the following authorities:

- a) *Jenkins*, 2021 CanLII 15851;
- b) *Jenkins*, 2021 IIROC 5; and
- c) *Sonne*, 2023 CIRO 33.

[94] In *Jenkins*, the Respondent was ordered to pay a fine and costs totaling \$32,500.00 in 60 monthly instalments of \$541.67 each, in addition to receiving a permanent prohibition.

[95] The Respondent was also the subject of an order to pay a fine and costs by IIROC, in separate proceedings.

[96] In *Sonne*, the Respondent was ordered to pay a fine of \$2,500.00 and costs of \$5,000.00 to be paid in equal quarterly instalments over two years, in addition to receiving a two-year prohibition.

[97] In providing these authorities to the Panel Staff acknowledged that a Hearing Panel's decision about the nature of a payment plan is very much fact dependent and not something which is typically based on precedents.

[98] The Panel agrees with that position.

[99] Having regard to the Respondent's evidence with respect to his personal circumstances and our decision of October 30, 2024 that he be allowed to pay the fine and costs based on a payment schedule, we order that he make an initial payment of \$10,000.00 payable by February 10, 2025 followed by 31 monthly instalments in the amount of \$550.00 each, without interest, commencing March 10, 2025.

[100] If the Respondent fails to make any of the payments as they become due then any

outstanding balance owed by the Respondent shall become immediately due and payable to CIRO.

CONCLUSION

[101] For all of the above reasons the Panel believes the penalty we have ordered is proportionate and reasonable, will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

DATED in Saskatoon this 16th day of January 2025

“Sherri Walsh”
Sherri Walsh
Chair

“Annette Stephens”
Annette Stephens
Industry Representative

“James Samanta”
James Samanta
Industry Representative

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