



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Francis Dwight Zachary Dorrington

Heard: June 2, 2015 in Toronto, Ontario
Reasons for Decision: July 9, 2015

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Mark J. Sandler	Chair
David W. Kerr	Industry Representative
Colleen Waring	Industry Representative

Appearances:

Maria L. Abate)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Francis Dwight Zachary)	Self-represented
Dorrington)	
)	

Introduction

1. In its Notice of Hearing, the Mutual Fund Dealers Association of Canada (“MFDA”) alleges that Francis Dwight Zachary Dorrington (“the Respondent”) committed the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: In October 2010, the Respondent failed to ensure that an investment recommendation he made to clients BK and AK in respect of the sale proceeds of their house in the amount of \$400,000 was suitable for them having regard to their investment objectives, risk tolerance and time horizon, contrary to MFDA Rule 2.2.1(c).

Allegation #2: In October 2010, the Respondent gave an undertaking in relation to the future value of a mutual fund he recommended to clients BK and AK for the purposes of effecting a trade in that security when he personally guaranteed to reimburse them for any decline in the value of their investment after one year, contrary to section 38(2) of the *Securities Act* (Ontario) and MFDA Rule 2.1.1.

Allegation #3: On or about October 13, 2011, the Respondent engaged in unauthorized discretionary trading by processing a redemption in the amount of \$33,335.40 in the account of clients BK and AK without their knowledge, instructions or approval, contrary to MFDA Rules 2.3.1 and 2.1.1.

2. The hearing into these allegations took place on June 2, 2015. The parties proceeded by way of an Agreed Statement of Facts (the “ASF”). In the ASF and verbally, Mr. Dorrington admitted that he had engaged in professional misconduct as set out in the three allegations. Based on the ASF, and the submissions of the parties, we made findings of professional misconduct in relation to all three allegations. We reserved our decision on one question: namely, whether the conduct set out in allegation #2 violated s. 38(2) of the *Securities Act*. We were satisfied that, at the very least, that conduct violated MFDA Rule 2.1.1, also relied upon by the MFDA in its Notice of Hearing. Of course, we were entitled to make a finding of professional misconduct even if only MFDA Rule 2.1.1 applied.

3. We then heard submissions on the issue of penalty. The Respondent provided us with some background facts in the course of his submissions and in his prepared statement. Enforcement Counsel was content that we place reliance on those facts without formal proof of them. We have done so.

4. After submissions were made as to penalty, we reserved judgment. For the reasons that follow, we have imposed a suspension of two years, a \$20,000 fine and costs in the amount of \$10,000.

The Agreed Statement of Facts

5. From November 10, 2003 to February 7, 2012, the Respondent was registered as a mutual fund salesperson in Ontario and Nova Scotia with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”).

Suitability

6. In 2010, clients BK and AK sold their house and advised the Respondent that they wanted to invest the proceeds from the sale, which amounted to \$400,000, in an investment that would provide a guaranteed return in one year. Clients BK and AK told the Respondent that their bank had offered them a one-year Guaranteed Investment Certificate (“GIC”) at an annual interest rate of 2.67%.

7. On or about October 7, 2010, clients BK and AK deposited the \$400,000 from the sale of their house into one of their accounts at Sun Life. The Respondent recommended that these clients invest the entire amount in the TD Canadian Bond Fund (the “Bond Fund”). According to the clients, the Respondent claimed that the Bond Fund provided a guarantee of principal and a return of 3% to 7% per annum. (The Respondent does not admit that he made this claim to his clients.)

8. The Respondent does admit that he told clients BK and AK that if they needed to withdraw the money after one year and the value of their investment in the Bond Fund had declined, he personally guaranteed to reimburse them for any losses they sustained. After meeting with the Respondent, the clients instructed the Respondent to invest the \$400,000 from the sale of their house in the Bond Fund.

9. The Bond Fund was not a suitable investment for these clients in relation to the \$400,000 in proceeds from the sale of their house, having regard to their risk tolerance, investment objectives and time horizon. These clients were seeking security of principal and a guaranteed return. The prospectus for the Bond Fund rated it as low risk and stated that it may be suitable for medium to long-term investors who could handle small changes in the value of their investment. The performance of the Bond Fund was therefore subject to fluctuation, preservation of capital was not guaranteed and it was intended for investors with a time horizon of greater than one year. The performance of the Bond Fund was subject to numerous risks, including interest rate risk, currency risk and credit risk. Since the Bond Fund's inception in 1989, its best 12 month period generated a return of 22.46%, while its worst 12 month period generated a return of -7.96%.

