

Decision and Reasons (Misconduct)

File Nos. 201042 and 201344



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: Gabriele Gentile and Ronald Bruce Brinson

Heard: March 24-25, 27-28, July 28-31, August 1, 11-12 and
November 5, 2014, in Halifax, Nova Scotia
Decision and Reasons (Misconduct): June 26, 2015

**DECISION AND REASONS
(Misconduct)**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Ann C. Etter	Industry Representative
Darrell Bing	Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
Lyla Simon)	Canada
)	
Brian K. Awad)	For the Respondents
)	
)	

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A. THE ALLEGATIONS

1. By *Amended* Notice of Hearing, dated April 10, 2013, the Mutual Fund Dealers Association of Canada (the “MFDA”) made the following allegation against Gabriele Gentile (the “Respondent Gentile” or “Gentile”):

Allegation #1: Between in or about February 2007 and June 2009, the Respondent, in his capacity as Branch Manager, received information on at least five occasions that Bruce Schriver, a licensed insurance agent of an affiliate of the Member who conducted business from the branch location supervised by the Respondent, had borrowed monies from clients and other individuals which he had not repaid, which information the Respondent failed to report to the Member’s head office compliance staff, as a result of which the Member was not made aware of the circumstances and was unable to conduct a reasonable supervisory investigation and take such other supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rules 2.5.3(b) and 2.1.1(c) and MFDA Policy No. 3.

2. By Notice of Hearing, dated September 9, 2013, the MFDA made the following allegation against Ronald Bruce Brinson (the “Respondent Brinson” or “Brinson”):

Allegation #1: Between in or about February 2007 and June 2009, the Respondent, while designated as co-Branch Manager or alternate Branch Manager, received information on at least five occasions that Bruce Schriver, a licensed insurance agent of an affiliate of the Member who conducted business from the location for which the Respondent was the co-Branch Manager or alternate Branch Manager, had borrowed monies from clients and other individuals which he had not repaid, which information the Respondent failed to report to the Member’s head office compliance staff, as a result of which the Member was not made aware of the circumstances and was unable to conduct a reasonable supervisory investigation and take such other supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rules 2.5.3(b) and 2.1.1(c) and MFDA Policy No. 3.

B. HISTORY OF PROCEEDINGS

3. The proceedings against the Respondents took place over a lengthy period of time. The initial Notice of Hearing was solely in relation to the Respondent Gentile. Eventually, a Notice of Hearing was issued against the Respondent Brinson, raising similar factual and legal issues as contained in the Notice of Hearing against Gentile.

4. On November 7, 2013, the Hearing Panel ordered that the two matters be tried together. The Hearing on the Merits took place over 12 days in the months of March, July, August and November of 2014. A total of 12 witnesses gave *viva voce* testimony. 121 Exhibits were filed.

5. The parties then served and filed written submissions and Books of Authorities. Oral argument was heard on November 5, 2014, at which time the matter was reserved by the Hearing Panel.

6. A condensed time-line follows:

Gentile

December 21, 2011	Notice of Hearing
January 23, 2012	Respondent's Notice of Motion for Dismissal
January 23, 2012	Respondent's Reply
February 2, 2012	First Appearance
March 2, 2012	Respondent's Submissions re: Motion for Dismissal
March 30, 2012	Staff's Submissions re: Motion for Dismissal
April 5, 2012	Appearance – Procedural re: Motion for Dismissal
April 10, 2012	Respondent's Reply Submissions re: Motion for Dismissal
April 19, 2012	Appearance re: Hearing of Motion for Dismissal
May 8, 2012	Decision and Reasons on Motion for Dismissal
May 29, 2012	Respondent's Amended Reply

August 30, 2012	Appearance (Hearing scheduled for November 26-29, 2012)
November 2, 2012	Staff's Notice of Motion for Directions, returnable November 6, 2012
November 6, 2012	Appearance re: Motion for Directions – Hearing adjourned to a date to be determined, etc.
December 31, 2012	Staff's Motion Record to Amend Notice of Hearing
January 10, 2013	Appearance re: time-lines, etc. – next Appearance scheduled for March 25, 2013
February 4, 2013	Staff's <u>Amended</u> Notice of Motion to Amend Notice of Hearing and Written Submissions
February 16, 2013	Respondent's Written Submissions re: Motion to Amend
March 20, 2013	News Release – Appearance scheduled for March 25, 2013 adjourned to April 10, 2013
April 4, 2013	Staff's Written Reply Submissions re: Motion to Amend
April 10, 2013	Appearance re: Motion to Amend
April 10, 2013	Order to Amend
April 10, 2013	<u>Amended</u> Notice of Hearing
June 27, 2013	Respondent's <u>Amended</u> Reply
September 16, 2013	Decision and Reasons on Motion to Amend
November 7, 2013	Appearance – set date for Hearing on the Merits
November 7, 2013	Order (Hearing to be heard with Brinson)

Brinson

September 9, 2013	Notice of Hearing
November 6, 2013	Respondent's Reply
November 7, 2013	First Appearance
November 7, 2013	Order (Hearing to be heard with Gentile)

Gentile and Brinson

February 2, 2014	Notice of Motion by Staff re: Conditions on c ross-examination of a Staff witness
February 7, 2014	Submissions of the Respondent re: Conditions
February 10, 2014	Submissions of Staff re: Conditions
February 27, 2014	Decision and Reasons on Motion for Conditions
March 24, 25, 27, 28, 2014	Hearing on the Merits
July 28 – August 1, 2014	Continuation of Hearing on the Merits
August 11 & 12, 2014	Continuation of Hearing on the Merits
November 5, 2014	Continuation and completion of Hearing on the Merits

C. THE EVIDENCE

7. During the course of the Hearing on the Merits, we received a significant amount of evidence, both documentary and testamentary. What follows is a synopsis of that evidence, as well as certain of our comments with respect to same.

a) **EVIDENCE OF CB**

8. CB began working for Bruce Schriver (“Schriver”) as an Associate Advisor in January of 2000, when Schriver was selling mutual funds at Investors Group Financial Services Inc. (“Investors”). He later moved with Schriver to Select Monies Strategies Inc. (“Select”) in the summer of 2000.

9. CB continued in his role as an Associate Advisor when Schriver became an insurance salesperson at Desjardins Financial Security Life Assurance Company (“Desjardins Life”) in 2004. By this time, Schriver had lost his mutual fund licence and was only licenced to sell guaranteed investment funds.

10. CB worked out of Schriver's office at Desjardins Life at 7001 Mumford Road, which was in the business towers at the Halifax Shopping Centre. The office contained Schriver's furniture, computers, filing cabinets and client files. Schriver had a key to the office but generally worked out of his home.

11. In late 2006, CB received separate calls from two of Schriver's clients (MM and CL) who advised him that they had loaned money to Schriver which had not been repaid.

12. CL and his wife, ML, had been clients of Schriver long before CB started his employment in 2000. MM was also a long standing client of Schriver.

13. The amounts of the loans were substantial. With CL, the money for the loan had come from certain redemptions which CB has processed on the client's behalf at Desjardins

14. The clients were upset at not being repaid the loans but specifically requested that CB keep this information confidential.

15. CB had not been previously aware of these borrowings.

16. CB was very concerned that this borrowing had occurred and he felt that Desjardins had to be advised. He knew that if he did come forward, his employment with Schriver was in jeopardy. He had previously completed some paperwork at Schriver's request, which the Nova Scotia Securities Commission felt was improper and for which he had lost his mutual fund licence. He was determined that it would not happen again.

17. He was also very concerned about the clients. He felt that it was unethical to borrow from clients, to commingle clients' assets with your own in any way. In CB's mind, it did not matter if they were mutual fund clients or insurance clients. Schriver had a fiduciary relationship and responsibility and, therefore, borrowing was improper.

18. After much soul searching, CB decided that he had to tell Desjardins. He called both MM and CL and told each of them that he was going to talk to the Branch Manager and Compliance Officer. He said that he simply could not sit on the information any longer.
19. CB said that both clients stated that they understood and said that he could reveal their names.
20. CB first called Schriver and told him that he was going to talk to Brinson and Gentile. Schriver was irate and said that it was none of CB's business who he borrowed money from. CB retorted that "when you borrow from clients, it is my business."
21. Schriver then said that he was going to tell Brinson and Gentile himself. Schriver called CB back in 15/20 minutes and said that he had told Brinson and Gentile.
22. CB then went to see both Brinson and Gentile and said that he understood that they had just been talking to Schriver and that he had told them about borrowing money from CL and MM.
23. Brinson said that Schriver had not told them that he had in fact borrowed but just raised the question hypothetically as to whether he could borrow.
24. CB made it clear to both Brinson and Gentile that the borrowings from CL and MM had, in fact, taken place and that it was not a hypothetical situation.
25. CB was adamant in his testimony before us that he provided the names of the clients and confirmed that the borrowings had occurred.
26. He told the Respondents that he was advising them of what had occurred so that they could do with it whatever they deemed appropriate.

