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: Tadeusz ("Ted") Bytnar

Heard: February 9 and 10, 2011 in Calgary, Alberta
Reasons for Decision: April 6, 2011

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

The Hon. Mary M. Hetherington, Q.C.	Chair
Patricia Kloepfer	Industry Representative
Kathleen Jost	Industry Representative

Appearances:

Lyla Simon	)	For the Mutual Fund Dealers Association of Canada
	)	
Tadeusz ("Ted") Bytnar	)	Not in attendance or represented by counsel
	)	

1. In accordance with s. 20 of By-law No. 1 of the Mutual Fund Dealers Association of Canada (MFDA), its Corporate Secretary signed a Notice of Hearing with respect to Tadeusz Bytnar on the 30th of June, 2010. A copy of this Notice of Hearing is marked as Appendix A to these Reasons for Decision.

2. On the 24th of September, 2010, this Hearing Panel found that Tadeusz Bytnar had been served with a copy of this Notice of Hearing in accordance with s. 4.2(1)(b) of the Rules of Procedure of the MFDA. On the same day it directed that the hearing take place commencing on the 9th of February, 2011.

3. As indicated above, Lyla Simon appeared on that date as Enforcement Counsel for the MFDA. Mr. Bytnar did not appear, nor was he represented by Counsel.

Allegations

4. The Notice of Hearing sets out the allegations made by the MFDA against Mr. Bytnar as Respondent. They are as follows:

- **Allegation #1:** In 2003 and 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of an investment product that was not approved for sale by the Member to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

- **Allegation #2:** In 2003 and 2005, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

- **Allegation #3:** In 2008 and 2009, the Respondent interfered with the ability of the Member to conduct a reasonable supervisory investigation of the Respondent's conduct by providing false and misleading responses to the Member in the course of its investigation, contrary to MFDA Rules 1.1.2 and 2.5.1, and 2.1.1.

- **Allegation #4:** Commencing August 2009, by failing to comply with a request by MFDA Staff that he provide copies of bank statements for the material time under investigation, the Respondent failed to cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

5. Ms. Simon advised the Hearing Panel that Allegation #2 should refer to MFDA Rule 1.2.1(c), instead of Rule 1.2.1(d).

Facts

6. Section 20.2 of MFDA By-law No. 1 provides that a person summoned before a Hearing Panel pursuant to a Notice of Hearing shall file a reply. Section 20.4 of the By-law reads as follows:

> 20.4 Failure to Reply or Attend
>
> If a Member or person summoned before a hearing of a Hearing Panel by way of Notice of Hearing fails to:
>
> (a) serve a reply in accordance with s. 20.2; or
> (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a reply may have been served;
>
> the Hearing Panel may proceed with the hearing of the matter on the date and at the time and place set out in the Notice of Hearing (or any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Hearing Panel may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Section 24.1.

7. Mr. Bytnar did not file a reply. He did not attend at the hearing specified in the Notice of Hearing, or at any subsequent hearing with respect to this matter. For this reason alone, the Hearing Panel could accept the facts alleged in the Notice of Hearing.

8. However, these facts are supported by the evidence of James Chee, an investigator for the MFDA. Mr. Chee swore an affidavit on the 2nd of February, 2011, which was marked as an exhibit during the hearing. He also testified before the Hearing Panel. Much of his evidence was hearsay. However, s. 1.6 of the MFDA Rules of Procedure permits the admission of hearsay evidence. The relevant part of that rule reads as follows:

> 1.6(1) . . . a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.

The Hearing Panel is satisfied that it can rely on Mr. Chee's evidence, and that it supports the facts set out in the Notice of Hearing.

9. The Notice of Hearing is marked as Exhibit A to this decision. The facts on which the MFDA relies are set out in it under the heading "Particulars". The Hearing Panel accepts those facts for the reasons set out above.

10. In summary, from May 2001 to November 2006, Mr. Bytnar was registered in Alberta as a mutual fund salesperson with Generation Financial Corp. ("Generation Financial"). From November 9, 2006 to June 15, 2009, he was registered in Alberta as a mutual fund salesperson with Professional Investment Services (Canada) Inc. ("P.I.S.").

