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: Jason Perry Boldt

Heard: January 10, 2017, in Edmonton Alberta
Reasons for Decision: February 6, 2017

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.	Chair
Nada Israeli	Industry Representative
Richard R. Sydenham	Industry Representative

Appearances:

H.C. Clement Wai	)	Counsel for the Mutual Fund Dealers Association of Canada
Jason Perry Boldt	)	Not in attendance personally or represented by counsel

I. INTRODUCTION

1. By Notice of Hearing dated July 28, 2016, the Mutual Fund Dealers Association of Canada (the "MFDA") made allegations against Jason Perry Boldt (the "Respondent") which read as follows:

a) Allegation #1: Between November 2011 and February 2013, the Respondent engaged in personal financial dealings with clients JL and HH and client SP when he arranged for the clients to loan at least $600,000 to a non-arm's-length corporation, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4, 1.1.2, 2.5.1 and 2.1.1.

b) Allegation #2: Between November 2011 and October 2014, the Respondent was a director, shareholder and/or principal of three corporations which was not disclosed to, and approved by the Member, contrary to MFDA Rules, 1.2.1(c) (formerly MFDA Rule 1.2.1 (d)), 1.1.2, 2.5.1 and 2.1.1.

c) Allegation #3: Commencing in January 2015, the Respondent failed to cooperate with an investigation conducted by Staff of the MFDA contrary to section 22.1 of MFDA By-law No. 1.

II. Hearing Date Set

2. On application of the MFDA on October 3, 2016, the Chair of this Panel, noting that the Notice of Hearing was personally served on the Respondent on September 23, 2016 and the Respondent and counsel for Staff of the MFDA made submissions with respect to scheduling and other procedural matters, ordered that the hearing of the matter on its merits take place on January 10-11, 2017.

III. Date of Hearing

3. On January 10, 2017, this Panel was informed that the Respondent and Enforcement Counsel had agreed, as to the allegations of misconduct, to proceed by way of an Agreed Statement of Facts.

4. This Panel was also informed that the Respondent:

a) declined to attend the hearing,
b) agreed to the facts set out in Part IV of the Agreement Statement of Facts, and
c) instructed an agent to attend on his behalf for the sole purpose of reading a written statement of the Respondent.

IV. PART IV OF AGREED STATEMENT OF FACTS

5. For ease of reference, Part IV of the Agreed Statement of Facts is set out below:

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

<u>Registration History</u>

8. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) since September 2000.

9. From November 2006 to September 2011, the Respondent was registered in Alberta as a mutual fund salesperson with Professional Investment Services (Canada) ("PIS"), a former Member of the MFDA. In September 2011, Global Maxfin Investments Inc. ("Global Maxfin"), a Member of the MFDA, acquired PIS and the Respondent continued to be registered in Alberta as a mutual fund salesperson with Global Maxfin until they terminated him on October 8, 2014.

10. At all material times, the Respondent conducted business at a branch located in Edmonton, Alberta.

11. The Respondent has not been registered in the securities industry in any capacity since October 8, 2014.

Facts

12. At all material times, the Respondent was the sole known shareholder and director of a corporation incorporated in Alberta, 1601117 Alberta Ltd.

13. At all material times, 1601117 Alberta Ltd was the sole known shareholder of a corporation incorporated in Alberta, Spectra Investment Corporation ("Spectra"). The Respondent was also a director of Spectra.

14. At all material times, 1601117 Alberta Ltd was a shareholder of a corporation incorporated in Alberta, Innovate Building Inc. ("Innovate"). The Respondent was, or held himself out to be, a principal of Innovate.

Allegation #1: Personal Financial Dealings with Clients

Clients JH and HH

15. In 2010, JH and HH became clients of PIS. The Respondent was the mutual fund salesperson responsible for servicing their accounts at PIS and subsequently at Global Maxfin.

16. On or about February 15, 2013, based upon a recommendation made by the Respondent, clients JH and HH signed an agreement to loan $300,000 to Spectra. The loan agreement included a term that clients JH and HH would be paid interest each quarter at a rate of 10% per annum.