27. The position of the Respondents was that, unless the clients came forward to “provide proof that these loans actually happened” there was nothing that they could do. Their “hands were tied”. CB responded that he was telling them that the loans had been made.

28. According to CB, the Respondents never asked him to review any of the clients’ files. He did not see the Respondents review any of the clients’ files.

29. CB would, subsequently, regularly ask the Respondents about the situation and was always told that unless there was an “official complaint”, they could or would do nothing.

30. Counsel for the Respondents chose not to cross-examine CB on his evidence.

31. The testimony of both Brinson and Gentile was that CB did not mention the names of CL and MM and, in fact, told them that the clients had wanted their names kept confidential.

32. We believe that both of the Respondents are incorrect in their respective recollections in this regard. Before coming to the Respondents, CB had obtained the specific consent of the clients to the release of their names. He had done so as he felt he could no longer keep the matter confidential. Before talking with Brinson and Gentile, he had talked with Schriver about specific clients and Schriver later told CB that he had spoken with the Respondents. Therefore, the overwhelming inference is that CB gave the Respondents the names of the clients in March of 2007.

b) EVIDENCE OF MM

33. MM testified that he is 75 years of age and is a retired school principal. He has a Masters of Education degree but no formal investment education.

34. Schriver had been his advisor since the late 1990’s. MM held mutual funds until Schriver lost his mutual fund registration, after which he switched to segregated funds.

35. He visited the Desjardins branch in the Halifax Shopping Centre on many occasions where he met with both Schriver and CB.

36. He identified his signature on a number of Desjardins Financial Security Investment Inc. (“Desjardins”) documents. He did not know if there is any difference between the various “Desjardins” companies for which he signed account or trade documents.

37. During the period of time that Schriver was affiliated with Desjardins Life, he approached MM to borrow money. MM had previously loaned money to Schriver when he was affiliated with Select. He had experienced difficulty in getting the loans repaid but, eventually, received his money.

38. In November of 2006, Schriver approached MM for a \$50,000 loan. He told MM that he would use the funds to pay the redemption fees associated with transferring certain clients over to Desjardins. He advised that that would result in large commissions for Schriver as the portfolios were quite large. These commissions would be used to repay the loan.

39. As MM had had difficulties in obtaining repayment on previous loans, he was reluctant to proceed. Schriver was persistent.

40. MM testified that he met with Schriver on November 20, 2006, in a parking lot. Schriver went over the details of the loan and how it would be repaid. MM said that he wanted to talk to Schriver’s “manager”, Bruce Brinson. According to MM, Schriver telephoned Brinson, told him the details of the transaction including the names of the individuals and the amount of money he would be bringing over to Desjardins. He then passed the telephone to MM. MM repeated this information to an individual he believed was Brinson. He asked if this would be something he (Brinson) would approve. The person on the telephone said that he would approve the transaction so long as the proper legal work was done.

41. MM then requested a letter from Schriver’s lawyer which indicated, *inter alia*, that Schriver’s “manager had been contacted about this loan. His manager does not see any conflict

of interest or unethical conduct on behalf of his representative as he is not a member of the Mutual Fund Dealers Association of Canada.”

42. MM arranged to obtain \$50,000 from a line of credit he took out for this purpose from the Bank of Montreal. There was a meeting in the office of Schriver’s lawyer at which time a non interest bearing note was drafted, executed by Schriver and witnessed by his lawyer on November 23, 2006.

43. On November 27, 2006, MM sent an e-mail to Schriver which stated, in part:

“Your manager, Bruce Brinson, approved of the Line of Credit based on your agreement to use the money for investment purposes in bringing the assets of new clients to Laurentian Financial. In order to do this, you told us that these clients had large investment portfolios and it would provide you with sufficient commissions to repay the Line of Credit of \$50,000 as specified in the agreement. Bruce, I want to make it perfectly clear that I do not expect any problems with the agreement as we made a sacrifice in approving the Line of Credit for you. I will keep this letter in my personal file for future reference.”

44. There is no doubt in our mind that MM thought he had discussed this loan arrangement, in detail, with Brinson and obtained his approval before proceeding. At the Hearing, MM reiterated his belief that the person he spoke with on the telephone was Brinson.

45. In both his examination-in-chief and cross-examination, Brinson was adamant that he did not talk to MM in November of 2006 and approve the loan transaction with Schriver.

46. The only way to reconcile this diametrically opposed testimony is to conclude that Schriver made arrangements with someone to pose as Brinson for this telephone call. While this may seem a bit of a stretch in that Schriver would not have known that MM would want to talk with Brinson until they were together in the parking lot, we are prepared to accept that Schriver was capable of this deviousness and that Brinson did not speak with MM on November 20, 2006.

47. Pursuant to the terms of the promissory note, \$1,500 payments were due on December 15, 2006 and January 15, 2007. These payments were made. The final payment, in the amount of \$47,000, was due on February 15, 2007. This payment was not made.

48. MM called Schriver's lawyer on a couple of occasions about not being repaid. The lawyer indicated that he would follow up with Schriver. When nothing happened, MM called CB in either late February or early March of 2007 and told him what had happened. CB was surprised and said that he would try to do something.

49. MM testified that he spoke with Brinson on several occasions in 2007 and 2008 with respect to the loan. In early 2007, MM indicated that he called Brinson. During the course of that conversation, MM reminded Brinson that, on November 20, 2006, Brinson had approved the \$50,000 loan based on the fact that Schriver was bringing clients over to Desjardins. Brinson told him that he did "not remember" that conversation. He kept repeating, according to MM, that he did "not remember" the November 2006 conversation. According to MM, Brinson said that he would call Schriver. He never called MM back.

50. In his testimony, Brinson was very vague about the conversation with MM. When it was suggested that MM had told him that Schriver had arranged the loan with the bank, Brinson replied: "I don't recall really."

51. He was then referred to his hand-written notes [Ex. 119], dated March 12, 2007, which stated, in part: "A Mr. M called to ask to have me pressure Mr. Bruce Schriver to pay him back on a loan he had given him."

52. The next note stated: "We met with Mr. Schriver who advised he had not borrowed from clients and had not arranged any loans with the bank."

53. In our view, the recollection of MM is to be accepted over the hazy recollection of Brinson. MM told Brinson about the November 20, 2006 conversation, he told him about the details of how the loan to Schriver was arranged and the fact that it had not been repaid.

54. We do believe Brinson when he testified that he did not call MM back to say that Schriver denied that any loan had been made. Brinson testified that he also does not believe that anyone else so advised MM. Neither he nor Gentile reported this matter to Head Office.

55. MM testified that he called Brinson on other occasions in 2007 and 2008 to find out what was happening, as Schriver still owed him money. According to MM, Brinson told him that he had talked with Schriver and that Schriver was “looking after it”.

56. In his testimony, Brinson denied that these conversations took place. Brinson also denied that he had talked to Schriver and urged him to repay MM.

57. In light of the documentary evidence, this position of Brinson is, indeed, curious.

58. For example, on September 3, 2008 [Ex. 12], Schriver sends an e-mail to MM which stated, in part: “I just received a phone call from Mr. Brinson who said that you had called him from [MM’s home phone number] on his cell. He wanted to know what was going on . . .”

59. MM says he made the phone call. It is difficult to accept that Brinson did not receive the call in light of the e-mail from Schriver. It is unlikely that Schriver would send such an e-mail to MM unless he, in fact, had received a call from Brinson telling him that he had received a call from MM.

60. There was a further e-mail from Schriver to MM later the same day, which stated: “nothing big but Brinson was wondering where you got his cell phone no.” MM testified that he obtained the cell phone number from Brinson’s “secretary.”

61. A little later in the month, MM said he made a further call to Brinson about Schriver. Brinson denied that the call had occurred. Ex. 14 was another e-mail from Schriver to MM which stated, in part, as follows: “(M) I spoke to Brinson about your conversation with him, he did not mention much just told me to get hopping . . .”

62. This, again, is an e-mail that it is unlikely would have been sent to MM, unless MM had in fact made the call to Brinson, which is recorded therein.

