

Decision and Reasons (Penalty)

File No. 201739



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: Gregory Burke

Heard: August 10, 2017 in Halifax, Nova Scotia
Misconduct Decision: August 10, 2017
Decision & Reasons (Penalty): December 19, 2017

DECISION AND REASONS (PENALTY)

Hearing Panel of the Atlantic Regional Council:

Edward W. Keyes	Chair
Susan Nixon	Industry Representative
Darrell Bing	Industry Representative

Appearances:

Lyla Simon)	Counsel for the Mutual Fund Dealers
)	Association of Canada
Brian Casey, QC)	Counsel for the Respondent
Gregory Burke)	Respondent, In Person
)	

I. Introduction

1. By Notice of Hearing dated May 24, 2017 the Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding against Gregory Burke (“Respondent”) pursuant to Sections 20 and 24 of MFDA By-law No. 1.

2. At a Hearing held on August 10, 2017, this Hearing Panel was asked to consider and determine the appropriate penalty to be imposed on the Respondent arising from an Agreed Statement of Facts (“ASF”), dated August 8, 2017, entered into between the MFDA and the Respondent. The relevant portions of the ASF are as follows:

I. IN PUBLIC / IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

II. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts with attached Appendix "A" ("Agreed Statement of Facts"), and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to be imposed on the Respondent including:

- i. a reprimand (if any), pursuant to s. 24.1.1 (a) of MFDA By-law No. 1;
- ii. a fine (if any) to be paid by the Respondent; pursuant to s. 24. 1.1(b) of MFDA By-law No. 1;
- iii. the length of a suspension, revocation, or prohibition (if any) to be imposed on the Respondent, pursuant to s. 24.1.1 (c) (e) of MFDA By-law No. 1;
- iv. any other conditions to be imposed on the Respondent (if any), pursuant to s. 24.1.1 (f) of MFDA By-law No. 1; and
- v. an amount for costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s. 24.2 of MFDA By-law No. 1.

6. Staff is seeking a fine in the amount of at least \$20,000 pursuant to s. 24. 1.1(b) of MFDA By-law No. 1, and costs of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

7. The Respondent is seeking a reprimand, pursuant to s. 24.1.1 (a) of MFDA By-law No. 1;

III. AGREED FACTS

8. 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 the documents attached as Appendix "A", and no other information 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.

9. 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.

Registration History

10. The Respondent has been registered as a mutual fund salesperson since January 1998.

11. Since December 2, 2009, the Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Equity Associates Inc. ("Equity"), a Member of the MFDA. The Respondent has been registered with Equity in the following provinces during the following time periods:

- December 2, 2009 to present: Ontario and Nova Scotia;
- December 2, 2009 to December 23, 2011 and June 28, 2016 to present: Alberta; and December 2, 2009 to December 23, 2011: Newfoundland and Labrador.

12. From January 2008 to November 30, 2009, the Respondent was registered in Alberta, Newfoundland and Labrador, Nova Scotia, and Ontario as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA.

13. From June 2004 to January 10, 2008, the Respondent was registered in Alberta, Newfoundland and Labrador, Nova Scotia, and Ontario as a dealing representative with HollisWealth Advisory Services Inc. (formerly Dundee Private Investors Inc.), a Member of the MFDA.

14. At all material times, the Respondent carried on business from a sub-branch location in Halifax, Nova Scotia.

Misleading Client Communications

15. From August 22, 2011 to November 25, 2015, the Respondent sent client communications to seven clients of Equity with respect to investments that the clients held, or investments that the Respondent was recommending to them, which included the following statements:

Date of email or letter	Client	Content	Appendix Tab
August 22, 2011 Letter	RB	"I have hired the best portfolio managers in Canada to manage our funds..." "We are 99% invested in Canada with the remainder in the U.S. in high yield corporate bonds, This month we have spent 8% of our cash during this correction taking advantage of the great buys" "...in 2008 when the TSX went down to 7,200 points, a decrease of -52% on the TSX. Our portfolio fell -22%. The TSX came up -25% and we came up a plus 7%." "If you began a T-SWP in December 2007 you would be receiving \$60k per annum, tax deferred."	1
February 18, 2013 Email	GB & MB	"\$100,000 invested today at 8% over 12 years should give you a return of \$251k, enabling you to withdraw \$20k net, taxed deferred over twenty years..."	2
November 10, 2013 Email	JM & HM	"TSWP funds to avoid non-realized capital gains, monies being distributed on an 8% ROC (return of capital) basically avoiding any taxes over the next twenty years..." I "I may suggest that if given an opportunity to payout your mortgage providing not attached to another interest bearing loan it would be to your benefit to pay it off, borrow against your house to reinvest using the interest for a tax deduction Total interest paid \$71k giving you a tax refund of \$31,600 over a period of five years..."	3
October 14, 2014 Email	RB ¹	"...in 2013 the market climbed 7%, but we gained 28%" "We will always outperform the markets on the way up." : "...I can assure you that with all the volatility we will double our ' investments in 10 — 12 years"	4
March 25-26, 2015 Email	AB	"...I will do a comparable analyst mine vs. GWL. Most pension funds are managed using a diversified balanced fund, on that alone I can blow theirs out of the ball park even in a downturn."	5