11. In 2003 and 2005 Mr. Bytnar encouraged four friends to invest in Safeguard Asset Management Inc. ("Safeguard"). It appears from Mr. Chee's evidence that these people were then in their fifties, and of modest means. They were not sophisticated investors. They had all immigrated to Canada from Poland, as had Mr. Bytnar. He had dealt with two of them as a mutual fund salesperson.

12. In dealing with these friends, Mr. Bytnar described the business of Safeguard in different ways, depending on the people to whom he was talking. He told one couple that an investment in Safeguard would give them an opportunity to invest in land, oil and properties in Canada and the United States. He told the other couple that an investment in Safeguard was a currency exchange investment based in Europe. (Much later he told Mr. Chee that Safeguard was developing a plasma engine for the United States military.) Mr. Bytnar also told his friends that he and his daughter had invested in Safeguard.

13. Safeguard raised funds by issuing promissory notes and preferred non-voting shares to investors. Mr. Bytnar facilitated his friends' investments in Safeguard by explaining things, completing documents, taking documents to and from the company, and collecting money for delivery to the company. He brought two of the investors a payment due from Safeguard on their investments. He also listened to his friends' complaints when Safeguard did not pay promised interest or return principal.

14. All of this was done without the knowledge of Generation Financial. The promissory notes and preferred non-voting shares of Safeguard were not investment products known to or approved by that company.

15. Two of the people referred to above invested USD $45,000 (approximately CD $56,000) in Safeguard. They recovered only USD $18,000 in 2008. The other two invested USD $40,000 (approximately CD $53,000). They did not recover anything. It is not likely that there will be any further recovery on these investments. Safeguard has been struck from the Alberta Corporate Registry, and no longer has a working address, telephone number or website.

16. In 2008 and 2009 the staff of MFDA advised P.I.S. that MFDA had received a complaint from two of the people who invested in Safeguard. P.I.S. then began an investigation. Mr. Bytnar provided false and misleading information to P.I.S. during the course of the investigation.

17. Initially, Mr. Bytnar cooperated with the MFDA investigation and was interviewed by MFDA staff on the 7th of August, 2009. During that interview he undertook to provide a number of documents. However, since that time he has failed to comply with this undertaking, and has ceased communicating with staff.

Decision of Hearing Panel as to Allegations

18. The first allegation made against Mr. Bytnar is set out above. I will repeat it here for ease of reference.

> **Allegation #1:** In 2003 and 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of an investment product that was not approved for sale by the Member to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

19. The relevant parts of MFDA Rule 1.1.1 read as follows. Mr. Bytnar was an Approved Person at the times in question in this case.

> **Members.** No…Approved Person…in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:
>
> (a) all such securities related business is carried on for the account of the Member through the facilities of the Member…and in accordance with the By-laws and Rules…

20. By-law 1.1 reads in part as follows:

> **"securities related business"** means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty securities sold pursuant to exemptions under applicable securities legislation;

The conduct of Mr. Bytnar clearly falls within the provisions of s. 1, ss. (a.1), (ggg) and (jjj) of the Alberta Securities Act, RSA 2000, c. S-4. These subsections define trading and advising in securities for the purposes of the Act. It follows that his conduct was contrary to MFDA Rule 1.1.1. It is not necessary for the Hearing Panel to consider MFDA Rules 2.4.2 and 2.1.1.

21. Nor is it necessary for the Hearing Panel to deal at length with the remaining allegations. Mr. Bytnar clearly contravened the MFDA Rules and the By-law referred to in them.

Decision of Hearing Panel as to Penalty

22. Ms. Simon referred the Hearing Panel to decisions of other Hearing Panels in similar cases. She also referred the Hearing Panel to the MFDA Penalty Guidelines. These Guidelines set out "…the general principles which should be considered in penalty decisions in all disciplinary cases." They also deal with case types that commonly arise. With respect to each of these case types, the Guidelines set out specific factors which should be considered in addition to the general principles. Further they set out types and ranges of penalties appropriate to the case type. Where a disciplinary proceeding involves a case type that is not described in the Guidelines, it is suggested that guidance can be obtained by comparison with a case type that is described in the Guidelines.

23. The Hearing Panel has considered carefully the provisions of the MFDA Penalty

Guidelines. Having done so, it is of the view that the following penalties are appropriate in this case:

- A permanent prohibition of Mr. Bytnar's authority to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member.

- A direction that Mr. Bytnar pay the following fines:

  (i) For engaging in securities related business or engaging in a dual occupation as described in Allegations #1 and #2, $90,000;

  (ii) For interfering with the Member's ability to conduct a reasonable supervisory investigation as described in Allegation #3, $10,000; and

  (iii) For failing to cooperate with the MFDA investigation as described in Allegation #4, $50,000.

- A direction that Mr. Bytnar pay to the MFDA costs in the amount of $7,500.

24. In coming to this conclusion the Hearing Panel has taken into consideration the following facts:

- By refusing to comply with the undertaking that he gave during his interview with MFDA staff, and by refusing after the interview to communicate with the staff, Mr. Bytnar has made it impossible to determine the full nature and extent of his misconduct regarding Safeguard. It is clear from Mr. Chee's evidence that others invested in Safeguard, some through Mr. Bytnar. The people who spoke to Mr. Chee about this would not name those individuals.

- In speaking to the four friends who invested in Safeguard (and to Mr. Chee), Mr. Bytnar gave very different descriptions of the business of Safeguard.

- In encouraging his friends to invest in Safeguard, Mr. Bytnar must have known that he was dealing with unsophisticated investors.

- These people invested in Safeguard because Mr. Bytnar recommended that they do so. They relied on him as a friend and as a mutual fund salesperson, and he betrayed their trust.

- They invested considerable amounts of money in Safeguard, and only one couple has received anything in return. Since it does not appear that Safeguard is now in business, it is very unlikely that there will be any further recovery.

- Mr. Bytnar made false and misleading responses to P.I.S. during the course of its investigation.

25. The Hearing Panel regards the contraventions by Mr. Bytnar of the Rules and By-law of

the MFDA to be very serious. However, it is satisfied that the penalties described above are such as to deter Mr. Bytnar and to deter others from contravening these Rules and the By-law. It is satisfied that they are sufficient to protect the investing public.

26. The Hearing Panel signed an Order setting out its decisions on the 10th of February, 2011. A copy of this Order is attached to these Reasons for Decision as Appendix B.

DATED this 6th day of April, 2011.

"Mary Hetherington"
The Hon. Mary M. Hetherington,
Chair

"Patricia Kloepfer"
Patricia Kloepfer,
Industry Representative

"Kathleen Jost"
Kathleen Jost,
Industry Representative

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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: Tadeusz ("Ted") Bytnar

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the "Hearing Panel") of the Prairie Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") in the hearing room located in the MFDA offices at 800 – 6th Avenue SW, Suite 850, Calgary, Alberta on September 17, 2010 at 10:00 a.m. (Mountain), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Tadeusz ("Ted") Bytnar (the "Respondent").

DATED this 30th day of June, 2010.

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto, Ontario, M5H 3T9
Telephone: 416-943-5836
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: In 2003 and 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of an investment product that was not approved for sale by the Member to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

Allegation #2: In 2003 and 2005, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1.

Allegation #3: In 2008 and 2009, the Respondent interfered with the ability of the Member to conduct a reasonable supervisory investigation of the Respondent's conduct by providing false and misleading responses to the Member in the course of its investigation, contrary to MFDA Rules 1.1.2 and 2.5.1, and 2.1.1.

Allegation #4: Commencing August 2009, by failing to comply with a request by MFDA Staff that he provide copies of bank statements for the material time under investigation, the Respondent failed to cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From November 9, 2006 to June 15, 2009, the Respondent was registered in Alberta as a mutual fund salesperson with Professional Investment Services (Canada) Inc. ("PIS").

2. The Respondent was previously registered in Alberta May as a mutual fund salesperson with Generation Financial Inc. ("Generation Financial") from 2001 to November 2006. Prior to Generation Financial, the Respondent had been registered in Alberta as mutual fund salesperson since May 1992.

3. Professional Investment Services (Canada) Inc. ("PIS") became a member of the MFDA on June 7, 2002.

4. PIS acquired Generation Financial Inc. in November 2006.

5. On June 15, 2009, the Respondent was terminated by PIS as a result of the events described herein.

6. The Respondent is not currently registered in the securities industry in any capacity.

Allegations #1 & #2 – The Safeguard Investment

7. Safeguard Asset Management Inc. ("Safeguard") was incorporated in Alberta in 2003 with its head office located in Calgary, Alberta.

8. At the material time, Safeguard raised funds by issuing promissory notes ("Safeguard Promissory Notes") and preferred non-voting shares to investors.

9. The Safeguard Promissory Notes were offered for a term of one year and paid interest at the rate of 3% per month (36% per annum), payable on a quarterly or annual basis. Both the initial investment and the interest payments were required to be in USD currency.

10. The minimum required investment for the Safeguard Promissory Notes varied from USD $10,000 to $50,000.

11. At the time of making their investment, investors completed a *Personal Data Summary*, and were issued a Safeguard Promissory Note, as well as a Safeguard *Share Subscription*

Agreement confirming their purchase of one preferred non-voting share in Safeguard for CDN $25. Investors were also required to complete a *Beneficiary Designation* form.

12. Neither the Safeguard Promissory Notes nor the Safeguard preferred shares were investment products known to or approved for sale by Generation Financial, the Member at which the Respondent was registered at the material time.

13. In or about March 2003, the Respondent attended a Safeguard seminar in Calgary, where he learned details about the Safeguard investment, including that Safeguard purportedly invested funds in plasma engine technology for the U.S military. Approximately 20 people attended the Safeguard seminar and prospective investors were instructed to visit Safeguard's website for further details.

14. The Respondent attended two further Safeguard seminars in Calgary in or about March to May 2003.

15. The Respondent states that shortly after the Safeguard seminars, he personally invested USD $30,000 in Safeguard for a term of two years.

16. The Respondent states that in 2005, his principal was returned to him, along with 30% interest (15% per annum).

Investment #1 - CW and WW (2003)

17. CW and WW ("the Ws") had been friends with the Respondent for approximately 15 years, spoke to him regularly and had previously purchased insurance products from him. The Ws were not clients of Generation Financial.

18. In or about 2003, the Respondent approached the Ws and presented Safeguard as a guaranteed investment which required a minimum initial investment of USD $50,000. The Ws were led to believe by the Respondent that they would be permitted to invest less than the usual minimum required.

19. The Respondent further advised the Ws that Safeguard invested funds in real estate and oil opportunities in the U.S. and Canada and that he (the Respondent) and his daughter were themselves Safeguard investors.

20. On or about October 14, 2003, the Respondent completed the subscription documents necessary for the Ws to invest in Safeguard, witnessed the Ws' signatures on the documents, and submitted the Ws' documents and a bank draft in the amount of USD $30,000 purchased by them to Safeguard to facilitate the Ws' investment in Safeguard.

21. As evidence of their investment, the Ws' received a Safeguard Promissory Note, dated October 14, 2003, which provided that their investment:

- was for a term of one year; and
- paid interest at the rate of 3% per month (36% per annum), calculated monthly and paid quarterly.

Investment #2 - CW and WW (2005)

22. On or about February 23, 2005, the Respondent completed the subscription documents necessary for the Ws to make a second investment in Safeguard in the amount of USD $15,000, which investment was made in the name of WW only.

23. The Respondent submitted the Ws' documents and bank draft to Safeguard on their behalf to facilitate the sale or referral of the Ws' investment in Safeguard. As evidence of their second investment, the Ws received a second Safeguard Promissory Note, dated February 23, 2005, which provided that their investment was:

- for a term of one year; and
- paid interest at the rate of 3% per month (36% per annum), payable in April 2006.

24. In or about 2005 or 2006, in response to complaints made by the Ws concerning their Safeguard investments, the Ws attended at the Respondent's home and were provided with a payment in the amount of USD $18,000, in the form of a cheque issued by Safeguard, on account of their Safeguard investments.

25. To date, aside from the USD $18,000 payment, the Ws have not received any further interest payments or return of capital in respect of their total USD $45,000 investment in Safeguard Promissory Notes. For the reasons set out below, there is no reasonable prospect of the Ws receiving any further payments.

Investment #3 - Clients OW and WW (2005)

26. From 1995 to September 2008, OW and WW ("the W-2s") were clients of Generation Financial and then PIS, after it acquired Generation Financial. At all material times, the Respondent was the Approved Person responsible for servicing their account.

27. In addition to being clients, the W-2s were also friends of the Respondent and spoke to him regularly.

28. In 2005, the Respondent invited the W-2s to a Safeguard seminar in Calgary.

29. The W-2s attended the Safeguard seminar with the Respondent, where they were led to believe that Safeguard invested funds in currency exchange products.

30. The Respondent advised the W-2s that Safeguard Promissory Notes were guaranteed and required a minimum initial investment of USD $40,000.

31. On or about October 14, 2005, the Respondent attended at the W-2s' home and provided additional details concerning the Safeguard investment, including that he and his daughter were both Safeguard investors.

32. At the W-2s' home, the Respondent completed the subscription documents necessary for the W-2s to invest in Safeguard and witnessed the W-2s' signatures on the subscription documents. Thereafter, the Respondent submitted the W-2s' documents and a USD $40,000 bank draft made out to Safeguard to facilitate the sale or referral of the W-2s' investment in Safeguard.

33. As evidence of their investment, the W-2s received a Safeguard Promissory Note, dated October 14, 2005, which provided that their investment:

- was for a term of one year; and
- paid interest at the rate of 3% per month (36% per annum), payable in November 2006;

34. When the W-2s' investment matured in November 2006, the Respondent persuaded them not to withdraw any capital or interest, but rather to leave the investment intact for another year, in return for a larger interest payment. The W-2s agreed to do so.

35. To date, the W-2s have not received any interest payments or return of capital in respect of their USD $40,000 investment in the Safeguard Promissory Note. For the reasons set out below, there is no reasonable prospect of them receiving any further payments.

Status of Safeguard

36. At no time did the Respondent disclose to or seek approval from Generation Financial to engage in the activity described above with respect to Safeguard. As stated above, the Safeguard Promissory Notes were not an investment product known to or approved for sale by Generation Financial (or by PIS).

37. Safeguard was struck from the Albert Corporate Registry effective September 2005 for failure to file annual returns and has not been reinstated.

38. Safeguard does not currently have a working address, website or telephone number.

39. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account of Generation Financial and through the facilities of Generation Financial (or PIS) by selling, referring or facilitating the sale of the Safeguard Promissory Notes, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

40. In the event the conduct engaged in by Respondent did not constitute securities related

business, then by engaging in the conduct described above the Respondent had and continued in a dual occupation that was not disclosed to and approved by Generation Financial (or by PIS), contrary to MFDA Rules 1.2.1(d) and 2.1.1.

Allegation #3 – Misleading the Member during its Investigation

41. On May 28, 2008, PIS received a copy of the written complaint by the Ws concerning the Respondent and their investment in Safeguard and commenced an internal investigation.

42. On May 29, 2008, PIS conducted a telephone interview with the Respondent, wherein he advised that he was aware that:

- clients had invested in Safeguard promissory notes, but that he had not discussed, recommended, or earned commissions from any sales of Safeguard Promissory Notes; and
- Safeguard had "gone under" and not met their obligations as he had spoken to "someone" from Safeguard.

43. During the same interview, when pressed, the Respondent provided the name and business contact information of the "someone" he had referred to, namely, one of the principals of Safeguard, MEH ("MEH").

44. Later in the day on May 29, 2008, PIS questioned the Respondent further in the form of an email questionnaire.

45. On June 3, 2008, the Respondent responded to the PIS questionnaire and:

- confirmed that he had not sold or recommended Safeguard products to any clients;
- confirmed that he had not received any commissions from Safeguard;
- stated that he was not in contact with MEH; and
- denied having any documents pertinent to PIS's review of Safeguard.

46. On June 3, 2008, PIS Compliance attended at the Respondent's branch and undertook a

review of all of his files.

47. The Respondent:

- reiterated that he had never sold or recommended Safeguard investments;
- advised, for the first time, that some of his clients had attended the same Safeguard seminar that he had attended but denied any knowledge of whether the clients had invested in Safeguard; and
- advised, for the first time, that he had heard of Safeguard in 2003, undertaken some research and had himself invested $30,000 in Safeguard.

48. On June 5, 2008, PIS Compliance requested a more fulsome response from the Respondent.

49. On June 9, 2008, Respondent responded by email to PIS and reiterated that he had not recommended any Safeguard products to anyone. In addition, the Respondent contradicted his earlier statement to PIS by:

- advising that he had attended not one, but two, Safeguard seminars in 2003; and
- denying that any of his clients had been in attendance at the Safeguard seminars.

50. In the same June 9, 2008 email response, the Respondent further advised PIS for the first time that:

- he had heard, while attending social gatherings, that others had invested in Safeguard; and
- in 2004, friends had accused him of stealing funds from their mutual fund accounts.

51. On June 10, 2009, PIS Compliance met with the W-2s and received copies of the W-2s' Safeguard documents, which:

- identified the Respondent by name as having referred the W-2s to the Safeguard investment; and

- bore the Respondent's signature as witness.

52. On June 11, 2009, PIS Compliance met with the Respondent. The Respondent acknowledged that it was his signature on the W-2s' Safeguard documents but was unable to provide a satisfactory explanation as to some of the other details in the documents. The Respondent indicated that he would speak with his legal counsel and advise further; however, PIS heard nothing further from the Respondent.

53. PIS immediately restricted the Respondent's ability to trade and placed him on strict supervision.

54. On June 15, 2009, the Respondent was terminated by PIS as a result of the events described above.

55. By providing false and misleading responses to the Member in the course of its investigation, the Respondent interfered with the Member's ability to conduct a reasonable supervisory investigation of the Respondent's conduct, contrary to MFDA Rules 1.1.2 and 2.5.1, and 2.1.1.

Allegation #4 – Failure to Cooperate

56. On August 7, 2009, MFDA Staff conducted an interview of the Respondent.

57. During his interview, the Respondent gave an undertaking to provide Staff with copies of his bank statements for the relevant period.

Letter #1 – August 11, 2009

58. By letter dated August 11, 2009, sent by registered and regular mail, MFDA Staff requested that the Respondent provide answers to his undertaking by August 25, 2009.

59. The copy of the letter sent by registered mail was signed for by "Bytnar BY" on August 13, 2009.

60. Staff received no response to the August 11, 2009 letter.

Letter #2 – August 31, 2009

61. By letter dated August 31, 2009, sent by registered and regular mail, MFDA Staff reiterated its request that the Respondent provide answers to his undertaking immediately.

62. The copy of the letter sent by registered mail was signed for by "Bytnar" on September 3, 2009.

63. Staff received no response to the August 31, 2009 letter.

Letter #3 – September 11, 2009

64. By letter dated September 11, 2009, sent by registered and regular mail, MFDA Staff reiterated its request that the Respondent provide answers to his undertakings.

65. The copy of the letter sent by registered mail was marked "item refused by recipient" by Canada Post on October 1, 2009 and the regular post copy was not returned to the MFDA.

66. Staff received no response to the September 11, 2009 letter.

Letter #4 – September 21, 2009

67. By letter dated September 21, 2009, sent by registered and regular mail, MFDA Staff advised the Respondent that the investigation was complete and the file was being escalated to litigation.

68. The copy of the letter sent by registered mail was marked "item refused by recipient" by Canada Post on September 22, 2009 and the regular post copy was not returned to the MFDA.

69. Staff received no response to the September 21, 2009 letter.

Letter #5 – May 5, 2010

70. Staff attempted to personally serve the Respondent with a letter dated May 5, 2010; however, service could not be completed due to the process server's inability to serve the Respondent at his last known address.

71. Due to the Respondent's failure to cooperate with the MFDA investigation into his conduct, the full nature and extent of the Respondent's conduct in relation to Safeguard and other possible misconduct is not known to the MFDA.

72. Commencing August 2009, by failing to comply with a request by MFDA Staff that he provide answers to an undertaking concerning matters under investigation, the Respondent has failed to cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose 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;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Lyla Simon
Fax: (416) 361-9073
Email: lsimon@mfda.ca

A **Reply** shall be **filed** by:

(a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

(b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or

(c) Transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfda.ca.

A **Reply** may either:

(i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

(ii) Admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

(a) to **serve** and **file** a **Reply;** or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-Laws.

End.

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: Tadeusz ("Ted") Bytnar

ORDER

WHEREAS on June 30, 2010, the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of a disciplinary proceeding commenced against Tadeusz ("Ted") Bytnar (the "Respondent");

AND WHEREAS a hearing on the merits of this matter was conducted on February 9 and 10, 2011 ("Hearing") in Calgary, Alberta, before a hearing panel of the Prairie Regional Council of the MFDA ("Hearing Panel");

AND WHEREAS the Respondent did not file a Reply in these proceedings; did not attend at the Hearing; was not represented by counsel at the Hearing; and did not otherwise participate in the Hearing;

AND WHEREAS the Hearing Panel considered the evidence, including:

- the affidavit of James Chee ("Mr. Chee") with attached exhibits numbered 1-36, sworn February 2, 2011;
- the evidence given by Mr. Chee in person at the Hearing;

- other affidavits and materials filed and marked as exhibits at the Hearing; and
- the written and oral submissions of Staff of the MFDA.

AND WHEREAS the Hearing Panel finds that the Respondent:

(i) in 2003 and 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring, or facilitating the sale of an investment product that was not approved for sale by the Member to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1;

(ii) in 2003 and 2005, the Respondent engaged in a dual occupation that was not disclosed to and approved by the Member by selling, referring or facilitating the sale of an investment product to four individuals, two of whom were clients of the Member, contrary to MFDA Rules 1.2.1(c) and 2.1.1;

(iii) in 2008 and 2009, the Respondent interfered with the ability of the Member to conduct a reasonable supervisory investigation of the Respondent's conduct by providing false and misleading responses to the Member in the course of its investigation, contrary to MFDA Rules 1.1.2 and 2.5.1, and 2.1.1; and

(iv) commencing August 2009, by failing to comply with a request by MFDA Staff that he provide copies of bank statements for the material time under investigation, the Respondent failed to cooperate with an MFDA investigation, contrary to section 22.1 of MFDA By-law No. 1.

IT IS HEREBY ORDERED THAT:

1. The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-Law No. 1;

2. The Respondent shall pay a fine in the amount of :

   (i) $50,000 for failure to cooperate with an MFDA investigation;

   (ii) $90,000 for securities related business outside the Member/ undisclosed dual occupation; and

   (iii) $10,000 for interfering with the Member's ability to conduct a reasonable

supervisory investigation.

pursuant to s. 24.1.1(b) of MFDA By-Law No. 1;

3. The Respondent shall pay costs in the amount of $7,500, pursuant to s. 24.2 of MFDA By-Law No. 1;

4. If a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 10th day of February, 2011.

"Mary Hetherington"
The Hon. Mary Hetherington,
Chair

"Patricia Kloepfer"
Patricia Kloepfer,
Industry Representative

"Kathleen Jost"
Kathleen Jost,
Industry Representative

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