63. We believe that Brinson is mistaken when he testified that these telephone calls did not occur.

64. It is also hard to believe that if Schriver did, in fact, deny the existence of the loan to MM, that Brinson would not have asked about similar alleged loans to other clients. If he did not do so, he should have.

65. MM came to Brinson to seek his assistance in getting Schriver to repay the loan. If Brinson had gone back to MM in March of 2007 and informed him that Schriver had denied that any such loan existed, it is reasonable to expect that MM would have taken immediate steps to protect his position which might well have included a formal complaint to Desjardins.

66. Also, when Brinson heard diametrically opposed stories about the existence of the MM loan it was incumbent upon him to take steps to either ascertain the truth or report it to Head Office so that an appropriate investigation could be undertaken with respect to Schriver's conduct.

c) EVIDENCE OF RS

67. RS testified that he was registered as a mutual fund salesperson and a life insurance agent. RS began working with Schriver in or about 2005.

68. On December 9, 2007, RS received a telephone call from his client, RG, advising him that Schriver had borrowed money from him and had not repaid it. RG said that he was having a hard time getting ahold of Schriver and wanted RS to call his "boss".

69. RG gave RS the names of two other individuals who, he advised, had also loaned money to Schriver and had not been repaid.

70. RS testified that he did not believe that it was appropriate for an advisor to borrow money from a client. Therefore, he thought his supervisors should know. When he could not reach Gentile, he called Brinson and advised him of what he had been told.

71. RS told Brinson that RG wanted a meeting set up with Schriver. According to RS, Brinson told him to get the three individuals together with Schriver. RS set up the meeting and so advised both Brinson and Gentile. He told them of the names of all three individuals and the approximate amounts of the alleged loans.

72. Brinson and Gentile told him to go to the meeting and report back. He did so. The meeting was on December 13, 2007. At the meeting, the individuals gave Schriver a couple of months to come up with the money which was owing to them. RS reported back to Brinson and Gentile. They told RS to continue going to client meetings and keep an eye on Schriver.

73. In paragraph 3 of the Amended Reply, filed by the Respondent Gentile, on June 17, 2013, he admitted that, the day after the meeting, RS advised the Respondent and Brinson about the meeting that had taken place.”

74. At the Hearing on the Merits, the Respondent Gentile testified that he did not recall RS coming in the day after the meeting and advising about what had taken place.

75. However, on cross-examination, he conceded that “if I said it earlier when my mind was fresher I could be mistaken today, I’m not sure. But today, I do not recall that.”

76. In his Reply pleadings, filed on November 6, 2013, the Respondent Brinson stated that “the Respondent admits that RS reported on the events at the meeting but is not aware of whether the report is accurate.”

77. At the Hearing on the Merits, the Respondent Brinson testified that he did “not recall that RS had reported what had occurred at the meeting.”

78. In light of the pleadings and the testimony of RS, we believe that RS did report on the meeting to both of the Respondents shortly after the meeting occurred.

79. The Respondents, according to RS, did not ask for client contact information and did not want to speak to the clients directly. According to the testimony of RS, the Respondents advised that, if the clients made a formal complaint, there was a good chance that Schriver might get fired or suspended and, thus, wouldn't be able to earn commissions to pay the clients back.

80. In January of 2008, RS discovered that Schriver was not repaying the three individuals as promised. RS was upset that the Respondents were not taking any steps to deal with the situation. Consequently, he prepared a letter, dated January 24, 2008 [Ex 32], which he requested each of the Respondents to sign. They did so.

81. The letter set out the history of the matter and contained the sentence: “At the request of the individuals involved I have closely monitored the situation and have not been instructed to approach the Insurance Industry regulators.” RS testified that the “individuals” referred to in that document included both of the Respondents.

82. RS testified that, prior to and during this period, he had many conversations in which he asked the Respondents whether any authorities like the insurance regulator, the Nova Scotia Securities Commission or head office compliance should be involved. He specifically mentioned the name of PS, the company compliance officer. According to RS, he was repeatedly told by the Respondents that this type of action would lead to Schriver being terminated.

83. In his examination-in-chief, Brinson denied that he had ever requested anyone not to report this matter to the insurance industry regulators. He admitted that RS was very upset at the lack of action but maintained that a formal complaint had to be made by a client before the

matter could be escalated to head office. He agreed that Gentile could have asked for the various clients contact information and done follow up. He agreed that this was not done.

84. If the testimony of RS is to be believed, it means that the Respondents were aware of conduct on the part of Schriver which was of such nature that, if they reported it to head office compliance, could result in Schriver being terminated. Yet, they deliberately chose to keep this information from head office.

85. The Respondents also chose not to make RS aware of the information which they had obtained from CB, starting in March of 2007, about other individuals who had allegedly loaned money to Schriver and had not been repaid. RS eventually received this information from CB in approximately February of 2008.

86. In early 2008, RS told the Respondents that he was extremely upset with the situation and could no longer work with Schriver.

87. RS eventually called PS at head office compliance and discussed the issue of borrowing from clients on a hypothetical basis. He called PS because nothing was happening in the office with respect to the borrowings and he was becoming frustrated. At PS's request, he forwarded a copy of Ex 32.

d) EVIDENCE OF MR

88. MR testified that he is 61 years of age and is retired. He was a computer programmer who had worked for the Provincial Government for 31 years before leaving to go on a project to implement a payroll system with the Nova Scotia Regional Housing Authority.

89. He began investing with Schriver in the early 1990's when he was with Investors. He continued investing through Schriver when he moved to Select and then to Desjardins.

90. When Schriver was with Investors and Select, MR was invested in mutual funds.

91. He believed that “Desjardins Financial Securities” was his “investment company”. He identified his signature on a number of account or trade documents [Ex. 36]. He did not know the difference between the various different companies and believed that they were all “Desjardins”.

92. MR testified that when Schriver left Select, he couldn’t deal in mutual funds. However, according to MR, Schriver told him that CB could, so that there would be no impact on the type of investments he could have in his portfolio. To Schriver’s knowledge, this statement was not true as CB could not deal in mutual funds.

93. MR had recommended Schriver to his older sister, LR, who, subsequently, also invested through Schriver, starting with when he was at Investors.

94. Starting in 2006, both MR and LR loaned money to Schriver.

95. In March of 2007, MR loaned \$75,000 to Schriver, which he advised would be used to purchase a book of business. Schriver stated that the fees generated would enable him to repay monies owing to both MR and his sister, LR.

96. Schriver did make some payments with respect to the loan. However, a year later, the principal was still outstanding. MR and LR then met with Schriver who advised that he was able to obtain a “two for one” loan. Thus, if MR loaned him \$50,000, Schriver could get a loan for \$100,000, the entire proceeds of which would be given to MR and LR to pay down the existing loans.

97. A Loan Agreement, dated May 5, 2008, was entered into, providing for a loan of \$50,000 to Schriver, with a repayment of \$100,000 on or before May 23, 2008, less than three weeks later.

98. MR testified that nothing has ever been paid on this Loan Agreement.

99. Neither MR nor his sister approached the Respondents with respect to the various loans. However, he testified that if he had been advised that Schriver had borrowed monies from other individuals and had not repaid it, he would never have provided any additional monies to Schriver.

e) EVIDENCE OF VM

100. VM testified that he is 65 years old. He is retired, after working for Nova Scotia Power Corporation for over 27 years as a senior electrical technologist.

101. He started investing with Schriver when he was at Investors. He was invested in mutual funds. He followed Schriver to Select and then to Desjardins. When Schriver lost his ability to sell mutual funds, VM switched to segregated funds. He testified that he really did now know the difference between the two types of investments. RF, at Desjardins, is his current advisor and he now again holds mutual funds.

102. VM was shown a series of accounts and trading documents [Ex. 48] with different names on them, including Optifund Investments Inc., Desjardins Financial Security, Laurentian Financial Services and Desjardins Financial Security Investments Inc. He believed that he was a client of “Desjardins Securities” and that the different names represented different funds of Desjardins.

103. VM started loaning money to Schriver in 2005 when he was with Desjardins. By June of 2006, the amount owed had risen to \$143,000. A Personal Loan Repayment Agreement, evidencing the now \$155,000 indebtedness, was entered into on June 5, 2006, between VM and Schriver [Ex. 49]. Schriver wished to borrow an additional \$12,000 to allegedly purchase a “book of clients” from another advisor.

104. In the spring of 2009, RF became his advisor. Up to this time, VM was not aware that other individuals had loaned money to Schriver and had not been repaid. VM said that, if he had

been aware of that, he never would have loaned any additional money to Schriver. He testified that it was RF who told him that he was “one of many”.

