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: Matthew Elliott de Haan

Heard: August 9-10, 2021 by electronic hearing in Vancouver, British Columbia
Decision: August 10, 2021
Reasons for Decision: September 27, 2021

# REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

| | |
|---|---|
| Joseph A. Bernardo | Chair |
| Holly Martell | Industry Representative |
| Darryl Gossen | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Zaid Sayeed | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Shelly M. Feld | ) | Director, Chief Litigation Counsel, Enforcement |
| Matthew Elliott de Haan | ) | Respondent |

## I. OVERVIEW

1. The Respondent was registered as a dealing representative with Sun Life Financial Investment Services registered (Sun Life), a Member of the Mutual Fund Dealer's Association of Canada (MFDA).

2. On January 18, 2021, the staff of the MFDA (Staff) issued a Notice of Hearing alleging that:

a) between October and December 2018 the Respondent had solicited one client and at least six other individuals to invest in an investment that was not approved for sale by Sun Life, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.1.1, and 2.5.1;

b) the solicitations constituted unapproved outside business activity, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 1.3.2, 2.1.1, and 2.5.1; and

c) on or about December 7, 2018, the Respondent made a false or misleading statement to the Member, contrary to MFDA Rule 2.1.1.

3. An electronic disciplinary hearing concerning these allegations was held on August 9 and 10, 2021.

a) At the commencement of the hearing the parties submitted an agreed statement of facts (ASF), following which the matter was adjourned to the next day. The ASF is attached as Appendix "A".

b) On August 10, 2021, the Respondent testified on his own behalf and the Hearing Panel received submissions from both parties.

c) The hearing concluded with the Hearing Panel ordering sanctions against the Respondent. The Order is attached as Appendix "B".

4. These are the reasons for the Hearing Panel's decision.

## II. EVIDENCE

5. In the ASF, the Respondent admitted the contraventions alleged in the Notice of Hearing on the basis of the following agreed facts:

a) The Respondent was a dealing representative with Sun Life in Abbotsford, British Columbia from July 8, 2016 to December 12, 2018, the effective date on which he resigned from the Member. He is not currently registered in the securities industry in any capacity.

b) Some time in October 2018, the Respondent entered into a sales arrangement with Impact International Secured Investments Corporation (Impact), a British Columbia corporation. This arrangement was subsequently confirmed in an October 29, 2018 written agreement made between the Respondent and Impact (Agreement).

c) Under the Agreement, the Respondent agreed to solicit investors to raise capital on Impact's behalf. This capital was to be used to structure bonds, purchase bonds, or otherwise serve as working capital for projects for which Impact was arranging financing. For his part, the Respondent was to receive a 10% commission on any transactions that resulted in a completed investment in Impact.

d) Impact provided promotional materials to the Respondent to use in soliciting investors. In these materials, Impact claimed to be structuring a bond to fund a wind farm project in the United States. To participate in the bond, a minimum investment of USD $500,000 was required. The total return on this amount over seven years was projected to be 7468%, as follows:

   i. an immediate return of $1,000,000 upon the completion of financing in December 2018;

   ii. an average of $2,000,000 per year for seven years in royalty revenue from the wind farm;

   iii. an average of $7,500,000 per year for three years in royalty revenue from a source called "Fintech Net Revenue"; and

   iv. $350,000 to be received at the end of the fifth year in respect of returns from gold assets that Impact claimed it would hold as collateral.

e) From on or about November 1, 2018 to December 3, 2018, the Respondent solicited at least seven individuals, including one Sun Life client, to participate in the purported bond investment by engaging in one or more of the following activities:

   i. introducing it them as an investment opportunity;

   ii. providing them with promotional and advertising materials;

   iii. discussing the terms and features of the bond with them, including the purported returns;

iv. providing them with an assessment of the risks and merits of investing in the bond;

v. recommending the bond to them as an investment; and

vi. sending them notes concerning the bond investment personally prepared by the Respondent relying on information Impact had provided him.

f) At all material times, Sun Life's policies and procedures required its Approved Persons to:

i. obtain the Member's written consent prior to engaging in any business or occupation outside of registered activities conducted on Sun Life's behalf;

ii. conduct all securities related business solely through the Member's auspices; and

iii. offer only investment products that had been approved by Sun Life.

g) The Respondent was aware that he was required to obtain Sun Life's approval prior to entering into the Agreement, but did not do so.

h) Impact's purported bond was not an investment Sun Life had approved for sale by its Approved Persons.

i) The Respondent's solicitations occurred without Sun Life's approval.

j) None of the Respondent's activities in relation to the bond investment were carried on for the account or through the facilities of Sun Life.

k) In December 2018, Sun Life became aware that the Respondent had been soliciting investments outside of the Member's auspices and commenced an investigation. During an investigative interview conducted on December 7, 2018, the Respondent represented to the Member that he had not solicited Sun Life clients to invest in the Impact bond. This was not true. One individual solicited by the Respondent was a Sun Life client.

l) The Respondent cooperated with the MFDA's investigation. He has not previously been the subject of MFDA disciplinary proceedings.

m) There is no evidence that any of the persons solicited by the Respondent invested in Impact's bond, or that he derived any financial benefit from promoting it.

6. The parties supplemented the ASF by jointly confirming that the Respondent's only experience in the securities industry was his period of employment as an Approved Person with Sun Life.

7. In his testimony, the Respondent sought to provide context for his conduct by explaining that:

a) He had become involved with Impact because he was not earning enough income and was financially desperate.
b) The one Sun Life client he spoke to about the Impact bond was a personal friend, from whom the Respondent was not so much soliciting investment as seeking an opinion. He acknowledged that doing so was nonetheless a breach of the Rules.
c) The December 7, 2018 investigative interview took place by phone while the Respondent was travelling in a car, and when he was asked whether he had solicited any clients the Respondent had not been in a position to review his records. He acknowledged that this reply was inaccurate, and that he should have subsequently checked his records and then contacted Sun Life to correct his answer.
d) Under cross-examination, the Respondent effectively reiterated the particulars of his misconduct as set out in the ASF.

## III. MISCONDUCT

8. An Approved Person is required by MFDA Rule 2.1.1 to observe high ethical standards, which includes refraining from business conduct that is unbecoming or detrimental to the public interest.

9. This general ethical obligation overlaps with the more specific requirements the Rules impose on an Approved Person. For present purposes, the relevant Rules are these:

a) Rule 1.1.1, which prohibits an Approved Person from engaging in any securities related business unless it is done for the account and through the facilities of the employing Member.
b) Rules 1.1.2 and 2.5.1, which obligate an Approved Person to follow the Member's supervisory policies and procedures.
c) Rule 1.3.2, which prohibits an Approved Person from carrying on any business outside of their employment duties without the Member's prior written approval.

10. The ASF establishes that the Respondent promoted the Impact bond to seven persons outside of Sun Life's auspices for the purpose of earning commission income. This was done without the Member's prior written approval and contrary to its policies and procedures. When Sun Life subsequently asked him whether he had promoted the bond to any of the Member's clients, the Respondent provided incorrect information.

11. Nothing in the Respondent's testimony or elsewhere in the record contradicts the ASF or otherwise creates any uncertainty about the material facts of this case. In other words, the evidence unambiguously confirms the Respondent's admission of liability.

## IV. SANCTION ANALYSIS

12. The sole material disagreement between the parties, and the substantive issue to be decided by the Hearing Panel, was over what consequences the Respondent should face as a result of his misconduct.

13. Enforcement Counsel on behalf of Staff argued that taking all the relevant facts into consideration the following sanctions would be appropriate:

a) a financial penalty of at least $15,000;
b) costs of $5,000, which was supported by a bill of costs; and
c) a prohibition of at least 12 months.

14. Against this, the Respondent submitted that the proposed financial penalty was excessive given his thorough co-operation with the MFDA investigation, the fact that none of the persons he solicited ever invested in the Impact bond, and his wholesale admission of fault in these proceedings.

## V. DETERRENCE

15. The essential purpose of securities legislation is to establish a comprehensive regulatory framework that protects the investing public. As a component of this framework, MFDA enforcement proceedings are required to be forward looking, which is to say preventative and not retrospective or punitive in orientation. That is, a hearing panel must have a rational basis for believing that ordering sanctions will serve to prevent likely future harm. In making this determination, general deterrence is a critical consideration.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at paras. 59, 68.

*Cartaway Resources Corp. (Re),* [2004] 1 S.C.R. 672 at para. 61.

16. The degree to which general deterrence deserves to be emphasized in a sanction decision turns on the circumstances of the case. To be reasonable, a penalty must be supported by analysis that establishes it as proportional to the misconduct.

> *Cartaway, supra,* at para. 64.
>
> *Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 at paras. 14, 85.

17. This principle of proportionality is central to the MFDA's sanction guidelines, which, among other things, state that:

a) Public confidence requires sanctions to be proportionate to the misconduct.
b) Distinctions should be drawn between negligent and deliberately deceptive conduct, and between isolated and repeated incidents.
c) Sanctions should reflect whether or not the misconduct resulted in the respondent receiving benefits or investors sustaining harm.
d) A respondent's prior disciplinary history should be considered when determining sanctions.

## VI. RELEVANT FACTORS

18. Co-operating with an investigation is not a mitigating factor, because there is nothing voluntary or elective about it. Rather, providing the MFDA with the information it requires is a strict obligation under Section 22.1 of MFDA By-law No.1, which provides that:

> For the purpose of any examination or investigation pursuant to this By-law, [an]… Approved Person… may be required… to produce for inspection and provide copies of the books, records and accounts of such person relevant to the matters being investigated; and… to attend and give information[.]

19. An Approved Person's failure to cooperate with an investigation is an aggravating factor because it severely undermines the MFDA's ability to fulfill its regulatory mandate. Providing full co-operation, by contrast, does no more than satisfy an explicit duty Approved Persons are required and expected to fulfill in the normal course. Similarly, the lack of investor harm is not a mitigating factor, and is relevant to sanction only in the limited sense of confirming the absence of an aggravating factor.

20. The one true mitigating factor in this case is the Respondent's admission of liability. In that regard, it is noteworthy that he conceded the substance of the misconduct in his reply to the Notice of Hearing, which is to say at the earliest juncture of these enforcement proceedings.

21. In the reply, the Respondent accepted full responsibility for engaging in unapproved outside securities related business that had not been carried out for Sun Life or through its facilities. He did not accept responsibility for knowingly making a misleading statement during his Sun Life telephone interview about whether he had solicited clients. The Respondent has continued to maintain that position throughout, including in his testimony — and, indeed, Staff eventually acceded to it. This is evident in the language of the ASF, where Staff's acceptance of the Respondent's admission of fault for misleading the Member is explicitly predicated on his failure after the interview to verify and correct his answer.

22. In short, the Respondent from the very outset has demonstrated a constructive attitude towards the disciplinary process. This has allowed this hearing to proceed in a relatively streamlined and efficient manner, with only the matter of sanction left to be resolved. Furthermore, it must be observed that the Respondent did not have the benefit of legal representation in these proceedings. As will be discussed later, these points are relevant to the question of costs.

23. The other salient issue for sanction purposes is the nature of the off-book investment the Respondent was promoting.

24. The ASF includes a sample of Impact's promotional materials. These refer to the bond investment being secured by gold assets, but no details are provided regarding their value or how the assets would supposedly be secured. The materials do not otherwise address the question of risk. This is always the cardinal consideration in the assessment of any investment's merits; and the more that projected returns exceed what is otherwise available in the market, the greater the urgency in determining the risk involved. For anyone involved in the financial industry this is, or should be, basic economic common sense.

25. Impact's promotional materials should have provoked immediate alarm in the Respondent. First, a projected total return of 7468% over seven years is so extraordinary as to defy every normal expectation of investment economics. Second, even if one accepts the assumptions underlying the projection, the final number provided is incorrect. According to Impact, an investment of USD $500,000 at the end of seven years would result in a total return of $37,840,000, or 75.68 times the original investment. This translates into a percentage return of 7568%, not 7468%. Such

carelessness in a financial offering is a very bad sign, and it is all the more so when the projected returns are beyond incredible.

26. In *Tri-West Investment Club,* the British Columbia Securities Commission found that the promotion of an investment scheme constituted regulatory fraud under section 57 of the *Securities Act*, R.S.B.C. 1996, c. 418. In arriving at this conclusion, the Commission in part relied upon the opinion of an expert in economics, banking, and finance:

> … Dr. Levi stated: "In my opinion, there is no possible basis for a claim that an investment can be both risk free and generate trading profits of 10 percent monthly. In fact, even by taking substantial risk, returns like this could not be made, except perhaps on a very rare lucky break when massive leverage is used." One of the reasons he provides for reaching this conclusion is that "[f]or an investor to earn ten percent per month a borrower must pay 10 percent per month. Financial institutions are ultimately intermediaries between borrowers and lenders, so they serve to bring lenders and borrowers together. No borrower with low risk would ever be forced to face such a high cost of capital. In fact, in my opinion, borrowers willing to pay 10 percent a month are likely to be most desperate indeed. The association of this type of return with zero risk makes no sense to me at all."
>
> *Tri-West Investment Club, et. al.* 2001 BCSECCOM 1013*,* at paras. 22 and 60-62.

27. It is important to note that the bond investment as described in Impact's promotional materials bears little resemblance to the *Tri-West* investment scheme. In particular, as already noted, the materials do not meaningfully address the question of risk, let alone claim that investing in the bond would be risk free. Nothing said here should be construed as the Hearing Panel expressing an opinion about the bond's legitimacy. Rather, *Tri-West, supra,* is cited solely for its universally applicable observation that the yield promised by a debt instrument corresponds to its level of investment risk.

28. The cost of borrowing money is a function of supply and demand: borrowers at low risk of defaulting are able to pay less to borrow money because lenders compete to lend it to them, while those at higher risk of defaulting are forced to pay a premium to attract any lenders at all. In short, the price a borrower is prepared to pay to borrow money is an objective measure of the risk to the lender.

29. This should have been at the forefront of the Respondent's thinking when he was offered the opportunity to promote Impact's purported bond investment. To any reasonable person, even a brief summary of its terms should have been more than sufficient to provoke intense suspicion. This is because the bond's projected returns were predicated on the ultimate borrower being

prepared to pay an effective annual interest rate of around 1080%. That alone should have signalled to the Respondent that the bond was necessarily an extremely risky proposition.

30. Section 347(2) of the *Criminal Code* (R.S.C., 1985, c. C-46) defines a criminal rate of interest as "an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement". Again, the purpose of this observation is not to characterize the bond investment as criminal. The point here is to emphasize that even a cursory review of the promotional materials should have provoked the Respondent into asking Impact some very hard questions before he even considered involving himself in soliciting investors on its behalf.

31. To support Staff's sanction submission, Enforcement Counsel brought forward a number of previous MFDA sanction decisions where the substantive misconduct involved conducting securities related outside business without Member approval.

> *Qi (Re), MFDA File No. 201253, November 20, 2013.*
>
> *Chang (Re), MFDA File No. 201431, December 7, 2015.*
>
> *Uy (Re),* MFDA File No. 201806, June 13, 2018.
>
> *Re: Cheung (Re),* MFDA File No. 201808, January 28, 2019.
>
> *Gomes (Re),* MFDA File No. 201920, February 4, 2020.
>
> *Bagga (Re),* MFDA File No. 2019, September 23, 2020.

32. The sanctions ordered in these cases included financial penalties in amounts ranging from $20,000 to $75,000, costs of between $5,000 to $9,500, and suspensions that ranged from 12 months to permanent prohibitions. All these precedents are distinguishable from the present case in important respects.

a) In all of the cases, the misconduct resulted in mutual fund clients actually purchasing unapproved securities.
b) The value of the off-book securities sold ranged from a high of $550,000 to a low of $40,000, with the average value being approximately $294,000.
c) In four of the cases, the respondents benefitted from their misconduct by receiving referral fees or commissions.

## VII. SANCTION DECISION

### Financial penalty

33. The Respondent's misconduct differs crucially from the misconduct in the sanction precedents: he was unable to persuade anyone at all to invest in Impact, let alone clients. The result was that his misconduct neither caused investor harm nor yielded any financial benefits for himself.

34. The lowest financial penalties in the decisions cited by Staff were those in *Qi, supra,* and *Bagga, supra,* where in each case penalties of $20,000 were ordered. In *Qi, supra,* the respondents facilitated a client's $40,000 unapproved investment in an offshore fund, which shortly thereafter was revealed to be a Ponzi scheme; after settling a claim against the respondents, the client was left with a $17,100 loss on the original investment. In *Bagga, supra*, the respondent received approximately $12,800 in fees for facilitating the sale of $128,000 in an unapproved syndicated mortgage investment to four individuals.

35. The Respondent's misconduct was indisputably serious. It cannot, however, be fairly regarded as equivalent to that of a respondent who causes significant actual client harm or gains financially from their misconduct. The $15,000 financial penalty proposed by Staff is a deterrent response that is proportionate to the misconduct, and the Hearing Panel ordered the Respondent to pay it.

## VIII. COSTS

36. The Staff's bill of costs indicates that the investigation and the conduct of these enforcement proceedings incurred total recorded costs of approximately $14,000. Those costs include the value of Enforcement Counsel's participation for the full two days originally scheduled for the hearing, notwithstanding that the first day was limited to the submission of the ASF and the attendance of the parties was in fact quite brief.

37. Moreover, the discussions that led to the ASF appear to have been less than efficient. The ASF was executed on August 8, 2021, the day before the hearing commenced. The Respondent's admission of liability in the ASF, however, is substantively no different from what he admitted in his reply to the Notice of Hearing at the very outset of the disciplinary process. No criticism of either party is intended by this observation. Last minute resolutions are not unusual when a person does not have the benefit of legal counsel, and the Respondent was unrepresented throughout.

Conversely, however, the Respondent's admission of liability at the earliest possible juncture reflects a level of diligence and engagement that is uncommon among unrepresented respondents.

38. The $5,000 in costs requested by Staff represents a significant discount from the total costs of approximately $14,000 recorded by the bill of costs. Nonetheless, it is not in the public interest to order any amount of costs against an unrepresented respondent who to all appearances has endeavored to do the right thing from the very start of litigation, and the Hearing Panel declined to do so in this case.

## IX. PROHIBITION

39. Based on the description provided by Impact's promotional materials, the purported bond offering can only be characterized as dangerously implausible. It follows that the Respondent's promotion of the offering exposed prospective investors to a truly severe risk of harm.

40. This was more than an example of extraordinarily poor judgment. The Respondent engaged in business conduct that was antithetical to the role of an Approved Person, so much so that a suspension for a period significantly longer than that requested by Staff is necessary. For that reason, the Hearing Panel ordered that the Respondent 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 five years.

**DATED** this 27th day of September, 2021.

"Joseph A. Bernardo"
Joseph A Bernardo
Chair

"Holly Martell"
Holly Martell
Industry Representative

"Darryl Gossen"
Darryl Gossen
Industry Representative

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: Matthew Elliott de Haan

# AGREED STATEMENT OF FACTS

## I. INTRODUCTION

1. By Notice of Hearing dated January 18, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Matthew Elliott de Haan (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

**Allegation #1:** Between on or about October 29, 2018 and December 3, 2018, the Respondent solicited a client and other individuals to invest in an investment that was not approved for sale by the Member, thereby engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.1.1, and 2.5.1.

**Allegation #2:** Between on or about October 29, 2018 and December 3, 2018, the Respondent engaged in an unapproved outside activity when he, acting on behalf of a third party company, solicited a client and other individuals to invest in an investment that was not approved for sale by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 1.3.2, 2.1.1, and 2.5.1.

**Allegation #3:** On or about December 7, 2018, the Respondent provided a false or misleading statement to the Member during the course of an investigation by the Member, contrary to MFDA Rule 2.1.1.

## II. 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.

## III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this 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 impose on the Respondent.

## IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV, and no other information, facts or documents, subject to the content of this paragraph and paragraph 7 below.

7. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

8. 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**

9. Since July 8, 2016, the Respondent was registered as a dealing representative in British Columbia with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.

10. At all material times, the Respondent carried on business in the City of Abbotsford, British Columbia area.

11. On November 27, 2018, the Respondent resigned from the Member, effective December 12, 2018.

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

**Contravention #1 - Securities Related Business Outside the Member**

13. At all material times, the Member's policies and procedures required its Approved Persons to conduct all securities related business through the Member. Approved Persons were permitted to only offer products approved by the Member.

14. Impact International Secured Investments Corporation ("Impact") is a corporation incorporated in British Columbia.

15. In or about October 2018, the Respondent accepted a sales role with Impact to solicit investors to provide capital to be used by Impact to: (i) sponsor the formation of bonds offered by Impact; (ii) purchase bonds; or (iii) serve as working capital for underlying projects for which Impact was arranging financing.

16. On or about October 29, 2018, the Respondent and Impact entered into an agreement (the "Agreement"), which provided, among other things, that the Respondent would receive compensation comprised of a 10% commission on closed transactions.

17. At the time he signed the Agreement, the Respondent was aware that there was a requirement for him to seek approval from the Member to enter into the Agreement; however, the Respondent did not obtain the required approval of the Member to enter into the Agreement.

18. The Respondent obtained promotional materials from Impact to use when soliciting investors to provide capital for a bond that was being arranged by Impact to finance a windfarm project in the United States called "WinGen 7" (the "Investment"). Among other things, the materials provided that:

a) the WinGen 7 project was an Ultra Green Bond offering for financing the windfarm;
b) the amount of investment sought was USD $500,000; and
c) the total forecasted return on $500,000 of investment was a percentage return of 7468% consisting of a share of investment from the purchase of the bond, assets put up to collateralize the bond, and revenue accruing from the operations of the underlying project.

19. A representative sample of the promotional materials referred to above are attached hereto as Appendix A.

20. From on or about November 1, 2018 to December 3, 2018, the Respondent solicited at least seven individuals, including one client (collectively, the "Investors") to invest in the Investment. In particular, the Respondent engaged in one or more of the following activities with the Investors:

a) introducing the Investors to the opportunity to invest monies in the Investment;
b) providing the Investors with promotional materials, including the materials described above, and advertising that described the Investment;
c) discussing the terms and features, including purported rates of return, of the Investment with the Investors;
d) providing the Investors with an assessment of the risks and merits of the Investment; and
e) recommending the Investment to Investors.

21. In addition to sending the promotional materials attached as Appendix A to potential investors, the Respondent also sent his own notes (the "Notes") concerning the Investment to potential investors. The information provided in the Notes was derived solely from information provided to the Respondent by Impact. The Notes are attached hereto as Appendix B.

22. Some of the details of the solicitation in which the Respondent engaged are described in the chart below:

| DETAILS OF DE HAAN SOLICITATION | | |
|---|---|---|
| **#** | **Person Solicited** | **Date of Solicitation** |
| **1** | Investor #1 | November 1, 2018 |
| **2** | Investor #2 | November 3, 2018 |
| **3** | Investor #3 (a client of the Member) | November 7, 2018 |
| **4** | Investor #4 | November 7, 2018 |
| **5** | Investor #5 | November 8, 2018 |
| **6** | Investor #6 | November 20, 2018 |
| **7** | An Ontario Company | Unknown |

23. The Respondent did not obtain the approval of the Member to solicit the Investors to invest as described above. The Investment was not an investment approved for sale by the Member.

24. The Respondent's activities with respect to the Investment described above were not carried on for the account or through the facilities of the Member.

**Contravention #2 - Unapproved Outside Activity**

25. At all material times, the Member's policies and procedures required that its Approved Persons disclose to and obtain written consent from the Member prior to engaging in any business or occupation other than acting as an Approved Person for the Member.

26. As described above, the Respondent entered into the Agreement with Impact which provided that the Respondent would receive payment of a 10% commission on closed transactions, and, acting on behalf of Impact, solicited investors to invest in the Investment.

27. The Respondent did not disclose to or obtain approval from the Member to enter into the Agreement or to solicit individuals to invest in the Investment as described above.

**Contravention #3 - Misleading the Member**

28. In December 2018, the Member became aware that the Respondent had solicited investment outside of the Member and commenced an investigation into the Respondent's conduct as described above.

29. On December 7, 2018, the Member interviewed the Respondent during the course of its investigation into the Respondent's conduct as described above. During the interview, the Respondent told the Member that he had solicited investors for Impact, but had not solicited clients to invest in the Investment.

30. The Respondent's statement to the Member was false because one of the individuals whom the Respondent had solicited to invest in the Investment was a client of the Member.

31. The Respondent states that he responded to the Member's questions about who was solicited to invest in the Investment while he was travelling in a car and therefore was not in a position to check his records prior to answering the question. However, the Respondent acknowledges that the factual information that he provided was inaccurate and that he should have verified the accuracy of the information that he provided and corrected his answer to the Member's question after the interview if he had subsequently discovered that he was mistaken.

**Additional Factors**

32. The Respondent cooperated with Staff throughout its investigation and during this disciplinary proceeding.

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

34. There is no evidence that any of the Investors ultimately invested in the Investment.

35. There is no evidence that the Respondent benefitted financially from his conduct.

**Misconduct Admitted**

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

a) Between on or about October 29, 2018 and December 3, 2018, solicited seven (7) individuals, including one client, to invest in an investment that was not approved for sale by the Member, thereby engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.1.1, and 2.5.1.

b) Between on or about October 29, 2018 and December 3, 2018, engaged in an unapproved outside activity when he, acting on behalf of a third party company, solicited seven (7) individuals, including one client, to invest in an investment that

was offered for sale by that company and not approved for sale by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 1.3.2, 2.1.1, and 2.5.1.

c) On or about December 7, 2018, during the course of the Member's supervisory investigation into his conduct, provided a false or misleading statement to the Member, contrary to MFDA Rule 2.1.1.

**Execution of Agreed Statement of Facts**

37. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

38. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 8th day of August, 2021.

"Matthew Elliott de Haan"
Matthew Elliott de Haan

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

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: Matthew Elliott de Haan

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# ORDER

(ARISING FROM HEARING ON THE MERITS OF AUGUST 9-10, 2021)

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**WHEREAS** on January 18, 2021, the Mutual Fund Dealers Association of Canada (the "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 Matthew Elliott de Haan (the "Respondent");

**AND WHEREAS** the Respondent delivered a Reply to the Notice of Hearing on February 23, 2021;

**AND WHEREAS** the first appearance in this matter was held before a hearing panel of the Pacific Regional Council of the MFDA (the "Hearing Panel") on March 23, 2021;

**AND WHEREAS** the Respondent and Staff of the MFDA ("Staff") entered into an Agreed Statement of Facts, dated August 8, 2021 (the "ASF"), in which the Respondent admitted to misconduct and facts that 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 the MFDA By-law No. 1;

**AND WHEREAS** on August 9-10, 2021, the Hearing Panel conducted a hearing on the issue of penalty, during which Staff and the Respondent presented the ASF and made submissions to the Hearing Panel with respect to the appropriate penalty to be imposed on the Respondent and

with the permission of the Hearing Panel and the consent of Staff, the Respondent provided some additional testimony to supplement the ASF;

**AND WHEREAS** on the basis of the facts and contraventions admitted by the Respondent in the ASF, the additional testimony provided by the Respondent during the hearing, and the submissions made by Staff and the Respondent during the hearing, the Hearing Panel is of the opinion that:

a) Between on or about October 29, 2018 and December 3, 2018, the Respondent solicited a client and other individuals to invest in an investment that was not approved for sale by the Member, thereby engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.1.1, and 2.5.1.

b) Between on or about October 29, 2018 and December 3, 2018, the Respondent engaged in an unapproved outside activity when he, acting on behalf of a third party company, solicited a client and other individuals to invest in an investment that was not approved for sale by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.1.2, 1.3.2, 2.1.1, and 2.5.1.

c) On or about December 7, 2018, the Respondent provided a false or misleading statement to the Member during the course of an investigation by the Member, contrary to MFDA Rule 2.1.1.

**IT IS HEREBY ORDERED THAT:**

1. The Respondent is prohibited from conducting securities related business while in the employ of, or in association with, any Member of the MFDA for a period of five (5) years from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay a fine in the amount of $15,000, pursuant to section 24.1.1(b) of By-law No. 1; and

3. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then 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 personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

**DATED** this 10th day of August, 2021.

"Joseph A. Bernardo"
Joseph A. Bernardo
Chair

"Holly Martell"
Holly Martell
Industry Representative

"Darryl Gossen"
Darryl Gossen
Industry Representative

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