17. On or about February 27, 2013, in furtherance of the loan agreement, clients JH and HH issued a cheque from their corporate account payable to Spectra in the amount of $300,000.

18. The Respondent advised clients JH and HH that Spectra would invest the proceeds of the loan in construction-related activities.

19. The Respondent arranged for the proceeds of the loan from clients JH and HH to be re-loaned or otherwise transferred from Spectra to Innovate.

20. On or about February 15, 2014, clients JH and HH sent an email to the Respondent to request a repayment of the loan.

21. On or about February 18, 2014, the Respondent sent an email to clients JH and HH stating, among other things:

> *"I will begin the process of redeeming your funds immediately. As we discussed, it takes about 90 days to get the funds back. I will see if any of the other investors want to buy you out to speed things up."*

22. On or about June 18, 2014, clients JH and HH received $50,000 from Spectra.

23. From April 2013 to July 2014, clients JH and HH received a total of $40,000 in interest payments from Spectra in respect of the loan.

24. On or about August 14, 2014, the Respondent sent an email to clients JH and HH stating, among other things:

> *"I am very sorry that an investment meant to earn you interest has become so difficult. I regret this and regret losing our relationship because of it. I will ensure that the funds are sent to your broker once the investments pay out."*

25. Clients JH and HH did not receive any further payments in respect of their loan to Spectra.

26. On or about August 21, 2014, clients JH and HH submitted a complaint to Global Maxfin with regards to the events described above.

Client SP

27. In November 2010, SP became a client of PIS. The Respondent was the mutual fund salesperson responsible for servicing client SP's account at PIS and subsequently at Global Maxfin.

28. On or about November 1, 2011, client SP entered into an agreement to loan $300,000 to Spectra. The loan agreement included a term that client SP would be paid interest each quarter at a rate of 10% per annum.

29. On or about November 2, 2011, in furtherance of the loan agreement, client SP issued a cheque from her account at Global Maxfin payable to Spectra in the amount of $300,000.

30. On or about August 1, 2012, client SP transferred her mutual fund accounts out of Global Maxfin.

31. On or about September 2013, client SP entered into a second agreement to loan $500,000 to Spectra. The second loan agreement included a term that client SP would be paid interest each quarter at rate of 10% per annum.

32. In furtherance of the loan agreement, client SP issued a cheque payable to Spectra in the amount of $500,000. As such, the Respondent recommended and facilitated two loans in the collective amount of $800,000 from SP to Spectra, $300,000 of which was loaned while SP was a client of Global Maxfin.

33. Between November 2013 and September 2014, client SP received $172,500 in interest payments from Spectra.

34. On December 23, 2014, client SP commenced a lawsuit against the Respondent, Spectra, Global Maxfin and others with regards to the Respondent's activities pertaining to the Spectra loans.

<u>Clients CS, TK, HP and PP</u>

35. In addition to the above, the Respondent also facilitated loans between the following clients of Global Maxfin and Spectra:

Clients	*Date of Loan*	*Amount of Loan to Spectra*	*Interest Payment from Spectra*
CS and JS	*February 15, 2013*	*$250,000*	*$100,000*
TK	*May 6, 2011*	*$80,000*	*$25,205*

Clients	*Date of Loan*	*Amount of Loan to Spectra*	*Interest Payment from Spectra*
HP and PP	*September 1, 2011*	*$400,000*	*$130,000*

36. Clients CS and JS were clients of PIS. The Respondent was the mutual fund salesperson responsible for servicing their accounts at PIS and subsequently at Global Maxfin. CS and JS were clients of Global Maxfin at the time the Respondent facilitated their loan to Spectra.

37. Client TK was a client of PIS. The Respondent was the mutual fund salesperson responsible for servicing his account at PIS and subsequently at Global Maxfin. TK was a client of Global Maxfin at the time the Respondent facilitated TK's loan to Spectra.