105. VM prepared a letter of complaint, dated June 19, 2009, detailing his dealings with Schriver. The letter was addressed to Brinson. [Ex. 51]

106. VM testified that, in late June or early July of 2009, he called Desjardins, hoping to speak with RF. He was advised that RF was not present. He asked to be put through to Brinson. He testified that he told Brinson that he had loaned money to Schriver and that he had not been repaid. According to VM, Brinson said “I don’t want to hear any more about it. Put it in writing and bring it into the office.” When asked about his conversation in his examination-in-chief, Brinson said that he did not “recall the exact conversation” but, after Schriver had been terminated, he would have requested that clients “bring any proof of the loans into the office and discuss them with Mr. Gentile.”

107. Therefore, it is quite believable that VM would have prepared the June 19, 2009 letter after his conversation with Brinson. VM testified that he took the letter to the office on Mumford Road and met with RF. He stated that RF took him down the hall, with the letter in his hand. RF then left it on the desk of an individual who was on the telephone. He later learned that this was Gentile.

108. RF testified. He admitted that he knew of Schriver’s activities about borrowing from clients in January of 2009. He agreed that VM became his client around April of 2009. He admitted that, upon VM becoming his client, he conducted a “Know-Your-Client” style review with him. He admitted that he met with VM at least a couple of times per month for the balance of 2009. He agreed that this could have been as many as 16 times.

109. RF knew that VM was communicating with Schriver and that Schriver had been his advisor for many years. Yet he testified that he never asked VM whether he was owed money by Schriver. He testified that VM never told him about the \$155,000 indebtedness. He said that he did not know about that until some time in 2012.

110. He denied that VM came into the Branch in the summer of 2009 with a letter. He said that he didn't "recall" the sequence of events described by VM about walking with VM to Gentile's office and dropping off the letter.

111. It is difficult to accept the testimony of RF in this regard. He was aware of Schriver's activities, he took on a new client who had been a client of Schriver, yet in his Know-Your-Client interview, he, apparently, made no inquiries with respect to any possible lending of money to Schriver. He meets with VM and his wife on a regular basis and has no recollection of VM talking about the matters referred to in the letter of June 19, 2009. In our view, VM was obviously upset about his dealings with Schriver and in some or all of those meetings would likely have conveyed this to RF.

112. Gentile denied seeing Ex. 51 at or about the date that it was written.

113. VM believed that Brinson was well aware of the borrowings by Schriver. He said that RF told him on a number of occasions about the client complaints.

114. In December of 2009, VM inquired from RF whether he had heard anything from head office about his complaint. RF responded "What complaint?" He reminded him of the walk down the hall to give the letter to Gentile. RF said that he would call head office. He was subsequently advised that head office had received nothing about the complaint.

115. VM then contacted the MFDA and the RCMP with respect to his dealings with Schriver.

f) EVIDENCE OF RG

116. RG, a self-employed electrical contractor, was a client of Desjardins Financial Security Investments Inc. RS was his representative. RS introduced him to his "partner" Schriver. His portfolio consisted of mainly Segregated Funds.

117. On or about October 1, 2007, Schriver called him at home and wanted to borrow \$34,000 for 30 days so that he could allegedly purchase the “investment book” of another representative and “sell” it to Desjardins. The interest rate was 10%.

118. After the money had been advanced, he spoke to his friend KK and learned that he too had loaned money to Schriver and was having trouble being repaid.

119. After 30 days, RG was not able to get ahold of Schriver and therefore telephoned RS, who told him that “investment guys don’t borrow money from their clients”. RS told RG that either he or RG should contact the Respondents. He described them as being “the boss” of the Desjardins office. RG did not contact the Respondents at that time.

120. RG did attend a meeting with Schriver and other individuals who had loaned him money, in Berwick, Nova Scotia, at the office of RS’s father. Promises of repayment were made at the meeting by Schriver, which promises were not kept. RG kept in touch with some of the others who were at the meeting.

121. After Schriver was fired by Desjardins, RG telephoned Brinson to see if Desjardins would assist him. According to RG, Brinson said that Schriver never worked for Desjardins and that RG should just write it off his income tax.

122. RG testified that he would not have loaned money to Schriver if he had been aware that there were others who had loaned money and had not been repaid. RG took his investments away from Desjardins.

g) EVIDENCE OF RA

123. RA testified that he is a manager of a long-term care facility. He was introduced to Schriver by RS in May of 2007. After a couple of meetings, he was induced to change his investments over to Desjardins. This occurred in the first part of June 2007, when he opened an account with Optifund, the predecessor to Desjardins [Ex. 62].

124. He had been in mutual funds. Schriver recommended segregated funds. He did not know what a segregated fund was. He only found out later that Schriver could only sell segregated funds as he had lost his mutual fund license.

125. During the course of the initial meetings, Schriver learned that RA had a \$50,000 line of credit which had not been drawn on. Within a couple of weeks of opening his account with Desjardins, Schriver asked for a loan so that he could purchase “books of business”. RA loaned him \$40,000 and received a promissory note, dated July 5, 2007.

126. In August of 2007, Schriver asked RA for a further \$50,000 loan to purchase another book of business. To fund this loan, RA redeemed certain securities which he had with Desjardins on August 27, 2007. He incurred fees to complete the redemptions.

127. RA did not receive any calls or correspondence from anyone at Desjardins with respect to these redemptions.

128. At this time, RA was not aware that Schriver had borrowed monies from other people and had not repaid them. He felt he was the only one and that Schriver was doing him a special favour.

129. In approximately November of 2007, he learned about others who had loaned money to Schriver and had not been repaid. He attended the meeting in Berwick with RG, KK and Schriver.

130. RS told RA that he had an obligation to report this matter to Desjardins. Over the course of the next year, he spoke to RS a couple of times per week. When he discovered the names of other individuals who had loaned money to Schriver, he provided those names to RS. He looked on RS as being his advocate with respect to Desjardins. RS told him that he was having frequent discussions with both Brinson and Gentile about what was going on. RS was trying to put internal pressure within Desjardins through the Respondents.

131. RS gave him a copy of the document which he had had executed by the Respondents, in January of 2008. [Ex. 32]

132. In the summer of 2008, RA spoke with Gentile. This was at the urging of RS, who advised that he had been having conversations with the Respondents on a regular basis, but nothing was happening as Schriver was still employed and monies were still owing. RA thought that RS wanted the matter reported to Head Office. RA told Gentile about the loans that had not been repaid by Schriver.

133. Gentile did not ask RA for the source of the loan funds, for copies of promissory notes or for his contact information.

134. RA testified that Gentile did not ask him to make a written complaint. He did tell Gentile that he had a lawyer representing him.

135. RA proceeded to sue Schriver and obtained a Judgment. He was only able to recover a small portion of what was owed to him.

136. He took his investments away from Desjardins. He is still owed over \$80,000 by Schriver.

h) EVIDENCE OF BWM

137. BWM testified that he is currently the Deputy Director of Capital Markets for the Nova Scotia Securities Commission (“NSSC”). He has held this position for 13 years. His main duty is the registration of firms and individuals who are required to be registered under the *Nova Scotia Securities Act*.

138. BWM explained the history and purpose of the National Registration Database (“NRD”). He testified that the NRD is an electronic system which replaced the paper-based system in 2003. The NRD is a secure non-public website, which requires a user name and password to access it.

139. Information is submitted to the NRD by an Authorized Firm Representative (“AFR”). A firm can have more than one AFR. The AFR attests to the NSSC as to the completeness and accuracy of the information submitted to the NRD.

140. BWM testified that the NSSC is totally reliant on NRD submissions. All securities commissions and other regulatory authorities across the country rely on the NRD system for their information on the registration status of individuals.

141. BWM then went through, in detail, the various registration changes relating to the Respondents.

142. He testified that Brinson became a co-branch manager on November 7, 2005. He stated that, prior to September 28, 2009, with the implementation of National Instrument 31-103, Nova Scotia did not have an actual category registration designated as “Branch Manager” and, thus, this type of designation was used.

143. At some point subsequent to September 28, 2009, everyone who had been designated as a “Co-Branch Manager” would have to be re-categorized.

144. National Instrument 31-103 was referred to as the Registration Reform Project. It, essentially, nationalized many individual categories into 5 or 6 unified categories across the country. It was an attempt to homogenize the registration regime in Canada.

145. Thus, after National Instrument 31-103, individuals became registered as “Branch Managers” instead of “Co-Branch Managers” or “Alternate Branch Managers”, etc.

