



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

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Tyler Weldon Davidson

Heard: July 8, 2021 by electronic hearing in Edmonton, Alberta

Decision: July 8, 2021

Reasons for Decision: August 24, 2021

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Birju Shah
Sean Shore

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Luke M. Day)	Counsel for the Respondent
)	
)	
Tyler Weldon Davidson)	Respondent
)	
)	

I. INTRODUCTION

1. On December 17, 2020, 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 Tyler Weldon Davidson (“the Respondent”).
2. On July 5, 2021, the Respondent entered into a Settlement Agreement (“the Settlement Agreement”) with MFDA Staff (“Staff”) and on July 8, 2021, the hearing which was originally scheduled to be a disciplinary hearing on the merits proceeded to be heard as a settlement hearing pursuant to Rule 24.4 of By-law No. 1.
3. Pursuant to the Settlement Agreement, the Respondent agreed to a proposed settlement of matters for which he could be disciplined under Sections 20 and 24.1 of MFDA By-law No. 1.
4. The Settlement Hearing was held by videoconference before a hearing panel of the MFDA Prairie Regional Council (“the Panel”) and was attended by both the Respondent and his legal counsel.
5. At the conclusion of the hearing, the Panel accepted the Settlement Agreement and issued an order to that effect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to having committed the following violation of the MFDA’s by-laws, rules or policies:

In or around September 2014, the Respondent recommended a trade in a mutual fund that unnecessarily subjected a client to a deferred sales charge schedule and generated commissions to himself, contrary to MFDA Rules 2.1.1, 2.1.4 and 2.2.1.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed to the following terms of settlement:
 - a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one month pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
 - b) the Respondent shall pay a fine of \$22,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

- c) the Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4 and 2.2.1; and
- e) the Respondent will attend in person or via video conference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The facts which Staff and the Respondent agreed would form the basis for the Settlement Agreement are set out at paragraphs 6 through 36 inclusive of that agreement and are reproduced below:

Registration History

- 6. Commencing in September 2011, the Respondent was registered in the securities industry.
- 7. From September 2011 to May 2015, the Respondent was registered as a dealing representative in Alberta and Saskatchewan with Investors Group Financial Services Inc., a Member of the MFDA (the “Member”).
- 8. From May 2015 to December 2017, the Respondent was registered as a dealing representative with another mutual fund dealer.
- 9. The Respondent is not currently registered in the securities industry in any capacity.
- 10. The Respondent is currently licensed in the insurance industry.
- 11. At all material times, the Respondent carried on business in the Medicine Hat, Alberta area.

The Respondent recommended a trade in a mutual fund that unnecessarily subjected a client to a deferred sales charges schedule and generated commissions

- 12. At all material times, the Member’s policies and procedures required its dealing representatives to, among other things:
 - a) ensure that the acceptance of any order for any account is within the bounds of good business practice; and
 - b) not become involved in any situation that could give rise to a conflict of interest.

13. At all material times, client PD was a client of the Member whose accounts were serviced by the Respondent.
14. Commencing in July 2014, client PD opened three accounts at the Member consisting of a non-registered account, a Registered Retirement Savings Plan (“RRSP”) account, and a Tax Free Savings Plan (“TFSA”) account.
15. On or about July 3, 2014, prior to the opening of client PD’s new investment accounts at the Member, client PD signed a “Withdrawal Fee Information Form” which referenced a Deferred Sales Charge (“DSC”) schedule that would be applicable if she purchased mutual fund purchases in the future that were subject to DSC fees.
16. Client PD completed transfer authorization forms to transfer her investments held at another financial institution to the Member in-kind.
17. In August 2014, client PD redeemed her investments held with the Member into a cash position.
18. Client PD was eligible to access a pool of no-load mutual funds offered by the Member through its I-Profile program, as client PD had investable non-registered assets greater than \$250,000. The mutual funds offered through I-Profile had lower management fees of approximately 20-35 basis points in comparison to the DSC fee mutual fund she actually purchased, as set out in paragraph 21, below.
19. In or around August 2014, the Respondent recommended that client PD purchase mutual funds offered through the I-Profile program for her non-registered account with the Member.
20. The Respondent states that he explained to the client that the 7 year DSC schedule would be applicable to the mutual fund purchases that were processed in client PD’s non-registered account on September 5, 2014. Client PD disputes the Respondent’s assertion that he provided her with an explanation of DSC fees or any DSC schedule applicable to that purchase.
21. Rather than creating a non-registered I-Profile account in order to access the no-load mutual funds offered through that program as previously recommended, on or about September 5, 2014, the Respondent facilitated the purchase by client PD of a mutual fund in the amount of approximately \$403,800 that was subject to a 7 year DSC fee schedule which client PD held in her non-registered account.
22. As a result of this purchase by client PD, the Respondent received commissions of approximately \$15,346.
23. On or about September 9, 2014, after the purchase of the DSC load mutual fund as described above, the Respondent facilitated the opening by client PD of a non-registered I-Profile account

with the Member and arranged for the switch of client PD's recently purchased DSC load mutual fund to a portfolio of new mutual funds offered through the I-Profile program.

24. A feature of the I-Profile program was that because client PD was switching into her I-Profile account a mutual fund that was already subject to an unexpired DSC fee schedule in her non-registered account, the new mutual funds held in the I-Profile account would remain subject to the unexpired portion of the DSC fee schedule that was applicable to the previously held mutual fund.

25. Between October 2014 and October 2018, client PD redeemed some of the mutual funds from her non-registered I-Profile account, and incurred DSC fees of approximately \$17,200 for doing so. In some cases the proceeds redeemed from the sale of mutual funds subject to DSC were transferred to client PD's RRSP account, and applied towards the purchase of additional DSC load mutual funds, which were subsequently redeemed by client PD and resulted in additional DSC fees.

26. In or around January 2015, client PD required monies for the purchase of a house, and she wished to redeem her non-registered mutual fund investments and apply the proceeds to the purchase of the house.

27. Because the mutual funds in client PD's I-Profile account were subject to an unexpired DSC fee schedule as described above at paragraph 24, client PD would have incurred substantial DSC fees if she redeemed her recently purchased mutual fund investments.

28. Client PD decided not to redeem mutual funds from her non-registered investment account due to the DSC fees that she would have incurred, and instead borrowed monies from a line of credit in order to pay the down payment on her house purchase. As a result, client PD incurred interest charges of approximately \$2,267 on the monies that she borrowed from her line of credit to finance the down payment for the purchase of her new home.

29. The Respondent knew that client PD was eligible to participate in the I-Profile program and purchase no-load mutual funds offered through the program, prior to facilitating the purchase of the mutual fund subject to a DSC schedule on September 5, 2014, as described above at paragraph 21.

30. Rather than facilitating the purchase of no-load mutual funds in the I-Profile program, the Respondent opened a non-registered account and facilitated the purchase of mutual funds by the client that were subject to a DSC schedule that resulted in the Respondent earning commissions. Approximately 4 days later the Respondent facilitated the switch of client PD's investments that were subject to a DSC schedule held in her non-registered account to the portfolio of mutual funds offered through the I-Profile program that the Respondent had initially recommended.

31. The Respondent facilitated the purchase on September 5, 2014 of a mutual fund as described above in order to, among other things, increase his compensation. Had client PD opened an I-Profile non-registered account upon becoming a client of the Member, she would have been

able to purchase no-load mutual funds with lower service fees as described in paragraph 18, above, compared to her DSC load mutual fund holdings, and would not have been subject to a DSC fee schedule after making the investment.

32. As a result of purchasing the DSC load mutual fund, the Respondent received commissions, which he would not have been entitled to receive had client PD's monies had been invested in the I-Profile portfolio directly.

The Member's Investigation

33. In or around April 2018, client PD filed a complaint with the Member concerning her purchase of the DSC load mutual fund on September 5, 2014. The Member subsequently commenced an investigation, and reimbursed client PD for the DSC fees she incurred from the redemption of mutual funds, as well as interest incurred on the money that she borrowed from her line of credit to finance her house purchase.

Additional Factors

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

35. The Respondent has co-operated with MFDA Staff during its investigation of his conduct.

36. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations.

V. ANALYSIS

Role of the Panel

9. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

10. When considering a settlement agreement, a Hearing Panel has only two options: either to accept or reject the settlement agreement.

MFDA By-law No. 1, s. 24.4.3

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." [1999] I.D.A.C.D. No. 17 at page 12

12. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected, is because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor for the Panel to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras. 22 and 23

13. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

"Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing."

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para. 31

14. Although the *Seifert* decision, *supra*, dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

15. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted, bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and

- g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at pp. 8 & 9

Appropriateness of the Proposed Penalty

16. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at para. 68

17. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.

Pezim v British Columbia (Superintendent of Brokers), *supra*, at paras. 59 & 68

18. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Hearing Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 & 76

19. The Hearing Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's experience in the capital markets;
- c) the level of the respondent's activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;

- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) 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;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge (Re), supra, at para. 77

MFDA Sanction Guidelines

20. On November 15, 2018, the MFDA issued Sanction Guidelines (the "Guidelines") to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

21. The Guidelines, as their name suggests, are not mandatory. They state, under the heading "Purpose of the Sanction Guidelines":

"... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision."

MFDA Sanction Guidelines p. 1

22. The Sanction Guidelines identify a number of factors which a Hearing Panel may take into account in determining an appropriate sanction. One of those factors is whether a sanction was imposed on the respondent for the same misconduct by the Member or another regulator. In this regard, the Guidelines state that "a sanction imposed by the Member or another regulator against a respondent for the same misconduct may be considered a mitigating factor.

MFDA Sanction Guidelines p. 4

Application of the Factors Listed Above in the Present Case

Seriousness of the Allegations

23. The Respondent's misconduct in this matter was serious.
24. The misconduct at issue involved the suitability of a recommendation the Respondent made to invest in a mutual fund with a DSC fee schedule when in fact the client qualified for a series of no-load mutual funds which had a lower management fee than that which was charged by the mutual fund the Respondent recommended.
25. As the result of his conduct described above, the Respondent violated MFDA Rules 2.1.1, 2.1.4 and 2.2.1.
26. MFDA Rule 2.2.1 codifies the 'Know-Your-Client' ("KYC") and "suitability" obligations that have consistently been recognized as "an essential component of the consumer protection scheme of [securities legislation] and a basic obligation of a registrant ...". MFDA Panels have found that a course of conduct by a registrant that involves a failure to comply with their obligations is an extremely serious matter."

Pretty (Re), MFDA File No. 201128, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated January 30, 2014, at para.89

27. MFDA Rule 2.2.1 states, in part:

2.2.1 "Know-Your-Client" Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
- (c) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account.

28. A registrant's KYC and suitability obligations were explained by the Alberta Securities Commission in *Lamoureux (Re)*, [2001] ASCD No. 613, where the Commission, in referring to *The Conduct and Practices Handbook Course* published in 1993 by the Canadian Securities Institute, described the KYC rule as: "the Cardinal Rule".

29. In that case, the Securities Commission explained that the 'know your client' and "suitability" obligations while conceptually distinct are in practice so closely connected and interwoven that the terms are sometimes used interchangeably.

Lamoureux (Re), supra, at p. 10

30. The Commission went on to state:

The "know your client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.

The "suitability" obligation is the obligation on a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match.

Lamoureux (Re), supra, at p. 11

31. The *Lamoureux* decision went on to explain that the process that culminates in a registrant's investment recommendation to a client has three component phases or stages that must occur in sequence:

- due diligence - the first stage involves the due diligence steps undertaken by the registrant to "know the client" and "to know the product";
- applying judgment - the second stage involves an Approved Person using information obtained under the know your client and know your product obligations and applying "sound professional judgment" to determine whether specific trades or investments, solicited or unsolicited, are suitable for that client; and
- disclosure of material risks and benefits - the third stage requires an Approved Person to disclose the material factors, negative and positive, involved in the transaction, to the client for the purpose of assisting them in making an informed decision about whether to proceed.

Lamoureux, supra, at pp. 14-15

32. The same three stage analysis has been adopted by MFDA Hearing Panels.

Lemay (Re), MFDA File No. 201634, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated February 28, 2017, at paras. 23-24

33. As Enforcement Counsel pointed out to the Panel, the suitability concerns in this case were somewhat unique because they specifically engaged an Approved Person's responsibility to disclose material negative factors to their client, when making a recommendation – engaging the third stage of the KYC process described above.