Personal Guarantee of Investment Performance

10. In October 2010, in February 2011 and again on April 20, 2011, the Respondent personally guaranteed to reimburse clients AK and BK for any decline in the value of their investment after one year.

Unauthorized Discretionary Trading

11. On or about October 6, 2011, clients BK and AK advised the Respondent that they needed to withdraw the \$400,000 they had invested in the Bond Fund for a real estate transaction. On October 13, 2011, the Respondent redeemed the clients' holdings in the Bond Fund, which resulted in proceeds of \$366,664.60 being deposited in the bank account of BK and

AK. The redemption proceeds represented a shortfall of \$33,336.40 from the clients' original investment of \$400,000.

12. The Respondent knew that the clients BK and AK were expecting to receive at least \$400,000 in redemption proceeds as a result of his personal guarantee. Accordingly, he advised the clients that they would receive their money in two installments. On or about October 13, 2011, without the knowledge or approval of clients BK and AK, the Respondent processed an unauthorized redemption in the amount of \$33,335.40 from one of BK and AK's other accounts at Sun Life. On or about October 18, 2011, the proceeds from this second redemption were deposited in BK and AK's bank account to bring the total value of the redemption proceeds deposited to their bank account to \$400,000.

13. In order to process the second redemption, the Respondent had photocopied the first redemption order ticket and then used correction fluid to alter the date of the order, the account number from which the redemption was being made, the names of the mutual funds being redeemed, and to specify that the amount of \$33,335.40 was to be redeemed. On October 27, 2011, clients BK and AK became aware that the second deposit in their bank account represented the proceeds of an unauthorized redemption from one of their other accounts at Sun Life and made a verbal complaint to Sun Life.

The Additional Uncontested Facts

14. The Respondent has no prior discipline history. He had handled over 15 million dollars in investment portfolios without any complaint made against him. Once Sun Life terminated its life insurance and investment sales contract with the Respondent as a result of his misconduct, he received or was to receive from Sun Life \$180,000 in total, spread out over 10 years. In his view, had the contract not been terminated, his business would have been worth \$500,000 to \$750,000 once he paid off his business loan in 2017. As a further result of his termination, his income was reduced from between \$101,000 and \$140,000 a year to between \$60,000 and \$70,000 a year (the latter range including the \$18,000 annual payments from Sun Life). He has not sought employment in the mutual fund industry since his termination in February 2012, a period of over

three years. Although the Respondent is far from destitute (with additional family income from his wife who works in the banking industry), his misconduct has significantly impacted on his financial position and security. He lost his entire client base and had to start “from scratch.” His retirement plans have been severely altered. He understands that there are consequences to his actions, but never envisioned that one mistake could be so costly.

15. The Respondent has been married 17 years. He has three children. He provides financial support, as needed, to his extended family.

16. The Respondent indicated that he misunderstood the needs of the clients in issue here, thereby placing them in an unsuitable investment. He has apologized repeatedly for what he did. He indicated that he promised to repay the clients for any losses since his conscience would not allow them to be prejudiced as a result of his conduct.

17. The Respondent indicated in his prepared statement that he would like the opportunity to be licensed in the mutual fund industry again. This case has made him even more cautious and more focused on full and open communication with potential clients.

Relevant Considerations

18. As stated in the recent decision in *George William Popovich (Re)*, [2015] MFDA File No. 201409, Reasons For Decision (Penalty) dated May 27, 2015 at para. 4: “[t]he most important objective in arriving at an appropriate penalty is protection of the investing public. The penalty imposed must serve to prevent and discourage future misconduct by the Respondent (specific deterrence) as well as by others (general deterrence.) The penalty should serve to improve industry compliance with applicable By-laws, Rules and Policies. It should also promote respect for and confidence in the securities industry and its participants, the integrity of securities markets, and the regulatory system. At the same time, the penalty must be proportionate to the misconduct, and take into consideration any extenuating or mitigating circumstances, all within the overall context of ensuring that the public is protected.”