146. Each Branch requires a Branch Manager. A Branch could have more than one Branch Manager.

147. BWM testified that Gentile had the designation of Branch Manager at Desjardins, with a start date of June 30, 2006.

148. According to the NRD, the Respondents are currently listed as “Branch Managers”, along with RF and DB.

149. BWM testified that, if an individual ceased to function as a Branch Manager or a Co-Branch Manager, the AFR could have taken steps to have that categorization removed. The individual could contact the registration department of the Member and request that a change be made.

150. BWM testified that he had never heard of Desjardins purporting to have a practice of leaving an individual registered on the NRD as a Co-Branch Manager even though that person had ceased that activity. If an individual was no longer acting in a given capacity, a change or surrender of individual category submission detailing the change or removal would have to be submitted within five days of the change.

i) EVIDENCE OF MF

151. MF testified that he is currently the Manager of Investigations at the MFDA and was the investigator in this matter.

152. MF reviewed, in detail, the investigation which was conducted and the documents which were gathered in the course thereof. These documents were entered as Exhibits and formed part of the evidence which we considered.

153. These documents included the transcripts of the interviews done by MF of both of the Respondents, pursuant to section 22.1 of MFDA By-law No. 1.

154. Included in the documentation provided by MF, and later confirmed by the relevant witnesses, were a series of Account Opening documents pertaining to VM, MR, MM, RA and RG. These documents related to either Desjardins or Optifund Investments Inc. (“Optifund”), the predecessor to Desjardins. Each of the corporations was an MFDA Member. All of the documents were executed by the Respondent, Gentile, in his capacity as “Authorized Branch Manager” in the case of the Desjardins documents, or “Manager Approving the Account” in the case of Optifund.

155. The Optifund Account Opening documents were executed between January 17, 2007 and June 14, 2007. Just above the signature of the Respondent, Gentile, on the Optifund documents, was an indication that the clients had received the “Client Complaint Information” documents provided by the Mutual Fund Dealers Association of Canada.

156. The Desjardins documents were executed between February 28, 2008 and March 19, 2009. Just above the signature of the Respondent, Gentile, was an indication that the clients had received the “Statement of Disclosure and the Mutual Fund Dealers Association Complaint Information” documents.

157. Thus, for some or all of the relevant period, the above-named individuals were mutual fund clients of Desjardins, whether they held mutual funds in their respective portfolios or not.

j) IL

158. IL did not testify. His evidence was elicited through the Exhibits and the testimony of the Respondents.

159. In June of 2008, IL met with both of the Respondents at the Branch. He showed them a letter, dated June 18, 2008, detailing his alleged dealings with Schriver. The Respondents spent about an hour with IL.

160. Brinson testified that he told IL that the type of loan detailed in his 4 page letter was not proper. Brinson said that while Gentile and himself reviewed the letter in detail, a copy was not left. IL had a lot of other documentation with him, which was not reviewed. IL said the loan had not been repaid.

161. Brinson said that, subsequently, Schriver admitted that he had arranged for a loan from IL, but gave a different reason for it.

162. Brinson admitted that, by this point, he had information on a number of Schriver loans which had not been repaid. However, it was decided not to do any further follow up with IL or to report this matter to Head Office. The main reason for this, according to Brinson, would appear to be that IL was not a client of Desjardins.

163. The evidence of Brinson is to be compared with that of Gentile, who admitted in cross-examination that, in fact, IL left the letter [Ex. 80] with Brinson and Gentile with instructions not to send it to Head Office until he told them to do so as he was meeting with Schriver and hoped to be paid.

164. Gentile also told IL that if he sent the letter to Head Office, they could cancel Schriver's contract.

165. Gentile also agreed that if IL had just left the letter and there had been no meeting, he would have sent the letter to Head Office. Consequently, the letter must have contained information which Gentile felt should be passed on to Head Office. He did not do so because an individual who was not a client of Desjardins requested that he not do so at that time.

166. Thus, one of the Respondents testifies that he did not have the letter, but knew of its contents, but did not pass the information on because IL was not a client. The other Respondent testified that he had the letter and would have passed it on except IL, a non-client, requested that he not do so.

167. It is difficult to reconcile these positions. What is clear, however, is that both of the Respondents were aware in June of 2008, of IL's dealings with Schriver.

D. CREDIBILITY OF WITNESSES

168. In coming to our conclusion, we have sought to reconcile, as much as possible, the testimony of the various witnesses. In some areas, reconciliation of the evidence was not possible. Consequently, we have had to determine which version of events is more plausible and credible.

169. We do not believe that any of the witnesses who appeared before us deliberately lied. We believe that, over time, memories fade and events can be related with the benefit of hindsight and with a "colour" beneficial to the position of the particular witness.

E. THE RESPONDENTS' KNOWLEDGE OF SCHRIVER'S FINANCIAL and REGULATORY BACKGROUND

170. Brinson testified that Schriver applied to Desjardins as both an insurance advisor and a mutual fund representative. He had a Book of Business of around \$7 million, most of it in mutual funds, but a lot in segregated securities.

171. Prior to hiring him, Brinson interviewed Schriver about four times. A Senior V.P. of Desjardins interviewed him twice.

172. When Desjardins was in the process of seeking to transfer Schriver's Mutual Fund Licence, Schriver's Branch Manager at Select lodged a formal complaint about Schriver doing "off-book" transactions in Portus. Consequently, the Nova Scotia Securities Commission refused to agree to the transfer of his Mutual Fund Licence.

173. Both of the Respondents were aware that Schriver had been terminated by Select before he joined Desjardins.

174. They were aware that, consequently, Schriver was only able to transfer his segregated fund business.

175. On his Application Form for Sponsorship [Ex. 106], Schriver reported that he had previously declared personal bankruptcy, that the Canadian Revenue Agency had garnisheed his wages and that he had been terminated by Select with cause for allegations of churning.

176. Brinson said that Gentile was aware of all of these facts.

177. Brinson requested and received a financial statement from Schriver before he was hired. Brinson testified that he was not concerned that Schriver did not show any liquid assets on this Statement.

178. Brinson also testified that he would have been aware that, in March of 2005, Revenue Canada was again garnisheeing Schriver's wages.

179. Brinson testified that, despite the above, he did not keep a closer eye on Schriver than on any other representative.

180. One would have thought that, with the knowledge of Schriver's financial and regulatory history, the Respondents would have acted proactively when they became aware of the reports of Schriver's alleged financial dealings. Instead, they did nothing, and neither investigated nor reported this information to the Compliance Department at the Member.

181. They testified that one of the reasons that they did not report was that they were afraid that, if they did report, Schriver might be terminated.

182. This is a revealing and incredible statement. If Schriver was to be terminated, it would, presumably, be because he was engaging in conduct which Desjardins would consider unacceptable for a person in his position. Conduct of this nature is exactly the type of conduct which a Branch Manager or Alternate Branch Manager should be protecting the Member from.

183. On several occasions, the Respondents learned that clients were saying that they had loaned money to Schriver and had not been repaid. Schriver denied the borrowings. Thus, there was a direct contradiction between what the clients and Schriver were saying. This should have raised red flags. Immediate steps should have been taken to ascertain the factual circumstances or report it to the Member so that the appropriate investigation could have been done.

184. Instead, the Respondents did nothing. They did not even see fit to relay Schriver's version of events to the clients. This type of conduct is unacceptable for either a Branch Manager or an Alternate Branch Manager.

185. In this case, nonfeasance becomes misfeasance.

F. WHAT IS A BRANCH MANAGER

186. A branch manager is an important and integral part of the MFDA regulatory regime. The branch manager is not only the eyes and ears of the Member, he/she is vested with a critical responsibility towards ensuring that the Member's business is carried on in accordance with all of the regulatory requirements and that the clients of the Member are afforded all of the protections of that regime.

187. MFDA Rule 2.5.3, as it was in effect at the material time, required each Member to designate "an individual qualified as a branch manager" for each branch office. This was a mandatory requirement, which highlights the importance of this position to the entire regulatory regime.

188. The position was of such critical importance that the Rule required the Member to "designate one or more alternate branch managers who must be qualified as branch managers" to carry out the responsibilities "in the event that a branch manager is temporarily absent or unable to perform his or her responsibilities."

189. MFDA Rule 1.2.2, as it then was, set out very stringent proficiency requirements for branch managers or alternate branch managers. These included specific licensing or registration provisions, course completion provisions, as well as experience provisions. Finally, each branch manager was required to be “registered, licenced or approved as a branch manager under the applicable securities legislation.”

190. In short, branch managers were and are experienced, knowledgeable professionals on whom a great deal of trust and responsibility is imposed.