38. Clients HP and PP were clients of PIS. The Respondent was the mutual fund salesperson responsible for servicing their accounts at PIS and subsequently at Global Maxfin. Clients HP and PP were clients of Global Maxfin at the time the Respondent facilitated their loan to Spectra.

39. The Respondent did not disclose, and PIS and Global Maxfin were not otherwise aware of, his activities with respect to 1601117 Alberta Ltd., Spectra or Innovate. Global Maxfin first became aware of some of the Respondent's activities in August 2014 when it received the complaint by clients JH and HH.

40. At all material times, Global Maxfin's policies and procedures prohibited the Respondent from borrowing monies from clients.

Allegation #2: Dual Occupation/Outside Business Activity

41. At all material times, Global Maxfin's policies and procedures required its Approved Persons, including the Respondent, to disclose and obtain prior written approval from Global Maxfin in order to engage in any outside business activities.

42. The Respondent did not disclose to Global Maxfin that he was:

- *a) a director of 1601117 Alberta Ltd.;*
- *b) a director of Spectra;*
- *c) arranging for clients or other individuals to loan monies to Spectra; and/or*
- *d) a principal of Innovate.*

43. The Respondent failed to obtain Global Maxfin's written approval prior to engaging in activities with respect to 1601117 Alberta Ltd., Spectra and Innovate, as required by Global Maxfin's policies and procedures.

44. By failing to disclose the Respondent's involvement with 1601117 Alberta Ltd., Spectra and Innovate, the Respondent interfered with Global Maxfin's ability to supervise his activities.

Allegation #3: Failure to Cooperate

45. On January 8, 2015, Staff of the MFDA ("Staff") sent a letter to the Respondent requesting his attendance at an interview for the purpose of providing a statement with respect to the events described above.

46. On January 23, 2015, the Respondent responded to Staff by email stating, "I have been unable to book a meeting until next week with my lawyer. Once I have had the meeting I will have my attorney contact you." Staff did not receive a response from the Respondent or counsel acting on his behalf.

47. On February 17, 2015, Staff sent an email to the Respondent requesting that the Respondent or his counsel contact Staff by February 20, 2015 to arrange an interview. No response was received from the Respondent or counsel acting on his behalf.

48. Staff sent further letters and emails to the Respondent on March 9, 2015 and March 30, 2015 requesting his attendance at an interview.

49. Between April 8, 2015 and May 19, 2015, the Respondent and Staff corresponded via email in regards to the Respondent's attendance at an interview. On May 19, 2015, the Respondent sent an email to Staff stating, among other things:

> *"…I would like to agree that I violated MFDA rules by having outside business activities. I did have ownership in Innovate while still holding a license. That being said, I don't think there is a need for a meeting. I no longer hold a license and am willing to accept whatever fine the MFDA sees fit to apply to me."*

50. Between May 19 and 26, 2015, Staff and the Respondent corresponded via email and telephone with respect to scheduling an interview. On May 26, 2015, Staff sent an email to the Respondent setting the date of the interview for July 16, 2015.

51. On July 16, 2015, the Respondent failed to attend the interview with Staff. The Respondent has not attended any interviews with Staff.

Misconduct Admitted

52. By engaging in the conduct described above, the Respondent admits that:

a) between May 2011 and February 2013, the Respondent engaged in personal financial dealings with clients JH and HH; client SP; clients CS and JS; client TK; and clients HP and PP when he arranged for the clients to loan at least $1,330,000 to a non-arm's length corporation, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

b) between May 2011 and October 2014, the Respondent was a director, shareholder and/or principal of three corporations which was not disclosed to, and approved by, the Member, contrary to MFDA Rules 1.2.1(c) (formerly MFDA Rule 1.2.1(d)), 1.1.2, 2.5.1, and 2.1.1

c) commencing in January 2015, the Respondent failed to cooperate with an investigation conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

V. WRITTEN SUBMISSIONS OF ENFORCEMENT COUNSEL OF MFDA

Applicable Rules and Provisions

6. MFDA Rule 1.1.2 requires each Approved Person who conducts or participates in any securities related business in respect of a Member to comply with the By-laws and Rules as they relate to the Member or the Approved Person.