19. In *Lamoureux (Re)*, [2002] A.S.C.D. No. 125, the Alberta Securities Commission identified a list of factors that inform penalty decisions. These do not purport to be exhaustive:

- The seriousness of the allegations proven;
- The Respondent's past conduct, including prior sanctions;
- Mitigating factors;
- The Respondent's experience in the capital markets, and the level of the Respondent's activity in the capital markets;
- Whether the Respondent recognizes the seriousness of the improper activity;
- The harm suffered by investors as a result of the Respondent's activities;
- The benefits received by the Respondent as a result of the improper activity;
- The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in those markets;
- The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- 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;
- The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- Previous decisions made in similar circumstances.

20. We have considered these factors, as well as the non-binding MFDA Penalty Guidelines, in arriving at an appropriate penalty.

The Positions of the Parties

21. Enforcement Counsel, Ms. Abate, proposed that we prohibit the Respondent from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA for a period of five years (a "five year suspension"). She also proposed that we impose a fine of \$25,000 to \$50,000, and costs of \$10,000.

22. Ms. Abate fairly conceded that we were dealing with an isolated incident, that the Respondent recognized the seriousness of his misconduct, and that he entirely restored the clients to the financial position they would have been in, had he placed them in a suitable investment

from the outset. Although the Respondent would have normally earned commissions relating to the subject transactions, Enforcement Counsel had no evidence as to the financial benefits, if any, actually received by the Respondent as a result of the misconduct. She also acknowledged that the unsuitability-related facts here were markedly different than the more typical situations in which blatant and self-interested misrepresentations are made by Approved Persons to their clients to facilitate the placement of client funds, sometimes leveraged, in terribly unsuitable investments, such as Return of Capital Funds. On the other hand, she emphasized that the Respondent's clients in this case were unsophisticated. This heightened the Respondent's obligation to ensure that they were properly advised. Finally, she observed that the Respondent's deliberate falsification of documents to facilitate his unauthorized discretionary trading constituted a serious aggravating factor.

23. The Respondent proposed that we prohibit him from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA for a period of 6 to 12 months. He also requested a lower fine and a lower costs award in light of his current financial situation and the financial toll already taken upon him. In support of his position, he relied upon the submissions and prepared statement summarized above.

Analysis

24. First, we address the question raised in connection with Allegation #2. Second, we explain why we impose the penalty set out at paragraph 4.

Allegation #2: The Undertaking Provided by the Respondent

25. As reflected in the ASF, according to clients BK and AK, the Respondent claimed that the Bond Fund provided a guarantee of principal and a return of 3% to 7% per year. However, the Respondent did not admit that he had made that claim. The Respondent did admit that he personally guaranteed the clients that he would reimburse them for any losses they would otherwise suffer if they needed to withdraw the funds after one year. Enforcement Counsel

submitted that this amounted to a violation of s. 38(2) of the Ontario *Securities Act* as well as MFDA Rule 2.1.1.

26. Section 38 of the Ontario *Securities Act* reads, in part:

Representations prohibited

38. (1) No person or company, with the intention of effecting a trade in a security, other than a security that carries an obligation of the issuer to redeem or purchase, or a right of the owner to require redemption or purchase, shall make any representation, written or oral, that he, she or it or any person or company,

- (a) will resell or repurchase; or
- (b) will refund all or any of the purchase price of, such security.

...

Future value

(2) No person or company, with the intention of effecting a trade in a security or derivative, shall give any undertaking, written or oral, relating to the future value or price of the security or derivative. (Emphasis added.)

27. MFDA Rule 2.1.1 reads as follows:

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 that 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.

28. In *Re Al-tar Energy Corp.*, 2010 LNONOSC 406, the Ontario Securities Commission interpreted s. 38(2) of the *Ontario Securities Act*. We agree with the Commission's interpretation as captured in the following paragraphs of its decision:

159 The purpose of this section is investor protection. Undertakings as to future value of shares are often made to vulnerable and unsophisticated investors, and this subsection seeks to prevent the sale of securities by means of promises of future prices and returns.

160 It is important to note that subsection 38(2) requires that an undertaking be made. A simple representation is not enough to trigger this subsection of the Act.