34. The Respondent in this case failed to comply with his suitability obligations by recommending a mutual fund that subjected the client to a seven year DSC schedule when the client was eligible to participate in a program that the Member offered which allowed the purchase of no-load mutual funds (the "I-Profile").

35. When the client was eventually placed into the I-Profile series of no-load mutual funds, the prior DSC mutual fund purchase resulted in the client being subjected to a DSC fee schedule to

which they would not otherwise have been subjected, had they been placed into the I-Profile funds directly.

36. The Respondent's failure to adequately ensure the suitability of his investment recommendations resulted in the client suffering a loss when they made redemptions in their I-Profile account and when they took out a line of credit to avoid incurring further DSC fees.

37. The Respondent's conduct not only exposed the client to an unnecessary DSC fee schedule, it also benefited his own interests by generating commissions of approximately \$15,346.

38. The Respondent's conduct, therefore, in addition to breaching his suitability obligations, gave rise to a conflict of interest.

39. As explained by the Hearing Panel in *Gaunt*:

A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.

Gaunt (Re), MFDA File No. 201232, Hearing Panel of the Atlantic Regional Council, Decision and Reasons dated September 20, 2013 at para. 47

40. MFDA Rule 2.1.4 requires that Approved Persons be aware of actual and potential conflicts of interest and address such conflicts by the exercise of responsible business judgment influenced only by the best interests of the client.

41. The Rule reads:

2.1.4 Conflicts of Interest

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

42. The Panel finds that the Respondent's conduct did not demonstrate the exercise of responsible business judgment influenced only by the best interests of the client.

43. In breaching Rules 2.1.2 and 2.1.4 in the manner described above, the Panel finds that the Respondent's conduct also breached the standard of conduct requirements under MFDA Rule 2.1.1. That Rule states:

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.

44. Accordingly, for all of the above reasons, the Panel finds that the Respondent's misconduct was serious.

The Respondent's Past Conduct and Experience in the Capital Markets

45. The Respondent was registered in the securities industry from September 2011 until December 2017. During that time, he was not subject to any prior disciplinary proceedings by the MFDA.

46. The Respondent is not currently registered in the industry.

Recognition by the Respondent of the Seriousness of the Misconduct

47. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved the MFDA the necessity of incurring the additional time and expense of a full contested hearing on the merits – at which, Enforcement Counsel advised, the client would have been required to testify.

Harm Suffered by the Client and Benefits Received by the Respondent

48. As a result of not having been placed directly into the I-Profile series funds, the client incurred DSC fees of \$17,200 as well as spending an additional \$2,267 related to having to take out a line of credit. The Member reimbursed the client for these fees and expenses.

49. The Respondent received commissions of approximately \$15,346 as a result of the DSC load mutual fund purchase.

Deterrence

50. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

Cartaway Resources Corp. (Re), [2004] 1 SCR 672 SCC, at paras. 52-62

Tonnies (Re), 2005 LNCMFDA 7, at para. 47

51. Although the Respondent at the time of the hearing was no longer registered in the industry, the Panel agrees with Staff's submission that a one month prohibition, in addition to the fine and order to pay costs, is necessary and sufficient to achieve the goals of specific and general deterrence.

52. The effect of general deterrence should advance the goal of protecting investors. A penalty should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

“A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction ... The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged ...”

Cartaway Resources Corp. (Re), *supra*, at para. 61

53. The Panel agrees that taken as a whole, the proposed penalty of a one month prohibition, a fine of \$22,500 and costs of \$5,000 is a substantial penalty which will achieve the goals of specific and general deterrence. This penalty is necessary in order to communicate to other Approved Persons that the misconduct engaged in by the Respondent has no place in the mutual fund industry.

Previous Decisions Made in Similar Circumstances

54. Enforcement Counsel in his submission indicated that because of the somewhat unique facts of this case, previous decisions were not that helpful in determining an appropriate penalty.

55. Nonetheless, he provided the Panel with the following cases:

CASE	FACTS	OUTCOME
<i>Lumbers (Re)</i> ¹	<p>The Respondent admitted that he:</p> <ul style="list-style-type: none"> failed to learn or update material changes to the KYC information of a 92 year old client's accounts; and recommended for the account of a 92 year old client the purchase of approximately \$340,000 of mutual funds which were subject to a 7 year deferred sales charge schedule, without ensuring that the recommendation was suitable having regard to the essential Know-Your-Client factors relevant to the client. <p>The client would have incurred \$18,195 in DSC fees upon their death had the mutual funds been redeemed. These fees were waived by the Member.</p>	<p><i>Settlement Hearing</i></p> <ul style="list-style-type: none"> \$20,000 fine \$2,500 costs
<i>Del Rosario (Re)</i> ²	<p>The Respondent admitted that she:</p> <ul style="list-style-type: none"> failed to ensure a trade in a client account was suitable for the client having regards to the client's KYC factors; processed a trade in a client account, using her discretion to select a version of a mutual fund subject to a deferred sales charge. <p>The Respondent was a branch manager.</p> <p>The client incurred \$6,000 in DSC fees, which was refunded by the Member.</p> <p>The Respondent received a commission of \$3,361.37, which was clawed back by the Member.</p>	<p><i>Settlement Hearing</i></p> <ul style="list-style-type: none"> \$10,000 fine 2 month BM prohibition \$2,500 costs
<i>Darrigo (Re)</i> ³	<p>The Respondent:</p> <ul style="list-style-type: none"> effected mutual fund transactions that triggered unnecessary deferred sales charges to his clients and undue commissions to himself, contrary to IIROC Dealer Member 1300.1(o). engaged in inappropriate personal financial dealings with two clients by borrowing from them, contrary to IIROC Dealer Member Rule 29.1. <p>The Respondent, over 15 months, effected buy and sell transactions of mutual funds which generated commissions and triggered DSC fees, and also caused the DSC schedule to reset upon buying new DSC funds.</p> <p>Many of the purchases were made without the clients' knowledge or consent.</p> <p>The Respondent earned commissions of over \$69,000 as a result of the trades, and also borrowed \$45,000 from clients without repaying them.</p>	<p><i>IIROC Uncontested Hearing:</i></p> <ul style="list-style-type: none"> \$50,000 fine for count 1, representing \$40,000 disgorgement and \$10,000 fine \$55,000 fine for count 2, representing \$45,000 disgorgement and \$10,000 fine \$65,000 costs 12 months strict supervision

¹ *Lumbers (Re)*, MFDA File No. 201825, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 6, 2019

² *Del Rosario (Re)*, MFDA File No. 201758, Hearing Panel of the Central Regional Council, Reasons dated December 7, 2018

³ *Darrigo (Re)*, 2015 LNIIROC 3 (LexisNexis)

56. Taking all of the circumstances of this matter into consideration, the Panel finds that the proposed penalty set out in the Settlement Agreement is within the range of and consistent with, previous decisions which have been made in cases involving similar misconduct.

Respondent Counsel's Submission

57. Counsel for the Respondent in his brief submission confirmed that the Respondent had learned a serious lesson from these proceedings and that the proposed penalty had significant financial ramifications for the Respondent and his family, in addition to satisfying the MFDA's goals of general and specific deterrence and fostering confidence in the integrity of the regulatory process.

VI. CONCLUSION

58. Having reviewed the Settlement Agreement and having considered the submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty proposed in the Settlement Agreement is reasonable and proportionate having regard to the Respondent's conduct, including the benefits which were obtained by the Respondent and the losses which were suffered by the client.

59. In this regard, we agree with Enforcement Counsel's submission that the monetary amount of the fine reflects a disgorgement of the fees generated and imposes a fine on top of that amount.

60. The one month prohibition reflects the fact that this was a unique transaction as opposed to a pattern of conduct while at the same time signals to the industry that the misconduct was serious.

61. We find that this penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings and will advance both the public interest and the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

62. The Panel, therefore, accepts the Settlement Agreement.

DATED this 24th day of August, 2021.

“Sherri Walsh”

Sherri Walsh
Chair

“Birju Shah”

Birju Shah
Industry Representative

“Sean Shore”

Sean Shore
Industry Representative

DM 836268