7. MFDA Rule 2.5.1 requires each MFDA Member to establish, implement and maintain policies and procedures to ensure that handling of its business is in accordance with MFDA By-laws, Rules and Policies and applicable securities legislation.

8. Based on the foregoing, the Respondent was required to comply with the supervisory policies and procedures that were established, implemented and maintained by his Member.

9. Enforcement Counsel cited *In the Matter of Michael Franco*, [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Reasons for Decision dated May 6, 2011 ("*Franco*") in support of the proposition that to give effect to the purpose of MFDA Rule 2.5.1, an Approved Person has to follow the Member's policies and procedures. At para. 38, that hearing panel stated that:

> *"[t]he obligation of Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined."*

10. Enforcement Counsel also cited *In the Matter of Michael Darrell Harvey*, [2012] Hearing Panel of the Central Regional Council, MFDA File No. 201108, Decision and Reasons dated July 12, 2012 at para. 67-72, where the Hearing Panel stated:

> *...in order to fulfill the obligations imposed by MFDA Rule 2.5.1, Members are required to establish, implement and maintain a supervisory structure appropriate to the manner in which the Member carries on business. This includes, among other things, supervisory procedures to monitor and review trading activity and other business conducted by Approved Persons involving the Member's clients to ensure that Approved Persons comply with the Member's policies and procedures, and all applicable MFDA requirements, and securities legislation.*
> *...where a Member becomes aware, during the course of its own supervisory reviews, through the receipt of client complaints or by some other means, that an Approved Person may have engaged in conduct that contravenes the Member's policies and procedures or regulatory requirements, the Member has a regulatory obligation to conduct a reasonable supervisory investigation of the activities and take appropriate action (if necessary) to address the conduct.*
> *...to ensure that a Member is able to fulfill its supervisory responsibilities, Approved Persons have corresponding obligations, under MFDA Rules*

> *1.1.2 and 2.1.1, to adhere to the Member's policies and procedures, and to cooperate with all supervisory activities undertaken by the Member…*
> *…this Rule provides that any obligation owed by a Member under the Rules or By-law is also an obligation owed by an Approved Person to the extent the Approved Person is involved in, or required for, the discharge of the Member's obligation. By aligning the regulatory duties of Members and Approved Persons, MFDA Rule 1.1.2 requires Approved Persons to conduct themselves in a manner consistent with the Member's supervisory structures…*
> *MFDA Rule 2.1.1, Standard of Conduct, is a rule of general application which prescribes the standard of conduct applicable to Members and Approved Persons…*
> *MFDA Rule 2.1.1 is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of conduct. The standard of conduct includes the obligation of an Approved Person to comply with the policies and procedures of their Member and cooperate with the supervisory activities undertaken by the Member...*

11. Enforcement Counsel cited *In the Matter of Arnold Tonnies*, [2005] Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Hearing Panel Decision dated June 27, 2005 ("*Tonnies*") at pp. 18-19 and *In the Matter of Luc Marc André Laverdière*, [2010] Hearing Panel of the Pacific Regional Council, MFDA File No. 200936, Hearing Panel Decision dated May 12, 2010, decisions in which the hearing panels determined that a Respondent's failure to comply with the policies and procedures of the Member constituted a breach of the standard of conduct and MFDA Rules.

12. Enforcement Counsel noted additional decisions in which hearing panels had similarly held that an Approved Person's failure to comply with a Member's compliance directive, or its policies and procedures, is conduct that is contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1., including *In the Matter of David William John Irwin*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 200915, Reasons for Decision dated April 28, 2010, *In the Matter of Michael Brandon Johns*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 200905, Reasons for Decision dated June 11, 2010, *In the Matter of James Vilfort*, [2010] Hearing Panel of the Central Regional Council, MFDA File No. 201021, Reasons for Decision dated December 15, 2010.

13. Enforcement Counsel also cited *Tonnies,* (supra at p 14) for the proposition that where an Approved Person borrows money from a client, such circumstances give rise to a conflict of interest within the meaning of MFDA Rule 2.1.4.