161 With respect to the meaning of the term "undertaking", in the *Limelight Merits* case the Commission relied on the interpretation in *Re National Gaming Corp.* (2000), 9 A.S.C.S. 3570 ("*National Gaming*"), where the Alberta Securities Commission (the "ASC") stated:

... an undertaking is a promise, assurance or guarantee of a future price or value of securities that can be reasonably interpreted as providing the purchaser with a contractual right against the person giving the undertaking if, for any reason, the value or price is not achieved.

(National Gaming, supra at p. 16)

162 In the *Limelight Merits* case, the Commission interpreted subsection 38(2) of the Act and stated that:

... we should not take an overly technical approach to the interpretation of subsection 38(2) and that we should consider all of the surrounding circumstances and the Commission's regulatory objectives in interpreting the meaning of that section.

(Limelight Merits, supra at para. 164)

163 The Commission also clarified that an undertaking is more than a mere representation; however, it may amount to something less than a legally enforceable obligation

(Limelight Merits, supra at para. 167).

164 The Commission case law has found that representations amounting to promises, guarantees or assurances of future value constitute undertakings which breach subsection 38(2) of the Act. For example, in *Aatra Resources Ltd.* (1990), 13 O.S.C.B. 5109, the Commission found that the following express representations regarding the future price of shares were undertakings that breached the Act:

I would assure you, I will practically guarantee you that within the week you will see the stock [...] anywhere from twenty cents (\$0.20) to fifty cents (\$0.50) higher.

(Aatra Resources Ltd., supra at para. 34)

165 Therefore, promises which specify a target value in a specific time frame will comprise the type of conduct that is captured by subsection 38(2) of the Act.

166 However, not all statements about future value of shares will breach subsection 38(2) of the Act. As explained in the *Limelight Merits* case:

... a mere representation as to future value is not an "undertaking" within the meaning of subsection 38(2) of the Act. Prohibiting all representations as to the future value of securities would ignore the reality of the marketplace.

(Limelight Merits, supra at para. 170)

167 This was also discussed in the *National Gaming* case:

... predictions relating to the future value or price of securities are commonplace in the securities industry, and are not prohibited by the Act. Predictions encompass a broad spectrum. They range from very general predictions about the entire market, to very specific predictions about the value or price of a particular security within a particular time frame. Some predictions are developed with extreme care, based on rigorous, professional research and scientific analysis based on sophisticated market theory. Other predictions may be based on no more than wishful thinking or guesswork. In our view, the shared element of all predictions is that they are merely opinions.

(National Gaming, supra at p. 16)

168 Therefore, to determine whether a statement amounts to more than a prediction or speculation about future value and falls into the category of an undertaking, the context of the statement and the specificity of the statement regarding the future value must be considered. In addition, it is "not necessary to show that all the elements of an enforceable contract existed" (*Limelight Merits, supra at para. 167*) All of this must be considered in light of the objective of the Act to protect investors.

29. Here, the specific promise or guarantee made by the Respondent that he would reimburse his clients for any losses would properly be characterized as an "undertaking." However, even giving s. 38(2) the most generous, least technical interpretation, the Respondent did not promise or guarantee what the "future value" of the investment would be. In some respects, he did the opposite: he promised or guaranteed that he would personally make up for any decline in the future value of the investment.

30. We are reinforced in that view by the Ontario Securities Commission's determination in *Al-tar Energy Corp (Re), supra*, that there was insufficient evidence that one of the respondents, Drago, violated s. 38(2). It said this:

198 Correspondence sent to Drago investors indicated that they could either purchase Drago shares for \$1.50 per share or they could take advantage of purchasing Drago shares at \$2.50 which were subject to a Fixed-Interest Option. Investors were directed to the Executive Summary which provided the following details:

Guaranteed Fixed-Interest Option: At the end of the one year investment term, we guaranteed the return of your original investment, plus guaranteed 12% interest on the investment.

199 Subsection 38(2) requires that the undertaking relate "to the future value or price of such security". In this case the undertaking does not relate to the future value or price of shares of Drago, it relates to a purported guarantee of return of principal and interest. In our view, the undertaking in this case was intended to entice investors to pay a higher price but it is not an undertaking envisioned in subsection 38(2) of the Act.