191. When each of the Respondents agreed to take on the position of either branch manager or alternate branch manager, it can be assumed that they each met the proficiency requirements and were willing to shoulder the responsibilities which the position entailed.

192. What were the responsibilities at the relevant period of time? MFDA Rule 2.5.3(b)(i) stated that it is “the responsibility of a branch manager to: (1) ensure that the business conducted on behalf of the Member by an Approved Person and other employees and agents at the branch is in compliance with applicable securities legislation and the By-laws and Rules.”

193. This provision has since been amended to say that the “branch manager must supervise the activities of the Member at the branch . . .”

194. In carrying out these duties and responsibilities, it is self-evident, in our view, that the branch manager must himself or herself comply with the Rules, one of which is Rule 2.1.1(c).

195. In addition to the general statement of the responsibilities of a branch manager set out in Rule 2.5.3, individual Members could seek to codify additional responsibilities either by way of policy, or by way of specific documentation.

196. In the case of Desjardins (formerly Optifund), there was a specific document entitled “Responsibilities of the Branch Manager-Fund”.

197. Four of these documents were entered as Exhibits at the Hearing. Exhibit 104 was executed by Brinson and Gentile in 2004. Exhibit 105 consisted of a 12 page document executed by Brinson on July 12, 2005, and by Gentile on July 13, 2005.

198. The contents of the 4 documents would appear to be similar or identical and consisted of specific instructions as to how to deal with specific situations, as well as certain general duties and obligations.

199. Two of the general duties and obligations were stated as follows, under the heading of “Compliance Management”:

- (a) “Refer all conflicts of interest situations to your Compliance Officer for consideration and resolution recommendations”;
- (b) “N.B. The Branch Manager is responsible for reporting any and all breaches of compliance/regulatory standards to the Compliance Officer, in writing, as soon as these are discovered or suspected (emphasis added). It is the responsibility of the Compliance Department to provide guidance or direction to the Branch Manager as to how a situation is to be conducted.”

200. Desjardins required its branch manager and alternate branch manager to bring matters to the attention of the Compliance Officer immediately so that the situation could be assessed and corrective action taken, if necessary. This action would likely include a reasonable supervisory investigation if matters, either factually or legally, were not initially clear.

201. What is the standard against which the actions of the Respondents should be judged?

202. We were referred to the IROC case of Mills (Mills (Re)) [2000] I.D.A.C.D. No. 41) where the Notice of Hearing alleged that the Respondent had “failed to fulfill his supervisory responsibilities as branch manager.” The Hearing Panel held that “the question is ultimately one of reasonableness”. Did the branch manager take the steps that were reasonably required in light of the information available to him and the obligations imposed upon him?

203. In its written submissions, Staff suggested a standard which should be required of a branch manager in the circumstances of the present case. We have modified that test or standard as follows:

“Where circumstances would make a reasonable branch manager acting prudently believe that harm is or may be occurring to clients, the Member or the investing public or could adversely affect public confidence in the securities market, the branch manager should, at a minimum, immediately inform him or herself as to the situation, and, if appropriate, report the conduct or suspicious activity to the Member.”

204. It should be emphasized that the failure of the branch manager to act according to this test or standard on a single or even repeated occasions does not necessarily result in a breach of Rule 2.1.1.

205. The first time a branch manager hears about questionable conduct, it may be sufficient to simply do a reasonable supervisory investigation and, depending upon the results, report or not report the conduct or activity to the Member.

206. However, if the branch manager has any doubts as to whether this conduct should be reported, the Member should be informed so that an unbiased third party evaluation can be made of the circumstances. The branch manager should work together with the Compliance Officer to assess the situation and decide upon the appropriate course of action.

207. Where, as here, there is a repeated failure to report the conduct or suspicious activity, which is of an ongoing and expanding nature, a breach of Rule 2.1.1 can occur.

208. The nature and reliability of the information is also important. Over the course of time, the Respondents heard of several instances of Schriver allegedly borrowing money from clients and not repaying. When confronted, Schriver denied the borrowings or alleged that the borrowings were for a purpose other than what the lender had been told. Those instances should have raised a serious concern on the part of the Respondents such that the matter should have

been reported to the Compliance Officer so that an appropriate investigation could have been undertaken.

209. When the Respondents learned that Schriver was allegedly borrowing funds to expand his book of business, they, along with the Compliance Officer, would have been in a position to quickly, independently, verify whether that had, in fact, occurred.

210. Brinson agreed, in cross-examination, that the position of Gentile was that, if the information provided by CB and MM in March of 2007 was verified and forwarded to Head Office, Schriver could be terminated.

211. On the same day as the conversation with MM, the Respondents met with Schriver, who advised that he had not borrowed from clients and had not arranged any loans with the bank.

212. Thus, on March 12, 2007, the Respondents received what Brinson described as “serious information” from a client, which information, if verified and forwarded to Head Office, could result in Schriver’s termination.

213. Schriver denied the information. The Respondents do nothing. They did not contact MM to advise him of Schriver’s denial. They did not contact Head Office.

214. If MM had been told on March 12, 2007, that Schriver had denied the existence of the loan, he might have been able to take steps to protect himself. He might well have insisted that the matter be reported to Head Office, despite his earlier reluctance to do so.

215. Also, in March of 2007, if the Respondents had passed the “serious information” on to Head Office, including Schriver’s denial of same, Head Office would, in all likelihood, have conducted a reasonable supervisory investigation which might well have led to Schriver’s termination in the Spring of 2007.

216. Brinson agreed that Head Office would take a dim view of Schriver borrowing money and failing to repay as they would be concerned about the firm's reputation, its image, harm to its brand, as well as the possible legal risk.

217. Yet the Respondents consciously and deliberately decided not to escalate this matter to Head Office and not to inform MM of what Schriver had said.

218. In our view, regardless of which branch manager test or standard is chosen, this conduct falls well below what would be reasonably expected of a branch manager.

G. STATUS OF BRINSON and GENTILE

The Allegations

219. The Notice of Hearing alleged, *inter alia*, that “between in or about February 2007 and June 2009, the Respondent (Brinson), while designated as co-Branch Manager or alternate Branch Manager, received information . . .”.

220. Under “Particulars” in the Notice of Hearing, it was alleged that Brinson “has been registered with Desjardins as co-Branch Manager or alternate Branch Manager since November 7, 2005.”

221. It was also alleged that “at all material times, Brinson was the designated co-Branch Manager or alternate Branch Manager of a Desjardins branch located at Suite 312, 7001 Mumford Road, Halifax, Nova Scotia (the “Branch”). Brinson also had the title of “managing director” for the Branch.”

222. In a footnote in the Notice of Hearing, it was stated that “the position of managing director is not a category of registration under local securities legislation, nor is it a requirement under MFDA Rules.”

223. With respect to the Respondent Gentile the *Amended* Notice of Hearing alleged that “between in or about February 2007 and June 2009, the Respondent (Gentile), in his capacity as Branch Manager, received information . . .”.

224. Under “Particulars” in the *Amended* Notice of Hearing, it was alleged that “at all material times, the Respondent was the designated branch manager (the “Branch Manager”) of a Desjardins branch located at Suite 312, 7001 Mumford Road, Halifax, Nova Scotia (the “Branch”) . . . “.

Position of the Respondents

225. In his Amended Reply, the Respondent Gentile admitted that, at all material times, he was the Branch Manager of the Branch.

226. In his Reply, the Respondent Brinson stated that:

- (a) He has never accepted nor, to his knowledge, been assigned or borne the responsibilities of a “co-Branch Manager” at the Branch.
- (b) From 2003-2005, he was the Alternate Branch Manager (“ABM”) at the Branch.
- (c) As of 2006, he has ceased to be the ABM and ceased to bear or accept the responsibilities of being an ABM.
- (d) If Brinson has been “registered with Desjardins” in any capacity relating to Branch Management in 2006 or thereafter, such registration has been without his knowledge or consent. Further, from 2006 forward, Brinson has not considered himself, nor has he been considered by Desjardins, to be responsible for compliance with the MFDA provisions referred to in the Allegation.
- (e) With respect to the title of “managing director”, Brinson acknowledged utilizing this title relating to his duties as an officer of Brinson Gentile Financial Inc. and with respect to a Franchise Agreement related thereto. The title was not for the “Branch” and did not trigger responsibilities for compliance with the MFDA provisions referred to in the Allegation.

The Evidence

227. Brinson was registered on the National Registration Database (“NRD”) as a co-branch manager during all of the material times. BWM, the Deputy Director of Capital Markets in the Nova Scotia Securities Commission (“NSSC”), testified that his main duty is the registration of individuals and firms that are required to be registered under the *Securities Act*.