14. This Panel accepted submissions of Enforcement Counsel that:

a) At all material times, Global Maxfin's policies and procedures prohibited their Approved Persons from borrowing monies from clients.
b) At all material times, Global Maxfin's policies and procedures required its Approved Persons, including the Respondent, to disclose and obtain prior written approval from Global Maxfin in order to engage in any outside business activities.
c) MFDA Rule 1.2.1(c) articulates the rights and restrictions on an Approved Person to hold dual occupations or conduct business activities outside the Member and seeks to ensure that an Approved Person carries on only authorized dual occupations and that they are done so with the knowledge and approval of the Member.
d) The policy rationale underlying the prohibition on off-book business is that when transactions are carried out off a Member's books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. As such, the Rule protects both investors and Members.
e) Section 22.1 empowers the MFDA to require an Approved Person to submit a written report, produce documents for inspection and attend and give information, regarding the matter under investigation.

VI. DECISION AS TO ALLEGATION #1

15. Based on the agreement of the parties and submissions presented by Enforcement Counsel, this Panel finds as facts those particulars set out in subparagraphs 7 through 51 of Part IV, set out in paragraph 5 above.

16. This Panel finds that, as set out in subparagraph 52 of the Agreed Statement of Facts set out in paragraph 5 above, the Respondent admitted that between May 2011 and February 2013, he engaged in personal financial dealings with clients JH and HH, client SP, clients CS and JS, client TK, and clients HP and PP, that gave rise to a conflict or potential conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4, 1.1.2, 2.5.1, and 2.1.1.

VII. DECISION AS TO ALLEGATION #2

17. This Panel finds that, as set out in subparagraph 52 of the Agreed Statement of Facts set out in paragraph 5 above, the Respondent admitted that between May 2011 and October 2014, he was a director, shareholder and/or principal of three corporations which was not disclosed to, and approved by, the Member, contrary to MFDA Rules 1.2.1(c) (formerly MFDA Rule 1.2.1(d)), 1.1.2, 2.5.1, and 2.1.1.

VIII. DECISION AS TO ALLEGATION #3

18. This Panel finds that, as set out in subparagraph 52 of the Agreed Statement of Facts set out in paragraph 5 above, the Respondent admitted that commencing in January 2015 he failed to cooperate with an investigation conducted by Staff of the MFDA, contrary to section 22.1 of MFDA By-law No. 1.

19. In conclusion, this Panel finds that all three allegations made against the Respondent have been proven to the required standard.

20. This Panel then invited submissions as to sanctions.

IX. PROPOSED SANCTIONS

21. Enforcement Counsel submitted the following sanctions should be imposed:

a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employee of, or in association with, any MFDA member, pursuant to s. 24.1.1 (e) of MFDA By-law No.1;
b) a fine in the range of $900,000 to $950,000, pursuant to section 24.1.1 (b) s. 24.1.1 (e) of MFDA By-law No.1;
c) costs attributable to conducting the investigation and hearing of this matter in the amount of $7,500 pursuant to section 24.2 of MFDA By-law No.1.

22. In support of these submissions, Enforcement Counsel referred this Panel to the following authorities:

a) The decision of *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 (*"Pezim*"), at paras. 59, 68 for the proposition that the primary goal of securities regulation is the protection of the investor;
b) The decision in *Tonnies, supra,* at p. 22 for the following considerations in determining an appropriate penalty:

    (i) The protection of the investing public;
    (ii) The integrity of the capital markets:
    (iii) Specific and general deterrence;
    (iv) The protection of the MFDA's membership;
    (v) The protection of the integrity of the MFDA's enforcement processes.

c) The decision in *Headley (Re)*, 2006 LNCMFDA 3, at para. 85, referencing the following other factors that hearing panels frequently consider:

    (i) The seriousness of the allegations against the Respondent;
    (ii) The Respondent's past conduct, including prior sanctions;
    (iii) The Respondent's experience and level of activity in the capital markets;
    (iv) Whether the Respondent recognizes the seriousness of the improper activity;

(v) The harm suffered by investors as a result of improper activity;

(vi) The benefits received by the Respondent as a result of the improper activity;

(vii) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

(viii) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

(ix) 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;

(x) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

(xi) previous decisions made in similar circumstances.

d) The MFDA Penalty Guidelines published to assist hearing panels when imposing penalties in disciplinary proceedings by providing a basis upon which discretion can be exercised consistently and fairly in like circumstances, but which are not binding on a hearing panel.

e) Decisions of MFDA Hearing Panels involving similar circumstances, including:

(i) *Frank (Re)* [2015], MFDA Central Regional Council, Hearing No. 201407, Hearing Panel Decisions dated May 5, 2015 (Misconduct Decision) and August 28, 2015 (Penalty Decision) where the respondent engaged in personal financial dealings with client AF by borrowing approximately $245,000 and repaying only $73,100. The respondent also recommended and implemented leveraged investments in the accounts of 10 clients without obtaining Member approval and failed to cooperate. A fine of $400,000 and costs of $10,000 were imposed in addition to a permanent prohibition.

(ii) *Vitch (Re)*, MFDA Central Regional Council, MFDA File No. 201103, Hearing Panel Decision dated September 22, 2011 where the respondent operated two outside businesses that were not disclosed to the Member, was alleged to have engaged in personal financial dealings involving a $250,000 loan to one of his businesses by a client and a $150,000 of the loan was outstanding at the time of the MFDA investigation. A fine of $50,000 and costs of $5000 were imposed in addition to a permanent prohibition.

23. Enforcement Counsel advised that the Agreed Facts had been accepted by the Respondent only as of the business day preceding the hearing dated January 10, 2017, as a result of which, Enforcement Counsel had been put to the time and expense of briefing and preparing witnesses until January 7, 2017.

24. In addition, Enforcement Counsel advised that due to the Respondent's non-attendance for an interview at any time, MFDA could not be certain even at the date of hearing whether the losses sustained by investors or the total amount of monetary gain of the Respondent was confined to the amounts stipulated in the Agreed Statement of Facts, or whether they exceeded those sums.

25. In particular, Enforcement Counsel advised that following the publication of the Notice of Hearing, three additional complainants came forward with complaints against the Respondent alleging similar misconduct.

26. This Panel closely questioned Enforcement Counsel as to whether his submission as to monetary fine was sufficient, having regard to the great number of investors harmed, the totality of the investment amount, the apparent monetary benefit to the Respondent, his failure to attend at requested interview, despite promises, and the suggestion that there could be additional losses yet undetermined.

27. In particular, this Panel queried whether the second payment by SP in the amount of $500,000 in September 2013 was included in the calculation of losses. Enforcement Counsel confirmed that it was not included due to the fact that SP was no longer at that date a client of Global Maxfin and accordingly, MFDA did not have jurisdiction over that transaction.

28. This Panel then invited the Respondent's agent to make submissions. As noted, the Respondent's agent advised that he had no instructions to answer questions of this Panel or to respond to submissions of Enforcement Counsel but was present only to read into the record the contents of the Respondent's prepared statement.

29. The Respondent's written statement referenced that he was not in attendance for the hearing because he had to be elsewhere on that date and that the amount of the monetary penalty should fall in the range of $25,000. These submissions appeared both to be mainly founded on recent hardships of the Respondent. In particular, the Respondent claimed that he did not attend in person due to fears for his physical safety arising from discord between his fiancée's ex-husband and himself. He said that he had suffered physical injury at the hands of the ex-husband on a prior occasion. The implication was that even at the date of the hearing, the Respondent continued to fear for his safety.

30. Since the Respondent's agent had no instructions to respond to questions from this Panel, it was not possible to determine what personal matters superceded the matter of determining sanctions for his misconduct or why the Respondent could not have made arrangements to attend by teleconference.

31. The Respondent's submission was also silent on the issues of the extent of the losses he had caused to clients and other investors, what had become of the monies he had appropriated from them, or why he declined to attend an MFDA interview to provide more particulars of the extent of financial losses to his clients or financial benefits he reaped in the process.

X. DECISION AS TO SANCTIONS

32. With the foregoing factors in mind, the Panel adjourned to deliberate on its decision as to sanctions.

33. This Panel took into consideration the choice of the Respondent to decline to attend the hearing, even by teleconference given his own agreement to the hearing date of January 10, 2017 in October of 2016, and that he arranged to communicate with Enforcement Counsel on the business day preceding the hearing.

34. Having regard to this history, this Panel did not find his explanation for non-attendance to be convincing or the restrictions imposed on his agent at the hearing to be helpful to his cause.

35. Without the opportunity to pose questions to the Respondent in respect of the submissions of Enforcement Counsel and in respect of the contents of his written statement, in the view of this Panel, the Respondent's reasons for not attending for an interview as requested by MFDA or at the hearing appeared more to do with continuing to conceal the reasons for and the extent of his misconduct rather than to fulfil any part of his obligations as a mutual fund dealer to his clients, to the Member or to the MFDA or to assist this Panel in arriving at an appropriate decision as to sanctions on the facts of this case.

36. In its deliberations, this Panel noted that factors potentially mitigating the penalties in this case were that the Respondent had no prior discipline history with MFDA and he agreed to certain facts and consequences flowing from those facts that saved the MFDA some time and expense in establishing those facts and consequences through the oral testimony of witnesses, that had been briefed and prepared up to the day prior to the hearing.

37. This Panel observed that in *Re Vitch,* supra, (at paragraph 59) the hearing panel took the admission of all the essential facts by the respondent to be an indication of remorse. The panel there said the respondent's admission made the holding of a lengthy hearing unnecessary, saving the MFDA substantial expense, and saved the witnesses the inconvenience of proving the

allegations which acknowledgment of misconduct justified mitigation of what otherwise might have been a more substantial penalty. On the other hand, in *Re Vitch* (supra), the respondent did not oppose the amount of the monetary penalty, which saved additional time at the hearing in that instance.

38. In the case at hand, the Respondent's admissions were confined to the facts supporting the allegations of misconduct. As a result, Enforcement Counsel was obligated to present detailed submissions as to penalty that were opposed by the Respondent's written statement.

39. This Panel took into consideration numerous aggravating factors arising from the facts described in subparagraphs 39-42 of paragraph 5 above.

40. First, the scope of the misconduct occurred over a period of at least 2 years and included at least 8 individuals, which shows that it was not a one-time error of judgment.

41. Second, eight clients loaned approximately $1,330,000 to Spectra of which only $517,705 was returned to the clients in the form of interest payments. The Respondent retained approximately $812,295 of the amounts received by the Respondent via loans to Spectra. The Respondent was recently discharged from bankruptcy proceedings. Thus it appears unlikely that Respondent will ever repay the clients who will thus be unable to recoup their losses.

42. Third, in this two year interval, the Respondent failed to disclose to or obtain approval from Global Maxfin in respect of his involvement as a director of 1601117 Alberta Ltd and Spectra, as a principal of Innovate, or as to arranging for clients or other individuals to loan monies to Spectra. This nondisclosure deprived the Member of its ability to determine whether there are any issues related to: (a) conflicts of interest; (b) potential client servicing issues; (c) standards of conduct; (d) nature of the activity; (e) risk management issues; and (f) ability to supervise. Given the Respondent had been a member of MFDA since the year 2000, he had to have been aware of his obligations as an Approved Member for many years prior to his misconduct.

43. Fourth, an Approved Person's failure to fully cooperate with Staff's investigation subverts or frustrates the MFDA's ability to perform its regulatory investigative function and undermines the integrity and effectiveness of a self-regulatory system. In this case, Staff at MFDA were unable to determine the size and extent of the outside business activity.

44. This Panel concludes that the Respondent must have been well aware that his failing to disclose to the Member his conduct at any time was wrong, and was intentionally committed without regard to the harm to his own clients, the Member, the investing public, and the integrity of the capital markets. Otherwise, the Respondent would have no reason to suppress the fact of his activities to the Member at all, or over the period of time that he did so.

45. This Panel considers as a particularly aggravating factor that his wrongful conduct deprived the investor clients, the Member and the investing public from the protection and benefit of the guidance of the Member that could have avoided or reduced the loss to all concerned.

46. Another particularly aggravating factor in this instance is the continuous refusal to cooperate with the MFDA investigation. In this regard, the comments of the hearing panel in *Re Vitch,* supra at paragraphs 54-56 are apposite and applicable portions are set out below:

> *"54. Failure to cooperate with an investigation, even where, as here, the failure is not total, is a matter which goes to the very heart of an MFDA's ability to attempt to protect investors, maintain capital market efficiencies and ensure public confidence in the system. Over 20 years ago, the Ontario Divisional Court, in Artinian v. College of Physicians and Surgeons of Ontario (1990), 73 O.R. (2d) 704 said:*
>
> > *"... every professional has an obligation to cooperate with his/her self governing body."*
>
> *55. There can be no exceptions to that obligation. The fulfillment of that obligation is particularly important to the MFDA because it has no statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to*

investigate and discipline its Members and Approved persons is gravely fettered…

> *56. This hearing panel cannot overstate the importance of cooperation with investigation. We think that it is necessary that Members and Approved Persons understand that any failure to cooperate with an investigation will likely attract severe sanctions."*

47. This Panel considers the Respondent's refusal to fully cooperate with the MFDA and the contents of his written statement which focused exclusively on his own personal circumstances clearly demonstrated a continuing unwillingness to face up to his professional responsibility for the significant amount of financial loss to a large number of clients who reposed trust in him. In addition, this displayed attitude demonstrates a disturbing lack of remorse.

48. For these reasons, this Panel is satisfied that the Respondent is ungovernable and as such, a permanent prohibition is necessary for the specific deterrence of this Respondent and for general deterrence of any mutual fund Approved Persons who might be inclined to risk engagement in similar conduct.

49. In addition, this Panel is satisfied that it should not accord significant weight to the late and only partial cooperation of this Respondent in avoiding the necessity of a hearing on the aspect of proof of the allegations as it was offset by the lack of disclosure necessary to ascertain the full extent of his misconduct.

50. In the circumstances of this case, this Panel gave consideration to imposing a fine in a higher amount than that submitted by Enforcement Counsel. However, it concluded that, by agreeing to certain facts and misconduct ahead of the hearing date, some credit should be accorded to the Respondent for having saved some time, cost and inconvenience to the MFDA, the prospective witnesses and this Panel.

51. In the result this Panel was persuaded that a monetary fine of $950,000 is appropriate in that it properly balances the aggravating and mitigating factors in consideration of all three allegations proven against this Respondent.

52. In addition, it reflects the need for protection of the investing public, the integrity of the capital markets, of the MFDA's membership, of the integrity of the MFDA's enforcement processes and most importantly, a signal to the Respondent and to others that his conduct was a serious violation of the MFDA Rules and caused significant harm to a number of investors leaving financial consequences that will impact their lives substantially.

53. Finally, this Panel is satisfied that the costs award of $7,500 is consistent with the awards in similar cases.

54. In summary, this Panel concluded that the following sanctions were appropriate in this case:

a) a permanent prohibition of the Respondent's authority to conduct securities related business in any capacity over which the MFDA has jurisdiction;
b) a direction that the Respondent pay a fine of $950,000; and
c) a direction that the Respondent pays to the MFDA $7,500 for costs of the investigation.

55. This Panel thanks Enforcement Counsel and the Respondent's agent for their cooperation in the course of the hearing.

DATED this 6th day of February, 2017.

"Shelley L. Miller"

Shelley L. Miller, Q.C.
Chair

"Nada Israeli"

Nada Israeli
Industry Representative

"Richard R. Sydenham"

Richard R. Sydenham
Industry Representative

DM 522744 v1