31. We observe that s. 38(1) of the Ontario *Securities Act*, unlike s. 38(2), prohibits certain representations that a person will refund invested monies. We need not decide whether s. 38(1), which for convenience is also reproduced above, would apply to the Respondent's conduct and if so, whether the Respondent would have been prejudiced if we made a finding of misconduct based on it, despite its omission from the Notice of Hearing. We are satisfied that the Respondent's personal undertaking to reimburse clients for any investment losses amounted to a violation of MFDA Rule 2.1.1.

32. The dangers associated with such a personal undertaking are obvious. It places the Approved Person in a blatant and irreconcilable conflict of interest both in giving advice as to the suitability of an investment, and in giving ongoing advice as to what should be done with an existing investment. Such an undertaking might well give the investor client a false sense of security. Its enforceability would be problematic at best. For example, the Approved Person may be in no position to reimburse his clients for significant losses. The clients may realistically be unable or unwilling to enforce it – especially where, as was the case here, it was undocumented and unapproved by Sun Life. Moreover, the personal exposure of the person providing the undertaking invites the very kind of misconduct (falsification of documents and discretionary

trading) that occurred here. For these and undoubtedly other reasons, such an undertaking is, among other things, unbecoming and detrimental to the public interest. It easily falls within the language contained in Rule 2.1.1.

The Appropriate Penalty

33. There are a number of mitigating factors here, as well as an absence of certain aggravating factors that exist in other cases. The Respondent has no disciplinary record despite extensive experience in the industry. He is obviously remorseful for what he did and recognizes its seriousness. He has apologized for his misconduct, and through his admissions, obviated the need for a contested hearing. He took measures to ensure that his clients were ultimately not harmed by his misconduct. Although he undoubtedly did business with these clients with a view to being compensated, the MFDA did not lead evidence that he actually received any benefits. He has already paid a significant price for his misconduct. That misconduct was somewhat isolated. Although the investment was unsuitable for these clients, this appears to have been driven largely by a misunderstanding as to their needs, rather than by unadulterated self-interest.

34. On the other hand, the Respondent engaged in three different types of misconduct: failing to ensure suitability, making a prohibited personal undertaking and engaging in impermissible discretionary trading. Most important, the Respondent falsified documents to facilitate his unauthorized trading and conceal his misconduct. He did not volunteer that he had engaged in misconduct. Instead, this was discovered by the clients.

35. In *George William Popovich (Re)*, *supra*, a hearing panel decided that Mr. Popovich's misconduct was egregious. That misconduct compelled his permanent prohibition from acting as an Approved Person in the mutual fund industry. A significant feature of the misconduct involved deliberate dishonesty or falsification of documents. The hearing panel said this:

15. The MFDA Penalty Guidelines reflect that termination or permanent prohibition may represent an appropriate penalty for "egregious" misconduct. The IIROC Sanction Guidelines are more specific in articulating factors that might support a suspension as opposed to factors that might support a permanent prohibition. Though the IIROC

Guidelines are not strictly applicable here, we find them helpful. Section 4.3 of the Guidelines reflects that a permanent ban is a severe economic penalty and should generally be reserved for cases where:

- The public itself has been abused;
- It is clear that a respondent's conduct is indicative of a resistance to governance;
- The misconduct has an element of criminal or quasi-criminal activity; or
- There is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.

16. Rather than asking, in a regulatory context, whether the misconduct has an element of criminal or quasi-criminal activity, we would prefer to ask whether a significant feature of the misconduct involves deliberate dishonesty or falsification of documents. (Of course, deliberate dishonesty and falsification of documents are hallmarks of criminal offences such as fraud, false pretences, and uttering a forged document).

17. In this case, members of the public were betrayed or abused as a result of the Respondent's misconduct. His efforts to prevent his supervisor from discovering what he was doing, coupled with his continuing misconduct while under close or strict supervision amount to powerful evidence of resistance to governance. Deliberate deceit and document falsification were significant features of the Respondent's misconduct. The facts provide ample reason to believe that the Respondent cannot be trusted to act appropriately in the future. We are equally satisfied, having regard to our findings viewed cumulatively, that this case is distinguishable from those in which suspensions of fixed duration were imposed. In any event, the misconduct here is properly characterized as egregious. The facts, again viewed cumulatively, do not permit a disposition that does not include permanent prohibition. Deterrence, as well as ongoing confidence in the securities industry, its participants, the markets and the regulatory system requires no less.