228. The NRD is a secure website. Only an Authorized Firm Representative (“AFR”) is granted access to the system on behalf of a firm. The submission form to the NRD contains an affirmation that the information being submitted is complete and accurate. An AFR can change any of the information previously submitted at any time.

229. Once a submission is approved by the Regulator, it becomes the permanent record on the NRD system and can only be changed with the approval of the Regulator.

230. The NRD system shows the history of any particular registration. BWM testified that the NSSC is totally reliant on the NRD system.

231. BWM identified an Investment Funds Institute of Canada Certificate, dated March 20, 1989, indicating that Brinson had successfully completed the Branch Manager’s examination for the Province of Nova Scotia.

232. BWM then reviewed in detail the NRD printout for Brinson, dated July 12, 2013 [Ex. 44]. He testified that the printout was a representation of what the NRD system would look like. The printout contained the submission registration history of Brinson from August 20, 2003 until February 13, 2012. Each submission is given its own unique submission number. Thus, a search for information can be done by date, name or submission number.

233. The documents show that Brinson was designated as a co-branch manager from June 30, 2006 to July 13, 2010. BWM testified that if an individual ceased to be a co-Branch Manager or

Alternate Branch Manager, there could have been an application by the AFR to have that categorization deleted or modified.

234. He testified that he had never heard of or been notified of a purported practice of Desjardins leaving a person registered on the NRD as a co-Branch Manager even though that person had ceased that activity.

235. In response to a written inquiry from MFDA Staff, the Compliance Officer for Desjardins advised that “according to our systems, Mr. Brinson has been an alternate Branch Manager since 2003.” [Ex. 99, p. 1241]

236. In cross-examination Gentile agreed that, at all material times, he considered Brinson to be “the third alternate branch manager” behind RF and DB and that this structure had been in place since RF joined the branch in 2005.

237. In November of 2008, Brinson signed, on two occasions, as “Branch Manager” on an outside business activity document relating to Gentile [Ex. 117], despite the fact that his position is that he ceased to be even an alternate branch manager in 2005.

238. In cross-examination, he admitted that he knew that the document had to be signed by the Branch Manager and the execution of this document was an aspect of the compliance function that a branch manager does at the Branch. He knew that this was a compliance document belonging to the Member.

239. He testified that Gentile requested him to execute the document as the “alternate branch manager” was away. If this is to be accepted, it would mean that Gentile either thought that Brinson was an alternate Branch Manager or he was knowingly forwarding a compliance document to his Member which he knew had been improperly completed.

240. As pointed out by Staff, in any event, “Managing Director” is not a category of registration under securities legislation. In his Reply, Brinson acknowledged utilizing the title of

“Managing Director” but only on the insurance side of the business and not “for the Branch”. His position is that this did not trigger responsibilities for compliance on the mutual fund side. If this is to be accepted, why would he be signing a mutual fund document as “managing director”?

241. The more logical explanation is that he was signing as branch manager or “co-branch manager” on the Mutual Fund side as that represented a position he held at that time.

242. Brinson’s explanation that he had been told by a representative of the Member that individuals who have completed the Branch Manager proficiency requirements remain registered as such even though they may not be acting in that capacity is difficult to accept as he admitted that he had only advised the MFDA of this position during the course of his testimony. Also, he did not provide any direct evidence from the identified person at the Member.

243. The parties agreed that the standard of proof in administrative proceedings of this nature is the civil standard of a balance of probabilities based on clear and cogent evidence.

244. Despite the indication of Brinson to the contrary, it is clear that at all material times Brinson held the position of either Co-Branch Manager or alternate Branch Manager at Desjardins.

H. POLICY 3

245. In the Notice of Hearing, Staff alleged that each of the Respondents acted contrary to MFDA Policy 3. This Policy is entitled “Complaint Handling, Supervisory Investigations and Internal Discipline”.

246. During the Hearing on the Merits, no substantive evidence was presented by Staff with respect to the alleged breach of this Policy by either of the Respondents.

247. No written submissions were made by Staff with respect to Policy 3. The Respondents did make written submissions with respect to this Policy. At the commencement of Oral

Argument on November 5, 2014, Staff advised the Hearing Panel that they were not relying upon Policy 3.

I. MFDA RULE 2.5.3(b)

248. The parties agreed that the version of MFDA Rule 2.5.3(b) in effect at the material time reads as follows:

“2.5.3 Branch Manager

- (b) Responsibilities. It is the responsibility of the branch manager to:
 - (i) ensure that the business conducted on behalf of the Member by an Approved Person and other employees and agents at the branch is in compliance with applicable securities legislation and the By-laws and Rules;
 - (ii) supervise the opening of new accounts and trading activity at the branch office.”

249. Rule 2.5.3(b) has more recently undergone a significant amendment such that the relevant provision is that “the branch manager must supervise the activities of the Member at a branch or sub-branch that are directed toward ensuring compliance etc.”

250. The position of the Respondents is that there could be no breach of Rule 2.5.3(b) as Schriver conducted no “business” on behalf of the Member as he was not an “Approved Person”, “employee” or “agent” of the Member as he was an agent of Desjardins Life – a separate legal entity.

251. Staff argued that the Hearing Panel should interpret the Rule using a broad and purposive analysis, consistent with the general approach of administrative tribunals to the interpretation and application of their governing provisions.

252. We were referred to the Alberta Securities Commission case of Ironside (Re) [2002] LNBASC 24 at paras. 18-19, where Mr. Justice Iacobucci, speaking on behalf of the Supreme

Court of Canada in the case of Re Rizzo & Rizzo Shoes Ltd. [1998] 1 SCR 27 (S.C.C.), at page 41, referred with approval to the approach to statutory interpretation enunciated by Driedger in *Construction of Statutes*, 2nd ed. (1983) as follows:

“Today there is only one principle or approach, namely the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

253. Using this approach, we believe that the word “business” in 2.5.3(b) could refer to the “business” of the Member and not the “business” conducted or not conducted by Schriver.

254. We also believe that the words “Approved Person”, “employee” or “agent” do not necessarily have to refer to Schriver but could refer to the Respondents themselves.

255. In our view, the current wording of the Rule is clear as to the mandatory obligations of the Branch Manager to “supervise” the “activities” of the Member to be in compliance with the By-laws, Rules and Policies of the MFDA.

256. In light of our unanimous finding with respect to the Respondents’ breach of Rule 2.1.1(c) and the specific wording of Rule 2.5.3(b), at the relevant period of time, we have chosen not to make a finding that the Respondents breached Rule 2.5.3(b) in the particular circumstances of this case.

J. MFDA RULE 2.1.1(c)

257. MFDA Rule 2.1.1(c) provides as follows:

“2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:

(c) not engage in any business or conduct or practice which is unbecoming or detrimental to the public interest.”

258. In Tony Tung-Yuan Lin 2011 BSCECCOM 197 (B.C.S.C.), the MFDA Hearing Panel had found that the scope of misconduct contemplated by Rule 2.1.1 was limited to the specific type of misconduct in previous cases and, in that case, could not be interpreted as extending beyond those case types to include excessive trading.

259. The B.C. Securities Commission found that this was an error in law. It stated (at para. 33):

“Rule 2.1.1 is intentionally broad so that the MFDA can discipline members for misconduct not specifically prohibited yet is clearly contrary to the public interest. Excessive trading falls into that category. The Investment Industry Regulatory Organization of Canada (“IIROC”) has no specific prohibition against excessive trading yet has long disciplined its members for churning through its equivalent to MFDA Rule 2.1.1, and continues to do so. It is in the public interest that the MFDA be entitled to take the same approach.”

260. MFDA Hearing Panels have, in the past, found a breach of Rule 2.1.1(c) when either head office personnel or a branch manager failed to take appropriate steps when they received certain types of information about either harm or a potential harm occurring at the branch.

261. In Berkshire Investment Group Inc. (“Berkshire”) [2007], MFDA File No. 200719, the Member’s Head Office personnel received what the Hearing Panel described as “significant” and “reliable” information, on two occasions, that non-clients had provided money to an Approved Person, Ian Throw, for investments outside the Member.

262. The conduct of Throw in Berkshire could be compared to the conduct of Schriver in the case before us. The B.C. Securities Commission found that Throw “dealt unfairly, dishonestly and in bad faith with his clients.” It would not be an exaggeration to say that the Desjardins clients who testified before us would feel that this was an apt description of how they were treated by Schriver.