¹ This refers to the same client RB as identified in the letter sent August 22, 2011.

Date of email or letter	Client	Content	Appendix Tab
November 25, 2015 Email	MN	<p>"The projected future of this net investment in ten years nearing your retirement would be estimated at an 8% compounded interest at approximately \$800k allowing a net annual income of approximately \$64,000..."</p> <p>"I am suggesting redeeming your existing Manulife loans taking our profits \$229k investing into Fidelity funds pledging the profits of \$100k of the 229 for a 3:1 \$300k I32B loan,"</p> <p>"One, showing you're the future growth in 10-20 years at 8% compounded interest of the strategy I am recommending. Two, a scenario of the growth of your investment in 10 years formerly IA Clarington now Fidelity at 8% compounded interest. The third is a withdrawal amount of both scenarios and the future growth on an 8% compounded interest with a 7.9% withdrawal over 30 years..."7.9% withdrawal over 30 years..."</p>	6

16. The client communications set out above:

- (a) were untrue or misleading;
- (b) failed to explain the risks, potential costs, or losses associated with the recommendations, including leveraged investment recommendations;
- (c) made unwarranted or exaggerated claims or conclusions or failed to identify the material assumptions made in arriving at these conclusions; and/or
- (d) failed to indicate the source of the information, such as providing complete information about how the proposed returns would be achieved on the investment recommendations the Respondent made to the clients,

17. The Respondent states that all of the clients referred to above are long-term clients of the Respondent, whose mutual fund accounts the Respondent has serviced for a period of 10 to 19 years. The clients are well-educated and have professional backgrounds.

18. The Respondent states that the client communications were accompanied by articles and other documents, which provided context to his statements.

19. No investments were made by the clients as a result of the communications in issue.

20. There have been no client complaints to the MFDA or Equity in this matter.

Misconduct Admitted

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

- i. Between August 2011 and November 2015, the Respondent sent written communications to seven clients containing misleading or incomplete information, unwarranted or exaggerated claims, and/or failing to identify the material assumptions upon which the conclusions were based, contrary to MFDA Rules 2.8.2 and 2.1.1.

Additional Factors

22. The Respondent resides in Lucasville, Nova Scotia and is 64 years old. The Respondent states that he wishes to continue as a dealing representative within the mutual fund industry.

23. Equity conducted an investigation of this matter, and on April 15, 2016, issued a warning letter to the Respondent. Equity also took steps to increase its review of communications issued by the Respondent to clients.

24. The Respondent has not previously been the subject of MFDA disciplinary proceedings;

25. The Respondent has cooperated with MFDA Staff throughout the investigation and the disciplinary proceedings.

Analysis and Reasons for Decision

4. The allegation admitted to by the Respondent, as set out in paragraph 21 of the ASF, arises out of 5 emails plus a letter that he sent to respective clients between August 22, 2011 and November 25, 2015 concerning investments the clients held or investments that the Respondent was recommending.

5. The task for this Hearing Panel is to determine the appropriate penalty to be levied against the Respondent under the circumstances.

MFDA Rules 2.1.1 and 2.8.2

6. MFDA Rule 2.1.1, states the following:

2.1.1 *Standard of Conduct*

Each Member and each Approved Person of a Member shall:

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

7. MFDA Rule 2.8.2 states the following:

2.8.2 *General Restrictions*

No client communication shall:

- (a) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;
- (b) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;
- (c) be detrimental to the interests of clients, the public, the Corporation or its Members;
- (d) contravene any applicable legislation or any guidelines, policy, rule or directive of any regulatory authority having jurisdiction over the Member; or
- (e) be inconsistent or confusing with any information provided by the Member or Approved Person in any notice, statement, on confirmation, report, disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rule, Policies or Forms.

Powers of Hearing Panel

8. Section 24.1.1(a) to (f) of MFDA By-law No. 1 sets out the penalties which may be imposed by Hearing Panels when an Approved Person has breached any By-law, Rule or Policy of the MFDA:

24.1.1. Approved Persons

A Hearing Panel of the applicable Regional Council shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation:
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

9. Staff submits that an appropriate penalty under the circumstances is a fine in the amount of \$20,000 pursuant to s. 24.1 (b) of MFDA By-law No. 1 together with an order that the Respondent pay costs of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1.

10. The Respondent argues that the appropriate penalty under the circumstances is a written reprimand.

Factors to Be Considered in Determining Appropriate Penalty

11. Hearing Panels have repeatedly stated that when exercising its discretion to impose a penalty, the panel should consider the following:

- (i) the protection of the investing public;
- (ii) the integrity of the securities market;

- (iii) specific and general deterrents;
- (iv) the protection of the governing body's membership; and
- (v) the protection of the integrity of the governing body's enforcement processes.

Re: Larsen 2009 LNCMFDA 30, Prairie Regional Council, File No. 200826, Hearing Panel Decision dated October 14, 2009.

Re: Scharfenberg 2008 MFDA, Prairie Regional Council, File No. 200824 Hearing Panel Decision dated March 9, 2009.

12. As well, numerous Hearing Panels have also set out the following additional factors to be considered when determining an appropriate penalty:

- (i) the seriousness of the allegations proved 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 the respondent's activities;
- (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.

Re: Larsen 2009 LNCMFDA 30, Prairie Regional Council, File No. 200826, Hearing Panel Decision dated October 14, 2009, para 73.

Application of above Factors to the Present Case

13. In assessing the appropriate penalty the Hearing Panel has considered and applied the above factors to the circumstances of this matter.

Respondents Experience and level of Activity in Capital Markets

(i) The Respondent is an experienced registrant, having been registered in the Industry since January 1998.

Respondents Disciplinary History

(ii) The Respondent has no prior disciplinary history with the MFDA.

Number of Clients in Receipt of Materials

(iii) The communications in question were sent to six clients over an approximately 4 year period.

Harm suffered by Investors as a Result of Improper Activity

(iv) No investments were made by the clients as a result of the communications received from the Respondent.

Benefits received by Respondent as a Result of Improper Activity

(v) The Respondent did not receive any benefits as a result of his activities.

Does the Respondent recognize the seriousness of the Improper activity

(vi) The Respondent co-operated with the MFDA; accepted responsibility for his misconduct; entered into the Agreed Statement of Facts, the effect of which has been to reduce the length and complexity of the proceedings.

Whether Materials Distributed would have been approved by Member

(vii) It is not disputed that Equity would not have approved the communications sent out by the Respondent. Equity conducted its own investigation, found the misconduct to be serious such that it issued a written warning to the Respondent. Equity also took steps to increase its review of correspondence issued by the Respondent.

Seriousness of the Allegations

(viii) Staff and the Respondent take differing positions on the seriousness of the allegation.

(ix) Staff submits that the misconduct admitted to by the Respondent is so serious that it should attract a fine in the amount of \$20,000 together with costs in the amount of \$5,000.

(x) The Respondent takes an opposing view, arguing that the communications were “sloppy” or “colorful language” or “puffery” and suggests the appropriate penalty in the circumstances should be a written reprimand only.

(xi) Further, the Respondent submits that because some of the communications were sent following a meeting with the clients and some also referred to attachments which presumably would have been discussed at the meetings, the communications should be viewed as less serious in terms of the penalty that should apply.

Deterrence

(xii) One of the most important factors to be considered in determining an appropriate penalty is the general deterrence objective which serves to promote the prevention of future harm to the capital market, thereby advancing the goal of enhancing the protection of investors.

14. The Supreme Court of Canada in *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557, held that the primary goal of all securities regulation, whether such regulation exists through legislation or is self-imposed by a self-regulation organization such as the MFDA, is the protection of the investing public.

15. In *Re Tonnies 2005 LCNMFDA 7*, the Panel there found that the role taken by a Hearing Panel in determining an appropriate penalty is similar to the role that is exercised by a Securities Commission when it determines an appropriate penalty. In *Re Tonnies* the Hearing Panel cited the Ontario Security Commission decision in *Re Mithras Management Ltd et al. (1990)*, 13 O.S.C.B. 1600, for the following proposition:

...[T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best

we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

16. Rule 2.1.1 sets out the Standard of Conduct for an Approved Person requiring them to, among other things:

- (i) deal fairly, honestly and in good faith with clients;
- (ii) observe high standards of ethics and conduct in the transaction of business;
- (iii) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

...

17. As an important element of investor protection, MFDA Rule 2.8.2 requires that no client communications shall (among other things):

- (i) be untrue or misleading or use an image such as a photograph, sketch, logo or graph which conveys a misleading impression;
- (ii) make unwarranted or exaggerated claims or conclusions or fail to identify the material assumptions made in arriving at these conclusions;
- (iii) be detrimental to the interests of clients, the public, the Corporation or its Members;
- (iv) contravene any applicable legislation or any guideline, policy, rule or directive of any regulatory authority having jurisdiction over the member; or
- (v) be inconsistent or confusing with any information provided by the Member or Approved Person in any notice, statement, confirmation, report disclosure or other information either required or permitted to be given to the client by a Member or Approved Person under the By-laws, Rules, Policies or Forms.

18. The Respondent admits that the communications in question with his clients:

- (i) were untrue or misleading;

- (ii) failed to explain the risks, potential costs or losses associated with the recommendations, including leveraged investment recommendations;
- (iii) made unwarranted or exaggerated claims or conclusions or failed to identify the material assumptions made in arriving at these conclusions; and/or
- (iv) failed to indicate the source of the information, such as providing complete information about how the proposed returns would be achieved on the investment recommendations the Respondent made to the clients.

19. The written communications that breached MFDA Rules 2.8.2 and 2.1.1, as are set out in paragraph 15 of the ASF, included the following comments:

- “I have hired the best portfolio managers in Canada to manage our funds...
- \$100,000 invested today at 8% over 12 years should give you a return of \$251K enabling you to withdraw \$20K net taxed deferred over twenty years...
- ...in 2013 the market claimed 7% but we gained 28%.
- “We will always outperform the markets on the way up.”
- “...I can assure you that with all the volatility we will double our investments in 10-12 years”
- “I can blow theirs out of the ball park even in a downturn.”

Penalty Guidelines

20. The Respondent submits that because the Penalty Guidelines do not specifically address a breach of Rule 2.8, a reprimand is an appropriate penalty for the Respondents misconduct.

21. The MFDA Penalty Guidelines however do provide guidance to the Panel when considering appropriate penalties for a breach of the MFDA Rules. The Penalty Guidelines at Part II give the following guidance to Hearing Panels when considering misconduct for which there is no specified penalty as in the case of MFDA Rule 2.8.2. It states:

Part II is not intended to be exhaustive of all possible case types. Where a disciplinary proceeding involves a case type other than the one described in Part II, guidance as to the appropriate types and ranges of penalties to impose may be obtained by way of comparison with one of the existing case types.

22. Accordingly Staff referred the Panel to the penalties set out for a breach of MFDA Rule 2.7 *Sales Communication* as a comparison of what may be appropriate in this case. A breach of MFDA Rule 2.7 calls, inter alia, for a minimum fine of \$2,500.

23. The Respondent objects to such a comparison due to alleged significant differences between Rule 2.7 and Rule 2.8 in the nature of the maligned conduct being addressed. The Respondent submits that the audience, intention and context of the activities which arise in a breach of MFDA Rule 2.7 are significantly different than the misconduct that is covered by MFDA Rule 2.8. As a result the Respondent submits that because a breach of MFDA Rule 2.7 attracts a minimum fine of \$2,500 which is arguably more serious than a breach of MFDA Rule 2.8, a reprimand is an appropriate penalty for the Respondent in this case.

24. Notwithstanding the Respondent's objections to comparing the penalties available under Rule 2.7 such a comparison is of some assistance to the Panel in determining the appropriate penalty vis à vis the Respondents misconduct in breaching MFDA Rule 2.1.1 and 2.8.2. In our opinion a number of the "Specific Factors to Consider" set out in the Penalty Guidelines in determining a penalty under Rule 2.7 can also be applied to a breach of Rule 2.8. These include:

- (i) Whether materials distributed would have received approval by the Member.
- (ii) Materiality of misrepresentations or prohibited information, if any, contained in materials.
- (iii) Whether misrepresentations are likely to bring the mutual fund industry into disrepute.
- (iv) Whether client(s) acted upon misrepresentations or prohibited information contained in materials.
- (v) Number of clients in receipt of materials.

25. MFDA Rule 2.8.2 is intended to stand on its own and a breach of the Rule will incur such penalty or penalties as a Hearing Panel deems appropriate given all of the circumstances of the case before it.

Prior MFDA Decisions

26. Hearing Panels are often referred to prior decisions of MFDA regulatory proceedings with similar fact scenarios or similar penalties in order to provide the Hearing Panel with guidance in determining the appropriate penalty. As stated in the MFDA Penalty Guidelines, at page 5:

“The amount of fine or other penalty depends on the facts of each case, including the need for specific and general deterrence. While prior decisions are instructive, the nature and extent of the penalty to be imposed in a given case cannot necessarily be determined by comparison with penalties imposed in similar proceedings.”

27. Staff referred the Panel to a number of prior MFDA decisions. In our opinion these decisions are not particularly helpful in determining an appropriate penalty in this case. None of the decisions had misconduct that was similar to the misconduct in the present case nor were the penalties imposed in line with the positions being taken by the parties in the present case.

28. MFDA Rule 2.1.1 requires Approved Persons to deal fairly, honestly and in good faith with clients while not engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. By engaging in the conduct admitted to the Panel finds that in breaching MFDA Rule 2.1.1 the Respondent has not dealt fairly and in good faith with his clients and has engaged in conduct that is unbecoming or detrimental to the public interest.

29. MFDA Rule 2.8.2 requires that Approved Persons will not disseminate, inaccurate or otherwise prohibited information to clients by any form of communication. The Respondent admits to breaching MFDA Rule 2.8.2.

30. In our opinion, the Respondent's breaches of Rule 2.1.1 and 2.8.2 are serious and the penalty imposed should be proportionate to the misconduct engaged in. The communications in question occurred on multiple occasions, over a number of years and were not retracted.

31. The fact that the misleading communications were reduced to writing in our opinion contradicts the Respondents argument that they were "puffery" and clearly shows the Respondent intended that the miscommunications be relied on. While the Panel acknowledges that Equity issued a written reprimand to the Respondent for his misconduct the Panel is of the opinion that a reprimand is not sufficient under the circumstances.

32. The Respondent is an experienced dealing representative with over 19 years' experience in the industry. He should have known that regardless of the purpose of communications or that they were sent in follow-up to client meetings the potential existed for his clients to act on his misleading communications. That they did not, in our opinion, does not lessen the Respondent's culpability in this matter nor should it serve to attract a lesser penalty.

33. It goes without saying that the investing public relies on the advice received from dealing representatives such as the Respondent when making investment decisions. It is important therefore that the information being communicated to clients be accurate and not misleading. Here the Respondent sent written communications to six clients containing misleading or incomplete information, unwarranted or exaggerated claims, and/or which failed to identify the material assumptions upon which the conclusions were based.

34. One of the most important factors that a Hearing Panel needs to consider in determining the appropriate penalty is deterrence, not only specific but general deterrence. In addition to deterring the Respondent from the type of misconduct a clear message needs to be sent to industry participants that the misconduct undertaken and admitted to by the Respondent is not acceptable and will not be tolerated. As was stated by the Hearing Panel in the MFDA decision of *John-Brown, 2005 LNCMFDA 6*, at para 19, "The penalty must re-affirm public confidence in the system, and to do this it must be seen to act as a general deterrent".

35. The breach of MFDA Rule 2.1.1 and 2.8.2, as has been admitted to by the Respondent, requires a penalty that will serve to re-affirm public confidence in the system and will deter others in the industry from undertaking the misconduct carried out by the Respondent.

36. Staff submits that an appropriate penalty is a fine in the amount of \$20,000 together with costs in the amount of \$5,000. We think a fine in this amount is excessive under the circumstances. Any penalty issued must not be punitive and a fine in the amount of \$20,000 under the circumstances of this case could be viewed as such. We also do not agree with the Respondent that a written reprimand is appropriate as a reprimand would not serve to deter others in the industry from engaging in the misconduct as has been admitted to by the Respondent.

37. Having regard to all of the circumstances of this case, as well as to the submissions of Staff and the Respondent, we hereby Order the Respondent:

- (i) to pay a fine of \$10,000 for breaching MFDA Rules 2.1.1 and 2.8.2, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (ii) to pay costs in the amount of \$5,000 pursuant to s. 24.1.1 (a) of MFDA By-law No. 1;

38. The Hearing Panel is satisfied that the penalties imposed are reasonable and proportionate and will deter the Respondent and other MFDA Approved Persons from engaging in similar misconduct. We believe the penalties imposed will advance the public interest and the MFDA objectives of enhancing investor protection and ensuring high standards of conduct in the industry.

DATED this 19th day of December, 2017.

“Edward W. Keyes”

Edward W. Keyes
Chair

“Susan Nixon”

Susan Nixon
Industry Representative

“Darrell Bing”

Darrell Bing
Industry Representative

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