36. Mr. Popovich was very differently situated than Mr. Dorrington. There were features of his misconduct, viewed cumulatively, that compelled the hearing panel to characterize it as egregious and deserving of the most severe penalty. Virtually none of the mitigating factors present here were available to Popovich. Nonetheless, the decision reinforces the view that deterrence must figure prominently in cases in which deliberate dishonesty and document falsification are significant features of the misconduct. Confidence in the securities industry, its participants, the markets and the regulatory system requires no less.

37. After careful consideration, we are satisfied that the Respondent understands the seriousness of his misconduct. It is likely that once this entire matter, including the penalty imposed, is behind him, he can be trusted to act appropriately in the future. His cooperation with the MFDA, and his repayment to clients, support his future governability. In the particular circumstances, a permanent prohibition is not necessary. A substantial period of suspension, coupled with a fine and costs, would give appropriate recognition to the aggravating features of the Respondent's conduct and meet the objectives of imposing penalty, including general and specific deterrence.

38. We disagree with the Respondent that a six to 12 month suspension gives adequate recognition to the seriousness of his misconduct, most particularly the deliberate dishonesty and document falsification involved. We also disagree with the MFDA that a five year suspension gives adequate recognition to the accumulation of mitigating factors that are present here.

39. We were provided with three prior decisions on penalty. Two involved settlement agreements. Decisions based on settlement agreements are relevant, but often have diminished value as precedents since they represent a joint submission that is often the product of compromise. They do speak more generally to the range of reasonable penalties since hearing panel are obligated to reject even settlement agreements that involve proposed outcomes that fall outside of the range of reasonableness. However, we found each of these decisions to be of limited value in determining the appropriate penalty. Simply by way of illustration, in *Mervyn Jacheil Fried*, [2014] File No. 201242 (Hearing Panel Decision dated November 10, 2014), a hearing panel accepted a settlement agreement relating to multiple contraventions, including failures to ensure that clients were placed in suitable investments. The settlement agreement provided for a four month suspension, although a permanent prohibition would follow if the respondent failed to pay the fine and costs awarded, as well as a restitution payment to clients that had been voluntarily offered. The facts bear little similarity to the case at bar. Moreover, the MFDA conceded in that case that there was no suggestion of any dishonesty on the part of that respondent.

40. In our view, the objectives in imposing penalty would be served by imposing a suspension of two years. To be clear, a suspension of this length might sometimes fail to adequately address a situation in which dishonesty and false documentation have played a significant part. However, in the particular circumstances of this case, we are satisfied that this suspension sends an important message of deterrence, while not precluding the Respondent altogether from any future involvement in the industry. The result would have been far different if the Respondent had not made his clients whole, acknowledged and understood the seriousness of his misconduct or repeated this misconduct with other clients. We are also mindful of the fact that the Respondent has not sought employment in the industry for over three years.

41. Deterrence also supports the imposition of a fine. Given all of the circumstances, including the non-binding Penalty Guidelines, the restitution already paid to the Respondent's clients and his current financial situation, we impose a fine of \$20,000. It will be a condition of the Respondent's re-registration that the fine first be paid.

42. Finally, by entering into an ASF, the Respondent substantially reduced the costs that the MFDA would otherwise have incurred in prosecuting this matter. Nonetheless, those costs (albeit reduced) should not generally be assumed by the MFDA directly or by the profession indirectly. In the circumstances, we also award costs of \$10,000. Again, payment of these costs will be a condition of the Respondent's re-registration.

Order

43. We make the following Order:

- a) If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

- b) From the date of this Order, the Respondent is prohibited from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA for a period of two years, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- c) The Respondent shall pay a fine in the amount of \$20,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- d) The Respondent shall pay costs of this proceeding in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- e) The Respondent shall comply with items (c) and (d) before he is permitted to be re-registered in the mutual fund industry.

44. We are grateful to Ms. Abate and Mr. Dorrington for their assistance.

DATED this 9th day of July, 2015.

“Mark J. Sandler”

Mark J. Sandler
Chair

“David W. Kerr”

David W. Kerr
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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