263. In the Berkshire case, Throw initially denied the receipt of funds, just as Schriver initially denied many of the borrowings.

264. In the Berkshire case, one of the non-clients contacted the Member to say that there had been a “misunderstanding”. Unbeknownst to the Member, the complaint had been withdrawn, based on Throw’s promise of repayment. The Member considered the matter closed and took no further investigative steps.

265. Subsequently, a further non-client came forward to the Member’s personnel with similar information. The individual stated that Throw was not returning phone calls, that this had been going on for months and he just wanted his money back. This individual had never been a client of Berkshire. He subsequently refused to co-operate.

266. The Settlement Agreement, accepted by the Hearing Panel, concluded that Berkshire did not take sufficient steps in furtherance of a reasonable supervisory investigation of Throw’s activities and did not impose any interim supervisory measures to protect its clients’ interests until such time as it could assess the merits of the non-client’s report.

267. The Hearing Panel found that the conduct of Berkshire was contrary to Rule 2.1.1(c).

268. In the case of Desjardins Financial Security Investments Inc. [2009], File No. 200908, Reasons for Decision, dated May 11, 2009, the Respondent, Desjardins, had designated Donald Cunningham (“Cunningham”) as the branch manager of its branch office in London, Ontario. Cunningham recruited Anthony McPhail (“McPhail”) to take his place as the designated branch manager.

269. In August of 2003, Desjardins and McPhail submitted an application to the Ontario Securities Commission (“OSC”) to transfer McPhail’s registration from his former Member to Desjardins. The OSC ultimately did not approve the transfer due to regulatory concerns arising from on-going investigations into McPhail’s conduct at the former Member. Consequently, Cunningham continued as the designated branch manager at the London office.

270. Pending the approval of McPhail's mutual fund registration, he was permitted by both Desjardins and Cunningham to attend the branch as well as an affiliated sub-branch. McPhail claimed that he was only providing insurance and tax-planning services.

271. During this period, Head Office personnel at Desjardins received reports from two Approved Persons and two complainants that McPhail was engaging in securities related business at the branch. Head Office personnel did not notify any of the Approved Persons at the branch, did not heighten supervision and permitted McPhail to continue operating.

272. Between January and May of 2004, Cunningham received information that McPhail was engaging in securities related business. Cunningham dismissed the reports as unsubstantiated rumours and did not investigate further.

273. Cunningham continued to receive information about McPhail's conduct for a period of 11 months but failed to take any action as he still deemed the information to be in the form of rumours.

274. In the case of Desjardins, the Hearing Panel found that it did not conduct a reasonable supervisory investigation to determine whether McPhail had, in fact, been carrying on a stealth advisory arrangement. It also failed to take such supervisory and disciplinary measures as may have been warranted as a result of its investigations and therefore acted contrary to Rule 2.1.1(c).

275. The Hearing Panel in the Cunningham case also found a violation of Rule 2.1.1(c) when Cunningham failed to conduct a reasonable supervisory investigation, failed to report any information to the Member and failed to take appropriate supervisory and disciplinary actions as a result.

276. A submission by Staff in the Cunningham case, which was accepted by the Hearing Panel, included the following:

“Members designate branch managers and entrust them with a significant amount of responsibility for supervision. Branch managers essentially serve as the

Member's eyes on the ground. Individuals who accept such responsibility must have the proficiency and training necessary to fulfill their important supervisory role. In addition to performing regular duties of supervision and review required in their positions, branch managers must pro-actively follow-up on information that comes to their attention which raises concerns that regulatory obligations or the Member's policies and procedures are being contravened or the interests of clients and other individuals are not being protected."

277. While the events at Desjardins relating to the Cunningham and McPhail matters took place between June of 2003 and September of 2005, prior to the events in the matter under consideration, the negotiation and execution of the Settlement Agreement by Desjardins, as well as the disposition of the matter by the MFDA Hearing Panel, took place during the relevant period of time. Consequently, it is likely that if the Respondents had brought the activities of Schriver to the attention of Desjardins, at a minimum, a reasonable supervisory investigation would have taken place.

278. We also reviewed the IIROC case of Richardson (*Richardson (Re)* 2013 LNIROC 50), where a branch manager became aware that a Registered Representative at his branch was recommending unsuitable margin borrowing to clients. Although the branch manager spoke to certain of the clients, he did not interview all of the clients for whom margin borrowing might not be suitable. He also did not advise head office of his concerns. He was disciplined.

279. In our view, it is clear that when a Branch Manager or alternate Branch Manager becomes aware of potential investor harm, he must take action. The nature and extent of this action will depend upon the circumstances.

280. For example, in March of 2007, when CB told both of the Respondents that two long-standing clients of Schriver had loaned him money and had not been repaid, this should have been a cause for concern.

281. When Schriver denied the borrowings to the Respondents, their level of concern should have been heightened, as there was a clear conflict between Schriver and the clients as to what the facts were.

282. In March of 2007, at the latest, the Respondents knew or ought to have known:

- (a) Schriver had been borrowing from named clients and had not been repaying the loans.
- (b) Schriver had specifically denied these borrowings to both of the Respondents.
- (c) CB was very upset and wanted something done.
- (d) If, in fact, Brinson was not a party to the November 20, 2006 telephone call, Schriver had arranged someone to impersonate Brinson to convince the client that the loan was legitimate and approved.

283. Action was demanded. Yet the Respondents, essentially, did nothing. They had a number of options, the easiest of which was to seek guidance from the Compliance Department at Desjardins. They did not want to do that as they feared that Schriver might be fired.

284. Schriver could only be fired if he was doing something improper. If he was doing something improper, especially with his past history, which was known to the Respondents, he should be fired. Fear of firing as a rationale for non-action is a non-sequitur.

285. Putting the onus on the clients to bring forward proof of loans before any action would be taken was improper.

286. The Respondents could have started their own investigation or passed that task on to Head Office. They should, at a minimum, have told the clients that Schriver was denying the borrowing.

287. Instead, they consciously decided to do nothing, with the presumed hope that matters would take care of themselves.

288. If appropriate action had been taken by the Respondents in March of 2007, the subsequent carnage wreaked by Schriver on the Desjardins clients might have been prevented or, at least, mitigated.

289. As time went on and matters escalated with more clients not being repaid the borrowings by Schriver, the Respondents still did not report matters to Head Office and seemingly put the onus on the clients to protect themselves from the predations of Schriver.

290. After a detailed review of the admissible evidence, we have concluded that the Respondents' conduct was not in the best interests of the clients. It was not in the best interests of Desjardins. It was not in the best interests of the public. It was conduct which was unbecoming and detrimental to the public interest.

291. We find that a breach of Rule 2.1.1(c) has occurred.

K. CONCLUSION AND DECISION

292. After carefully reviewing the extensive documentary and testamentary evidence in this matter, and listening to and considering the written and oral submissions of the parties, including the case-law submitted, we have, unanimously, concluded as follows:

- (a) In the case of the Respondent, Ronald Bruce Brinson, we find that "Between in or about February 2007 and June 2009, the Respondent, while designated as co-Branch Manager or alternate Branch Manager, received information on at least five occasions that Bruce Schriver, a licensed insurance agent of an affiliate of the Member who conducted business from the location for which the Respondent was the co-Branch Manager or alternate Branch Manager, had borrowed monies from clients and other individuals which he had not repaid, which information the Respondent failed to report to the Member's head office compliance staff, as a result of which the Member was not made aware of the circumstances and was unable to conduct a reasonable supervisory investigation and take such other

supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rule 2.1.1(c).”

- (b) In the case of the Gabriele Gentile, we find that “Between in or about February 2007 and June 2009, the Respondent, in his capacity as Branch Manager, received information on at least five occasions that Bruce Schriver, a licensed insurance agent of an affiliate of the Member who conducted business from the branch location supervised by the Respondent, had borrowed monies from clients and other individuals which he had not repaid, which information the Respondent failed to report to the Member’s head office compliance staff, as a result of which the Member was not made aware of the circumstances and was unable to conduct a reasonable supervisory investigation and take such other supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rule 2.1.1(c).”

293. At this time, we have received no evidence, nor heard any submissions with respect to what, if any, penalty should be imposed on either or both of the Respondents in light of the findings which we have made herein. In this regard, we would ask that the MFDA Hearings Manager confer with the parties in order to ascertain whether mutually agreeable arrangements can be made for a penalty hearing. If such arrangements cannot be made, the MFDA Hearings Manager shall convene a telephone appearance, at a mutually convenient time, so that the Hearing Panel can make the appropriate procedural Order.

DATED this 26th day of June, 2015.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative