



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: Mahmoud Rihawi, Attal Golzay, Ajmal Golzay, Roomal Golzay,
Mustafa Sayed Hashimi, Zobair Hashimi, Sama Tabesh, Saadet Kolgekaya,
Rhea Galias Fortes, Shameel Rawani, Anjum Pathan, and
Mohammad Yunas Masood**

Heard: May 16-17 and May 25, 2018 in Toronto, Ontario
Decision and Reasons: November 27, 2018

DECISION AND REASONS

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC	Chair
Guenther W. K. Kleberg	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Francis Roy)	Counsel for the Mutual Fund Dealers Association of Canada
Mahmoud Rihawi, Attal Golzay, Ajmal Golzay, Roomal Golzay, Mustafa Sayed Hashimi, Zobair Hashimi, Sama Tabesh, Saadet Kolgekaya, Rhea Galias Fortes, Shameel Rawani, Anjum Pathan, and Mohammad Yunas Masood)	Respondents, not in attendance or represented by counsel

PART I. GENERAL

The Misconduct

1. The 14 persons named in the Notice of Hearing dated February 28, 2017 (“Notice of Hearing”) were Approved Persons at the Mississauga branch of WFG Securities Inc. (“WFG”), an MFDA Member. They operated a branch-wide scheme (the “scheme”) to falsify documents to enable them to sell leveraged investments to clients who did not meet the suitability criteria of WFG, and conspired to cover up (the “cover up”) their misconduct by agreeing to mislead, and by misleading WFG in its investigation of their conduct. Several also misled the MFDA in its investigations or failed to co-operate with the MFDA. The misconduct was itemized in six allegations in the Notice of Hearing, and the person to whom each allegation applied was specified.

2. Appendix “1” is the Notice of Hearing which sets out the allegations against each Respondent and particulars alleged. (In particular, the persons named in the Notice of Hearing are: Mahmoud Rihawi (“Rihawi”), Attal Golzay (“Attal”), Ajmal Golzay (“Ajmal”), Roomal Golzay (“Roomal”), Mustafa Sayed Hashimi (“Mustafa”), Zobair Hashimi (“Zobair”), Sama Tabesh (“Tabesh”), Saadet Kolgekaya (“Kolgekaya”), Hammond Lieu (“Lieu”), Rhea Galias Fortes (“Fortes”), Shameel Rawani (“Rawani”), Anjum Pathan (“Pathan”), Mohammad Yunas Masood (“Masood”) and Juliene da Rosa Lima (“Lima”).

3. Staff withdrew the allegations against Lima, one of the persons named in the Notice of Hearing.

Lieu Settlement

4. Lieu, another of the persons named in the Notice of Hearing, entered into a settlement agreement (the “Lieu Settlement”) on May 10, 2018. The Lieu Settlement was presented to the panel for acceptance at an in camera hearing on May 16, 2018 held just prior to the hearing for the remaining persons (the “Respondents”).

5. In the Lieu Settlement, Lieu agreed to provide truthful testimony and evidence in this proceeding against the Respondents.

6. The agreed penalty in the Lieu Settlement was a permanent prohibition.

7. The panel reserved judgment on whether to accept the Lieu Settlement until it made its decision regarding the Respondents.

Tabesh ASF

8. One of the Respondents, Sama Tabesh, and staff signed an agreed statement of facts (the “Tabesh ASF”) dated May 15, 2018. In the Tabesh ASF, Tabesh admitted facts establishing three of the four allegations against him, and staff and Tabesh made a joint recommendation as to penalty for the three allegations. Staff advised that upon acceptance of the Tabesh ASF into evidence by the panel, it would withdraw a fourth allegation (misleading the MFDA) against Tabesh.

9. The panel made it clear that the Tabesh ASF was not a settlement agreement and that it was not bound to accept the joint recommendation as to penalty if it admitted the Tabesh ASF into evidence. Staff confirmed that the general affidavit of its investigator, Mr. Lambshead, previously introduced into evidence, covered the scheme and cover up by the Respondents and that staff had available for introduction into evidence a specific affidavit of Mr. Lambshead as to the misconduct relating specifically to Tabesh.

10. The panel observed that Tabesh had two options. He could agree to let the Tabesh ASF stand and have it entered into evidence with the understanding that although the panel would consider the joint recommendation as to penalty, it would not be fettered by it in exercising its discretion as to the appropriate penalty for him; or he could take back the Tabesh ASF in which case the panel would disregard it. Staff confirmed, however, that if Tabesh took back the Tabesh ASF, staff would not withdraw the fourth allegation against Tabesh; and staff would introduce into evidence the specific affidavit of Mr. Lambshead pertaining to Tabesh’s conduct.

11. After a 20 minute adjournment, Tabesh advised he had decided to let the Tabesh ASF stand and be entered into evidence.

12. After hearing from staff and Tabesh the panel announced that it had determined that the three remaining allegations against Tabesh had been proved and that Tabesh had violated the rules referred to in them. The panel advised that it would reserve judgment as to the appropriate penalty for Tabesh until it was ready to determine the appropriate penalty for the other Respondents.

13. After this, Tabesh and his counsel left the hearing.

14. Appendix “2” sets out the Tabesh ASF.

No contention of fact

15. Of the persons named in the Notice of Hearing, only Tabesh (and his counsel) and Lieu (as a witness) appeared at the hearing.

16. None of the other Respondents filed a Reply or appeared at the hearing, in person or by agent, or took any other steps to answer the allegations against them.

17. In this matter, the facts were not in issue.

PART II. DECISION ON THE MERITS

18. The panel announced that it would proceed with the hearing in the absence of the remaining Respondents and would accept as proven against the remaining Respondents the facts and conclusions drawn in the Notice of Hearing, including the particulars, as permitted by section 20.4 of MFDA By-law No. 1, and Rules 7.3 and 8 of MFDA Rules of Procedure.

19. Notwithstanding this, staff presented two witnesses, Lieu and its investigator, Mr. Lambshead. It also introduced in evidence through Mr. Lambshead a general affidavit regarding the scheme and cover up, and 11 affidavits, one for each of the other 11 remaining Respondents. Finally, staff provided information requested by the panel on commissions earned and loan amounts and outstanding balances which it obtained from WFG.

20. The evidence of staff's two witnesses, Lieu and Mr. Lambshead, and in the affidavits of Mr. Lambshead was clear, convincing and uncontroverted and substantiated on a balance of probabilities the facts and conclusions drawn in the Notice of Hearing.

21. The panel determined that the misconduct alleged against the remaining Respondents was a violation of the Rules, By-law, and Policies referred to in the allegations.

PART III. ISSUES

22. Accordingly, the issues the panel faced revolved around an appropriate penalty for each of the Respondents.

23. With regard to the Lieu Settlement (which the panel had considered in the settlement hearing immediately prior to the commencement of the hearing of this matter and on which it had reserved judgment) the panel had only two options: to accept it in its entirety or to reject it.

24. The panel determined that it could not accept the Lieu Settlement if doing so would require, for fairness and consistency, that the panel not impose fines on the Respondents for their same or similar misconduct. The panel determined that it could accept the Lieu Settlement if it determined that not imposing a fine on Lieu in the face of the fines it would impose on the Respondents was fair and reasonable and in the public interest.

25. With regard to the joint submission on penalty in the Tabesh ASF, the panel had to determine how much deference it should give to it, and whether, if it decided for fines suggested in the joint recommendation, the panel would then be required, for fairness and consistency, not to impose fines on the remaining Respondents for allegations #1, #2, and #3, much different from those suggested for Tabesh in the Tabesh ASF.

PART IV. PENALTIES

Approach of the panel to determine appropriate penalties

26. The panel considered the MFDA penalty guidelines and the precedent cases submitted to us by staff, discussed below, the submission of staff concerning the Lieu Settlement, the joint recommendation on penalty in the Tabesh ASF, and staff's submission on penalty for the remaining Respondents.

MFDA Penalty Guidelines

27. The guidelines suggest one or more of a minimum fine of \$5,000 and a permanent prohibition for breach of the standard of conduct in Rule 2.1.1.

28. They suggest one or more of a minimum fine of \$10,000 and a permanent prohibition for a breach of suitability and know-your-client requirements under Rule 2.2.1.

29. They suggest one or more of a minimum fine and a permanent prohibition for a breach of the supervision requirements of Rules 2.5.1, 2.5.5, 1.1.2 and 2.1.1 and MFDA Policy No. 2.

30. They suggest one or more of a minimum fine of \$50,000 and a permanent prohibition for failure to co-operate with or for misleading the MFDA contrary to section 22.1 of MFDA By-law No. 1.

31. The guidelines suggest several factors to consider in determining an appropriate penalty, including the magnitude of losses directly attributable to the conduct, the number of clients affected, evidence of cover up of the conduct, the existence of any pattern, and whether the contraventions were intentional or inadvertent.

Precedent cases

32. Staff submitted several precedent cases, including the following.

Daubney et al. (2008)

[Daubney, 2008 ONSEC 16]

In this case a panel of the Ontario Securities Commission listed some factors that the Commission considers when determining appropriate sanction (which we took into consideration in setting the penalties for each of the Respondents):

- a) the seriousness of the allegations proved;
- b) the respondent's experience in the marketplace;
- c) the level of a respondent's activity in the marketplace;
- d) whether there has been a recognition of the seriousness of the improprieties;
- e) whether or not the sanctions may deter not only those involved in the case, but any like-minded persons from engaging in similar conduct in the capital markets;
- f) any mitigating factors;
- g) the size of any profit (or loss avoided) from the improper conduct;
- h) the size of any financial sanction or voluntary payment when considered with other factors;
- i) the effect any sanction might have on the livelihood of the respondent;
- j) the restraint any sanction might have on the ability of the respondent to participate without check in the capital markets;
- k) the reputation and prestige of the respondent;
- l) the financial consequences to the respondent;
- m) the remorse of the respondent.

Adeola (2015) [*Adeola (Re)*, MFDA Central Regional Council, File No. 201401]

This case (uncontested) involved one uncooperative respondent who falsified information for unsuitable leveraged investments for 7 clients over an 8 month period. Clients lost at least \$180,000. The respondent received commissions on approximately \$700,000 of unsuitable leveraged mutual funds. Penalties included a permanent prohibition and fines and costs of \$260,000.

DeVuono (2012) [*DeVuono (Re)*, MFDA Pacific Regional Council, File No. 201102]

This case (contested without counsel) involved one respondent who sold unsuitable leveraged investments to 2 clients over a 3 year period. Clients lost in excess of \$285,000. The respondent earned commissions of at least \$38,300. Penalties included a 3 year prohibition and a fine and costs of \$170,000.

Arseneau (2012) *[Arseneau (Re), MFDA Atlantic Regional Council, File No. 201115]*

This case (uncontested) involved one respondent who falsified information and made unsuitable leveraged investments for at least 20 clients and did not do suitability checks for 155 clients over a 3 or 4 year period. Commissions from unsuitable leveraged investment were about \$630,000. Client losses were at least \$358,000. Penalties included a permanent prohibition and a fine and costs of \$520,000.

Ogalino (2014) *[In the Matter of Estrellea Ogalino, MFDA Central Regional Council, File No. 201248]*

This case (uncontested) involved one respondent who misappropriated at least \$52,000 from at least 8 clients over a 3 and a half year period and failed to cooperate. Penalties included a permanent prohibition and a fine and costs of \$117,500.

Villarin (2014) *[Villarin (Re), MFDA Prairie Regional Council, File No. 201352]*

This case (uncontested) involved one respondent who falsified information for unsuitable leveraged investments for 14 clients over approximately 2 years and failed to cooperate. Clients lost \$400,000 and had over \$1,500,000 of investment monies exposed. Penalties included a permanent prohibition and a fine and costs of \$260,000.

Pretty (2014) *[Pretty (Re), MFDA Atlantic Regional Council, Hearing Panel Decision dated January 30, 2014]*

This case (contested) involved one respondent who recommended and misrepresented leveraged investments to 6 clients over a 3 and a half year period and failed to cooperate.

Clients lost at least \$540,000. Two clients still owed the bulk of their loans of approximately \$800,000 and the value of their investments was insufficient to pay off the loans. The respondent received \$48,000 in commissions. Penalties included a permanent prohibition and a fine and costs of \$125,000.

Gragasin (2014) *[Gragasin (Re), MFDA Prairie Regional Council, File No. 201249]*

This case (contested) involved one respondent who falsified information and made unsuitable leveraged investments for 10 clients over about one and a half years. There was an agreed statement of facts. The reasons gave no information on the amount of investments or client losses or financial benefits to the respondent. They stated that by borrowing funds himself to purchase mutual funds, the respondent created financial hardship for his family and was considered to have suffered severely for his actions. This was considered a mitigating factor. Penalties included a 3 year prohibition and a fine and costs of \$35,000.

Sarker (2014) *[Sarker (Re), MFDA Central Regional Council, File No. 210327]*

This case (contested without counsel) involved one respondent who falsified information and made unsuitable leveraged investments for 2 clients over a 5 month period. There was an agreed statement of facts. Clients lost about \$70,000 as a result of the respondent's actions. One client also lost about \$150,000 on his own account by taking out an investment loan to buy mutual funds. There was no information on benefits received by the respondent. The respondent addressed the panel. He was sorry. He was a college student and hoped to embark on a new career outside the securities industry. He said he had not received proper training from his Member which led him to make his mistakes. Penalties included a 3 year prohibition and a fine and costs of \$22,500.

Lipski (2010) *[Lipski (Re), MFDA Pacific Regional Council, File No. 201012]*

This case (contested without counsel) involved one respondent who falsified information and assisted 12 clients to borrow money and invest in unsuitable leveraged investments

over a 2 year period and misled his Member and the MFDA. There was an agreed statement of facts with admissions of misconduct. The admissions were considered a mitigating factor. Client loans amounted to \$1,525,000. The MFDA's investigation did not reveal any client losses or the benefits received by the respondent. The penalties included a permanent prohibition and a fine and costs of \$30,000.

The Scheme and the Cover up

33. The Respondents' misconduct was contemptible and an embarrassment to the entire investment industry. The Respondents have demonstrated that they have no concern or thought for clients or the regulatory regime. They are ungovernable and should not be involved in the securities business. The misconduct was not an isolated incident but part of a larger pattern of conduct involving multiple clients.

34. Collectively, the Respondents and Lieu engaged in conduct that affected at least 50 clients who obtained investment loans totaling approximately \$4.2 million.

35. The proceeds of the loans were used for the purchase of leveraged investments, being return of capital mutual funds.

36. The scheme operated over a period of 6 years.

37. The Respondents conspired to mislead WFG about their scheme, thereby exacerbating WFG's inability to conduct a reasonable supervisory investigation of their activities.

Permanent Prohibition

38. The misconduct was egregious.

39. The Lieu Settlement, the joint submission on penalty in the Tabesh ASF, and staff's submission on penalty for the remaining Respondents called for a permanent prohibition on each of the respective person's authority to act and be registered (for Lieu and Tabesh, as a salesperson, and for the remaining Respondents, in any capacity) in the mutual funds industry.

40. The panel agreed that this was appropriate for Lieu. The panel determined that Tabesh and the remaining Respondents should be permanently prohibited from acting or being registered in any capacity in the mutual funds industry.

41. This was consistent with the recommendations in the MFDA penalty guidelines and the precedent cases, and in accordance with the mandate of the MFDA to be protective of the securities industry and preventative of harm, as outlined in *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission*, [2001] S.C.R. 132.

Fines

42. The panel agreed that in view of the significant nature of the misconduct, namely, the long-lasting, deliberate, widespread, and coordinated deceit of the participants in the scheme, the conspiracy to cover up and mislead the investigation of WFG, the disregard for the suitability criteria, the unsophistication of the clients involved, and the apparent unfamiliarity of the Respondents with the nature of the leveraged investments sold to their clients, appropriate fines were necessary as a deterrent to others in the industry.

43. To address fairness, consistency and comparability of the penalties for the Respondents and Lieu, the panel first determined a normative amount (the “norm”) for each allegation, or group of allegations, based on general considerations applicable to the misconduct, without adjustments based on factors it considered relevant for each person. It then considered factors that were relevant for each person to vary the norm.

Allegations #1 and #2 (falsification and suitability)

44. The panel grouped allegations #1 and #2 because they were closely connected and reflected the misconduct of the scheme. The panel set the norm for allegations #1 and #2 at \$10,000 based on suggestions from the MFDA penalty guidelines and precedent cases submitted by staff.

45. Staff submitted that the guidelines suggest a minimum fine of \$50,000 for fraud or forgery and suggested a fine of \$50,000 for the misconduct in allegations #1 and #2 for each Respondent except Tabesh and Fortes. But the guidelines state that the \$50,000 suggestion for fraud or forgery is only for fraud or forgery to deprive others of property or rights. Egregious as the deceit in this matter was, there was no evidence that the Respondents intended to deprive their clients or others of their property or rights, or that there was any misappropriation. Indeed, the Respondents appeared to operate the scheme under the mistaken belief that their scheme would allow their clients to make advantageous investments they would otherwise be prevented from making.

46. The panel made adjustments upward or downward from the norm of \$10,000, taking into consideration, to some extent, the number of loans and dollar amounts applicable to each Respondent, and personal factors, such as the fact that Pathan's only loan and investment were for himself and his wife, or the fact that Fortes had just one client and the loan amount was just \$25,000 which had been paid off.

47. Not a great deal of weight was given to numbers applicable to each Respondent alone because the misconduct was part of a collective scheme and a cover up in which all participated. The Respondents were also connected through the business compensation arrangements at WFG which was applicable to them. It provided for more senior sales persons to share in commissions earned by sales persons recruited by them or reporting up to them (the "pyramid compensation arrangements").

Allegation #3 (misleading WFG)

48. The panel determined \$20,000 as the norm for the fine applicable for misconduct in allegation #3 based on the MFDA guidelines, precedent cases submitted to the panel and the submission of staff on penalties for Respondents other than Tabesh. An adjustment downward of \$10,000 was made for Fortes, Pathan, Ajmal, Roomal, Rawani, and Massood who were junior and minor players in the scheme. No adjustments were made for the other Respondents.

Allegation #4 (mismanagement)

49. Only Attal was charged with this allegation. He was the only Respondent with management and supervisory responsibilities at the branch. He reviewed and supervised the forwarding to WFG of the documentation which he knew had been falsified.

50. He was a ring-leader in implementing, overseeing and training other members of the branch as they participated in the scheme.

51. He was a prime participant in the cover up and called the first meeting on June 13, 2014 with the other Respondents to get their stories consistent just before the meeting with a senior member of WFG investigating client complaints.

52. As a senior participant in the pyramid compensation arrangement at WFG, he stood to gain a good deal from the commission sharing arrangements with those under him participating in the scheme.

53. Staff suggested a fine of \$15,000 for this allegation.

54. However, the panel set the fine at \$30,000 for this allegation after considering precedent cases and the key role that Attal played, and his deliberate and callous disregard for the policy and rules of WFG regarding suitability and management supervisory and compliance requirements.

Allegation #5 or #6 (misleading or failure to cooperate with the MFDA)

55. Each Respondent, other than Tabesh, was charged either with allegation #5 or #6, but not both.

56. Tabesh was originally charged with allegation #6, but it was withdrawn against him as a consequence of the Tabesh ASF.

57. The panel determined the norm for misconduct in allegation #5 or #6 to be \$50,000, based on the MFDA guidelines, precedent cases submitted to us, and staff's submission on penalties for Respondents other than Tabesh.

58. As submitted by staff, the panel adjusted this norm to \$25,000 for Fortes in recognition of her eventually admitting to staff her misconduct, and correcting her earlier denial to staff of any misconduct.

59. We determined that no other adjustments to the norm was warranted for the other Respondents subject to either of these allegations.

Other considerations in setting amounts

i) Absence of evidence of client harm

60. There was no evidence of significant client harm resulting from the Respondents' misconduct, perhaps because of the difficulty staff faced in gathering evidence from uncooperative Respondents, or perhaps the clients were lucky because of the market at the time. Of course, although we had little evidence of actual client monetary harm, we know that clients were subject to great risk that comes from leveraging. Some are still saddled with loan balances outstanding the size of which may be totally inappropriate for them.

61. The few clients who complained to WFG were made whole by WFG.

62. The absence or presence of client monetary harm was an important factor in the size of fines in the precedent cases. It is suggested in the MFDA penalty guidelines as an important factor for panels in determining an appropriate penalty.

63. The norms for fines would have been set by us at higher amounts if there had been evidence of significant client losses.

ii) Absence of evidence of significant profits

64. Although staff did not adduce evidence of the specific benefits received by the Respondents as a result of their misconduct, the Respondents would have received a portion of the commissions received by WFG on the sales of the leveraged investments (return of capital mutual funds) sold to clients as part of the leveraged investment strategy recommended by the Respondents.

65. Trailer fees on the clients' investments would have been:

- a) 0.5 % per year on the total assets that remained invested in the deferred sales charge version of the funds; and
- b) 1% per year on the total assets that were re-invested in low load versions of the fund.

A sales commission of up to 5% was paid on the initial sale of a deferred charges version of the fund.

66. During his testimony, Lieu stated that, depending on their level of seniority within WFG (which ranged from associate to senior marketing director), the Respondents could be expected to be paid by WFG between 2% and 4% of sales commissions. The Respondents would also have received a portion of the trailer fees paid out by the fund. The higher the seniority of the Respondent, the higher the compensation received by the Respondent as a result of "overrides" paid to them by WFG from their "downlines" earnings under the pyramid compensation arrangements.

67. Of approximately \$4.2 million of leveraged investments sold by the Respondents and Lieu over the period of the scheme, we estimated that shared commissions paid to the Respondents and Lieu in aggregate would have possibly amounted to approximately \$100,000 to \$150,000, not including trailing commissions.

68. These are not big numbers when compared with the benefits received by respondents in precedent cases with similar misconduct where they received large fines.

iii) The Knowledge and skills of the Respondents

69. Many of the Respondents were part time workers at the branch and held down other jobs. Most, if not all, were naive. Lieu testified that everyone thought the mutual funds which they sold as leverage investments paid dividends or interest from profits and that no one realized that the investments maintained their set payout amounts from a return of capital when profits were insufficient. We concluded that the Respondents were unsophisticated and not knowledgeable about the leveraged investments they sold. This was inexcusable.

iv) Respondents' Recognition of the Seriousness of their Misconduct

70. The Respondents other than Tabesh did not respond to the disciplinary proceeding. They either did not recognize the seriousness of their misconduct, or were unwilling to take responsibility for it. This was an aggravating factor with respect to penalty.

v) Duration of the scheme

71. The scheme began in 2008 for some of the Respondents with others joining in as they were recruited and trained in the branch, and lasted until the Respondents and Lieu had their employment terminated by WFG in 2014.

vi) No Prior disciplinary problems

72. None of the Respondents had any prior disciplinary problems with the MFDA. However, we did not consider this to be a mitigating factor considering the seriousness of the misconduct.

vii) Individual circumstances

73. We looked at specific factors relevant to the amount (or absence) of a fine for each of the Respondents and Lieu.

Lieu

74. Lieu was young and naive. He was forthcoming and admitted his wrongdoing at an early stage in WFG's investigation and was fully cooperative with WFG and the MFDA.

75. He was sorry for his misconduct and told us that he realized he is not suitable for the securities industry and that he should seek a career in some other field.

76. Staff advised that Lieu had extensively cooperated with staff throughout its investigation and during the preparations for disciplinary proceedings.

77. In addition to admitting the facts and contraventions in the Lieu Settlement, he provided to staff substantial evidence pertaining to his and the branch's practice of falsifying, fabricating or altering clients' know-your-client information on account forms submitted to WFG, and information on loan applications and client documents submitted to lenders, in order to facilitate and obtain investment loans to purchase mutual funds for clients which loans and investments the clients did not otherwise qualify for.

78. In addition, he agreed to testify against the Respondents.

79. His testimony was revealing and helpful to the panel in understanding the scheme, the cover up, the business model, including the pyramid compensation arrangements at the branch, the understanding of the Respondents of the nature of the leverage investments they were selling, and the degree of involvement of others in the scheme.

80. We were impressed that Lieu was forthcoming about his own involvement in the scheme, which he did not try to downplay or justify in any way. He may have been naive but he knew that what he was doing was wrong and against the rules. He knew that just because everybody at the branch was doing it, his misconduct was not justified or excusable.

81. He was open about his motivation for co-operating fully with WFG and the MFDA at an early stage.

82. He realized that the jig was up and that it was useless and would be counterproductive to try to cover up what had occurred. Also, he was concerned that the others might try to put sole blame on him since he was the go to person to alter or fabricate documents as instructed by others. He was concerned that the others might try “to throw me under the bus”. He realized that his best course of action was to make a complete confession and to co-operate fully.

83. The panel agreed that it was appropriate in the circumstances that no fine or costs be payable by Lieu, and accordingly, the panel accepted the Lieu Settlement. We have issued a separate document for our decision and reasons for acceptance of the Lieu Settlement.

Tabesh

84. Tabesh was discharged from bankruptcy in 2017. His assets are limited. His monthly income from a carpentry job is minimal. His wife is expecting their first child. His rent and other living expenses severely limit his ability to pay more than \$500 per month for the foreseeable future.

85. The joint submission in the Tabesh AFS requested a fine of \$10,000 and costs of \$5,000. Tabesh requested terms for payment of this in monthly instalments of \$500 over a period of 30 months.

86. Tabesh was the senior business person in the branch. Most if not all of the other Respondents were downline from him in the pyramid compensation arrangements.

87. Lieu testified that if he had to identify the single person who ran the office, it would be Tabesh. He was the major decision maker in everything that happened in the office. He very much had the first say on what happened, and on what was not allowed to happen in the office.

88. In view of the major role Tabesh played in the scheme and cover up, we believed the appropriate fine for him for allegations #1 and #2 was \$15,000 (being \$5,000 higher than the norm) and \$20,000 (the norm) for allegation #3.

89. We granted Tabesh terms to pay the fines, and costs of \$5,000, at the rate of \$500 per month for 60 months, without interest. The balance owing at the end of 60 months, namely \$10,000, would then be due. If Tabesh defaults in making an instalment payment, the entire amount of fines and costs would become immediately due and payable.

90. Our analysis of why we determined it not appropriate to accept the joint recommendation on penalty is set out below under the heading “Considerations on deference for the Tabesh ASF joint recommendation on penalty”.

Remaining Respondents

91. None of the remaining Respondents advanced any special considerations or adduced evidence of the impact on them of the fines that might give us reason to reduce the amounts of the fines we otherwise determined were reasonable, appropriate, fair and consistent for them.

Fines set by the panel

92. Appendix “3” sets out staff’s suggestion for fines for the Respondents other than Tabesh. If Tabesh is included, total fines recommended by staff amount to \$1,295,000 and recommended costs amount to \$32,500 for a total of \$1,360,000.

93. The fines suggested by staff are higher than warranted when compared with the size of fines in the precedent cases, taking into account the extent of the activity, the dollar amounts, client monetary losses, and benefits received, as well as any special factors relevant to the respondents in the various cases.

94. Furthermore, the discrepancies in fines recommended for Tabesh and those for the other Respondents relative to allegations #1, #2, and #3 are not appropriate, fair or reasonably explainable.

95. The fines for the Respondents set by the panel, which total \$865,000 plus costs of \$32,500 for all Respondents are:

- a) Attal: #1 & 2 \$10,000; #3 \$20,000; #4 \$30,000; #6 \$50,000; total \$110,000
- b) Mustafa: #1 & 2 \$15,000; #3 \$20,000; #6 \$50,000; total \$85,000
- c) Rihawi: #1 & 2 \$15,000; #3 \$20,000; #6 \$50,000; total \$85,000
- d) Kolgekaya: #1 & 2 \$15,000; #3 \$20,000; #6 \$50,000; total \$85,000
- e) Ajmal: #1 & 2 \$10,000; #3 \$10,000; #6 \$50,000; total \$70,000
- f) Roomal: #1 & 2 \$10,000; #3 \$10,000; #5 \$50,000; total \$70,000
- g) Zobair: #1 & 2 \$10,000; #3 \$20,000; #5 \$50,000; total \$80,000
- h) Rawani: #1 & 2 \$10,000; #3 \$10,000; #5 \$50,000; total \$70,000
- i) Masood: #1 & 2 \$10,000; #3 \$10,000; #5 \$50,000; total \$70,000
- j) Fortes: #1 & 2 \$5,000; #3 \$10,000; #5 \$25,000; total \$40,000
- k) Pathan: #1 & 2 \$5,000; #3 \$10,000; #5 \$50,000; total \$65,000
- l) Tabesh: #1 & 2 \$15,000; #3 \$20,000; total \$35,000

Considerations on deference for the Tabesh ASF joint recommendation on penalty

96. Tabesh misled the MFDA and refused to cooperate until on the doorstep of the hearing.

97. Staff advised that if the Tabesh ASF was withdrawn by Tabesh, it was ready to introduce additional evidence in an affidavit of Mr. Lamshead already prepared specific to his conduct and proceed with its original allegations against him. It appears that the investigation time and effort by staff had already been completed. However, the admissions in the Tabesh ASF at this stage of the process may have saved some hearing time.

98. Unlike in criminal law matters where a defendant is under no obligation to defend himself, or to provide information to assist those investigating a crime, in investigations and proceedings by the MFDA a respondent has obligations.

99. A respondent has a duty to co-operate with the MFDA in its investigation, to comply with requests for information, and to be truthful.

100. A respondent has an obligation to reply to allegations against him and, truthfully, to admit or deny them.

101. Tabesh did not file a Reply as required by the rules, and misled (although we did not take this into account when determining the appropriate fine for Tabesh) the MFDA until he agreed to the Tabesh ASF.

102. Staff argued that the panel should give great deference to the joint recommendation on penalty and referred us to *R v Anthony-Cook* [2016] 2 S.C.R. 204 which put the test for approval of a joint submission on the penalty in a criminal proceeding as: “a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.”

103. At paragraph 33 of *Anthony-Cook* the court stated, “A joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so ‘markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the criminal justice system’.”

104. The panel determined that it should not apply a penalty to any Respondent which would appear to persons looking for the deterrent effect and the fairness, reasonableness and consistency of our administrative justice system to be inconsistent with the penalties applied to the other Respondents after taking into account reasonable, explicable and understandable differences.

105. The panel determined that since the misconduct of the various Respondents and Lieu was based on common facts and circumstances, the penalties for them should generally be similar and consistent for each allegation, with any variation in penalty from the norm being explainable, appropriate, fair, and reasonable in all the circumstances. Otherwise, the results would not be in the public interest and the administration of justice would be brought into disrepute.

106. For the reasons given above under the **Fines**, the panel decided it would not be appropriate to adopt the joint recommendation without variation.

PART V. MISCONDUCT: LAW

Allegations #1 and #2 – False and misleading documentation and suitability

107. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to Members and Approved Persons. It states that each Member and Approved Person 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 Rule 2.1.1, or as may be prescribed by the Corporation.

108. MFDA Rule 2.1.1 is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule articulates the most fundamental obligations of all registrants in the securities industry.

109. MFDA hearing panels have consistently held that an Approved Person contravenes the standard of conduct set out in MFDA Rule 2.1.1 when he or she completes account forms and loan applications with information which he or she knows, or ought to know, is false.

110. The Respondents committed a fraud on their Member and on the lenders. In the words of the hearing panel in *Arseneau*, the Respondents' conduct was “so outrageously outside the bounds of the conduct required when promoting borrowing for leveraged investments and the very basic requirements to Know-Your-Client and determinations of suitability.”

111. The Respondents' conduct made it appear to WFG's supervisory and compliance staff as though the clients satisfied WFG's requirements regarding the use of leveraging. This conduct

inhibited WFG's ability to fulfill its supervisory obligations with respect to the suitability of investment loans.

112. MFDA Rule 2.2.1 states:

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; and
- (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and
- (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

113. This MFDA Rule codified the “Know-Your-Client” and “suitability” obligations recognized by securities regulators. Securities regulators have held that these obligations are “an essential component of the consumer protection scheme of [securities legislation] and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter”. *E. A. Manning Ltd. et al (Re)*, 1995 LNONOSC 377 (OSC) (“*E.A. Manning*”) at p. 34; *Daubney (Re)*, 2008 LNONOSC 338 (OSC) (“*Daubney*”) at para. 15; *DeVuono (Re)*, [2012] MFDA Pacific Regional Council, MFDA File No. 201102, Hearing Panel Decision dated November 22, 2012 (Misconduct) (“*DeVuono*”) at para. 52.; and *Pretty (Re)*, [2014] MFDA Atlantic Regional Council, Hearing Panel decision dated January 30, 2014 (“*Pretty*”) at para. 89.

114. In *Lamoureux*, a hearing panel of the Alberta Securities Commission described the relationship between the “Know-Your-Client” and “suitability” obligations. The hearing panel stated that the “know your client” and “suitability” obligations are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are sometimes used interchangeably. 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 of 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)*, [2001] A.S.C.D. No. 613 (ASC) (“*Lamoureux*”) at pp. 11-12. *DeVuono, supra* at para. 53. *Pretty, supra* at para. 89.

115. An Approved Person has an obligation to couple the recommendation to a client to invest in a certain product or strategy with disclosure to the client of all salient material relevant to the product or strategy including negative factors involved in the transaction, prior to executing a trade on the client’s behalf. A balanced presentation must be offered to the client in the interest of complete disclosure and relative objectivity. *Lamoureux, supra* at p. 19. *Abrams in trust for Transpacific Sales Ltd. v. Sprott Securities Ltd. and Spork*, [2003] O.J. No. 3900 (C.A.) at pp. 7-8 and 10.

116. The Approved Person is obliged to properly explain all of the material risks of the leveraging strategy and the leveraging recommendation should not be supported by inaccurate or misleading representations. *Mytting (Re)*, 2012 LNIROC 45 (“*Mytting*”) at pages 17-18.

117. It is particularly important that the Approved Person ensure the client understands the risks of borrowing monies to invest because leveraging can magnify the losses suffered by the client. *Daubney, supra* at paras 24-25.

118. In addition, an Approved Person’s description of the risks of leveraging must take into account the possibility of a market downturn and the impact such a downturn would have on the leverage strategy. It ought to be reasonably foreseeable to any investment advisor that there might, at almost any time, be a market downturn that might prove to be of minor or major proportion and would impact, potentially substantially, the performance of a mutual fund. *Pretty, supra* at para. 103. *Rhoads v. Prudential-Bache Securities Canada Ltd.*, [1992] B.C.J. No. 153 at pp. 7-8.

119. In the present case, the clients had limited to no investment knowledge or experience. The Respondents themselves did not appear always to have a proper understanding of the return of capital mutual fund they were selling as leveraged investments.

120. The Respondents knew the clients did not meet WFG's suitability criteria and deliberately and deceitfully falsified documents to hide this fact.

121. By engaging in the misconduct, the Respondents acted contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3 – Providing false information to WFG

122. A Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation. WFG had policies and procedures requiring its Approved Persons to cooperate with it in investigating client complaints, among other things.

123. An Approved Person is required to comply with the policies and procedures established, implemented and maintained by its Member, and to cooperate with the Member in its compliance investigations. The Respondents' failure to do so in this case was conduct in breach of their standard of conduct under MFDA Rule 2.1.1.

Allegation #4 – Failure to supervise

124. Attal was branch manager of the Mississauga branch. As such he had duties and supervisory obligations to ensure that the Respondents, including himself, complied with their regulatory obligations.

125. The Respondents' scheme was specifically aided and perpetuated by Attal who failed to fulfill his responsibilities as branch manager by deliberately failing to adequately supervise the other Respondents, and report to WFG that the Respondents (including himself) were falsifying, fabricating or altering client information and documents in order to obtain investment loans to purchase mutual funds, which prevented WFG from conducting a reasonable supervisory

investigation and take such other supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rules 2.5.1, 2.5.5, 1.I.2, and 2.1.1, and MFDA Policy No. 2.

Allegations #5 or #6 – Misleading or failing to cooperate with staff

126. Under s. 22.1 of By-law No. 1 of the MFDA the Respondents had a duty not to mislead the MFDA in its investigation of them and to cooperate with the MFDA in its investigation.

127. Either the Respondents failed to attend at interviews requested by staff (in the cases of Pathan, Roomal, Zobair, Rawani, and Masood), or they knowingly provided false and misleading answers to staff's questions (in the cases of Rihawi, Mustafa, Attal, Ajmal, Kolgekaya, and Fortes).

128. In the case of Fortes, though she misled staff at the beginning of her interview, after being confronted by staff with evidence of her misconduct, she eventually admitted what she and the other Respondents had done.

129. The Respondents, other than Tabesh, misled or failed to cooperate with the MFDA, which constituted a contravention of section 22.1 of MFDA By-law No. 1 and MFDA Policy No. 2 as alleged in these allegations.

PART VI. PROCEDURE AND RELATED MATTERS

Joinder of Respondents into one matter

130. The Notice of Hearing joins allegations against several persons into one matter. In view of the common facts and misconduct of the Respondents it was convenient and efficient to have the allegations against them joined into one matter. No Respondent objected or requested that his or her misconduct be dealt with separately.

Service of the Notice of Hearing

131. On May 23, 2017 the MFDA issued a news release announcing that it had commenced this matter and published on its website a copy of the Notice of Hearing dated February 28, 2017.

132. At the first appearance in this matter on June 7, 2017, staff provided an affidavit of service of the Notice of Hearing on the persons named as respondents in the Notice of Hearing and 13 other affidavits of service or attempted service. The chair of the panel reviewed the facts attested to in the affidavits and determined that good and sufficient service of the Notice of Hearing had been made on each of the Respondents in accordance with the requirements of the MFDA.

Effect of a failure to respond to the proceeding

133. Section 20.4 of MFDA By-law No. 1 states:

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.

134. Rules 7.3 and 8 of the MFDA Rules of Procedures similarly empower a Hearing Panel, where a Respondent does not file a Reply or attend the hearing, to proceed with the hearing in the absence of a Respondent and accept the facts alleged and conclusions in the Notice of Hearing as proven.

135. As previously mentioned, the panel proceeded with the hearing in the absence of the Respondents other than Tabesh. In addition, the panel, having regard to the other Respondents' failure to file a Reply or otherwise respond to this proceeding, accepted as proven the facts alleged and conclusions against them drawn in the Notice of Hearing notwithstanding that staff adduced evidence to prove its case.

Penalty Argument

136. Staff completed its case on the merits against the Respondents on May 17, 2018 and the panel made its decision on the merits.

137. The hearing then adjourned to May 25, 2018 to hear argument on staff's submission on penalties.

138. The panel requested that Tabesh's counsel be invited to the session on May 25 which staff did. Tabesh's counsel advised she would not be attending the May 25 session. The panel requested the MFDA to advise Tabesh's counsel that if she wished to adduce additional facts relevant to our penalty decision, or to make further submissions as to penalty, she should advise the MFDA and a session before the panel would be arranged. She did not make any request.

Costs

139. Staff requested a costs award against Tabesh for \$5,000. Staff requested a costs award of \$2,500 against each of the other Respondent.

140. In view of the time and effort expended by staff as evidenced in the testimony of Mr. Lamshead and the affidavits prepared by him for the hearing, and the length of time and number of interviews and other matters since the commencement of staff's investigations until the conclusion of the hearing, the panel accepted as reasonable and appropriate the suggestions of staff for costs.

DATED this 27th day of November, 2018.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative

DM 623235

Appendix “1”

Notice of Hearing

File No. 201727



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: Mahmoud Rihawi, Attal Golzay, Ajmal Golzay, Roomal Golzay,
Mustafa Sayed Hashimi, Zobair Hashimi, Sama Tabesh, Saadet Kolgekaya,
Hammond Lieu, Rhea Galias Fortes, Shameel Rawani, Anjum Pathan,
Mohammad Yunas Masood and Juliene da Rosa Lima**

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room at the MFDA offices, located at 121 King Street West, Suite 1000, Toronto, Ontario on June 7, 2017 at 9:30 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Mahmoud Rihawi (“Rihawi”), Attal Golzay (“Attal”), Ajmal Golzay (“Ajmal”), Roomal Golzay (“Roomal”), Mustafa Sayed Hashimi (“Mustafa”), Zobair Hashimi (“Zobair”), Sama Tabesh (“Tabesh”), Saadet Kolgekaya (“Kolgekaya”), Hammond Lieu (“Lieu”), Rhea Galias Fortes (“Fortes”), Shameel Rawani (“Rawani”), Anjum Pathan (“Pathan”), Mohammad Yunas Masood (“Masood”) and Juliene da Rosa Lima (“Lima”) (collectively referred to as the “Respondents”).

DATED this 28th day of February, 2017.

“Sarah Rickard”

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5143
Facsimile: 416-361-9781
Email: corporatesecretary@mfda.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between 2008 and August 21, 2014, the Respondents falsified, fabricated or altered:

- a) clients’ Know-Your-Client (“KYC”) information such as income, net worth, investment objectives, and risk tolerance on account forms submitted to the Member, including new account application forms; and
- b) information on loan applications and client documents submitted to lenders, including bank statements, investment statements, pay stubs, or Canada Revenue Agency Notices of Assessment;

in order to obtain at least 51 investment loans to purchase mutual funds on behalf of clients, thereby failing to observe the high standards of ethics and conduct in the transaction of business, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Between 2008 and August 21, 2014, the Respondents failed to ensure that at least 51 investment loans recommended to clients were suitable for the clients and in keeping with the clients’ investment objectives, having regard to the clients’ relevant “Know-Your-Client” information and financial circumstances, contrary to the Member’s policies and procedures, and MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Commencing December 2013, the Respondents engaged in conduct unbecoming Approved Persons by providing false and misleading responses to the Member during the course of the Member's investigation into their conduct, contrary to MFDA Rule 2.1.1.

Allegation #4: Between December 12, 2011 and August 21, 2014, Attal failed to fulfill his responsibilities as Branch Manager by failing to adequately supervise the Respondents, and report to the Member that the Respondents (including himself) were falsifying, fabricating or altering client KYC information and client documents in order to obtain investment loans to purchase mutual funds, which prevented the Member from conducting a reasonable supervisory investigation and take such other supervisory measures as may have been warranted in the circumstances, contrary to MFDA Rules 2.5.1, 2.5.5, 1.1.2, and 2.1.1, and MFDA Policy No. 2.

Allegation #5: Commencing in December 2014, Pathan, Roomal, Zobair, Rawani, and Masood failed to attend an interview with MFDA Staff and produce information, documents and records requested by MFDA Staff during the course of an investigation, contrary to section 22.1 of MFDA By-law No. 1.

Allegation #6: Commencing in March 2015, Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes misled MFDA Staff during an interview and/or failed to produce copies of documents and records requested by MFDA Staff during the course of an 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:

Overview

1. The Respondents all operated out of the same branch office of WFG Securities Inc. (“WFG”) or one of its predecessor companies, located in Mississauga, Ontario (the “Branch”).
2. This proceeding concerns allegations that the Respondents engaged in a widespread practice at the Branch which involved falsifying, fabricating or altering clients’ KYC information on account forms submitted to WFG including new account application forms, and information on client documents submitted to lenders including bank statements, investment statements, pay stubs, or Canada Revenue Agency Notices of Assessment, in order to obtain investment loans to purchase mutual funds in client accounts.
3. The Respondents engaged in these practices, without the knowledge or authorization of clients, in order to make it appear as though the clients satisfied WFG’s requirements regarding the use of leveraging and to increase the likelihood that the lenders would approve the investment loans.
4. The Respondents’ conduct increased the amount of money invested by the clients in mutual funds, and thereby increased the amount of commissions and fees each of them received.

Registration History – Rihawi

5. From January 23, 2012 to August 21, 2014, Rihawi was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Rihawi is not currently registered in the securities industry in any capacity.

Registration History - Attal

6. From September 24, 2008 to August 21, 2014, Attal was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. From December 12, 2012 to August 21, 2014, Attal was also designated as the Branch’s branch manager. Attal is not currently registered in the securities industry in any capacity.

Registration History - Ajmal

7. From May 2, 2012 to August 21, 2014, Ajmal was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Ajmal is not currently registered in the securities industry in any capacity.

Registration History - Roomal

8. From September 24, 2008 to August 21, 2014, Roomal was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Roomal is not currently registered in the securities industry in any capacity.

Registration History - Mustafa

9. From March 25, 2011 to August 21, 2014, Mustafa was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Mustafa is not currently registered in the securities industry in any capacity.

Registration History - Zobair

10. From March 29, 2012 to August 21, 2014, Zobair was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Zobair is not currently registered in the securities industry in any capacity.

Registration History - Tabesh

11. From February 15, 2008 to August 21, 2014, Tabesh was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Tabesh is not currently registered in the securities industry in any capacity.

Registration History - Kolgekaya

12. From April 16, 2008 to August 21, 2014, Kolgekaya was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Kolgekaya is not currently registered in the securities industry in any capacity.

Registration History - Lieu

13. From February 13, 2012 to August 21, 2014, Lieu was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Lieu is not currently registered in the securities industry in any capacity.

Registration History - Fortes

14. From May 15, 2012 to August 21, 2014, Fortes was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Fortes is not currently registered in the securities industry in any capacity.

Registration History - Rawani

15. From January 14, 2010 to August 21, 2014, Rawani was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Rawani is not currently registered in the securities industry in any capacity.

Registration History - Pathan

16. From September 28, 2009 to August 21, 2014, Pathan was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Pathan is not currently registered in the securities industry in any capacity.

Registration History - Masood

17. From November 7, 2013 to August 21, 2014, Masood was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Masood is not currently registered in the securities industry in any capacity.

Registration History - Lima

18. From May 24, 2012 to August 21, 2014, Lima was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG. Lima is not currently registered in the securities industry in any capacity.

Allegation #1 – Falsification of KYC Information and Client Documents

19. Between 2008 and August 21, 2014, the Respondents recommended to at least 51 clients that the clients borrow monies and use the proceeds of the investment loans to purchase mutual funds for their accounts at WFG.¹

20. In the course of assisting the clients to obtain the investment loans, the Respondents prepared and submitted new client account forms (“NCAFs”) and loan applications, which they knew or ought to have known contained falsified, fabricated, incorrect, and/or misleading information. Among other things, the Respondents:

- a) inflated the market values of the clients’ residences on the loan applications without consulting the clients about the market values of their residences or by ignoring the market value estimates provided by the clients;

¹ The individual Respondents’ participation in recommending and implementing a leveraged investment strategy in the accounts of at least 51 clients commenced on or about the date they became registered as mutual fund salesperson with WFG. All of the Respondents’ individual participation in recommending and implementing a leveraged investment strategy ended on August 21, 2014 when WFG terminated their registration as a result of the facts alleged in this Notice of Hearing.

- b) reported on the loan applications and/or NCAFs that the clients owned cash or liquid assets which the clients did not own or which the Respondent inflated in value;
- c) reported on the clients' loan applications that the clients owned other investments which the clients did not in fact own or which the Respondents inflated in value;
- d) reported on the loan applications and/or NCAFs that the clients had "good" investment knowledge and a "high" risk tolerance when the clients had limited to nil investment knowledge and a risk tolerance less than "high";
- e) reported on the clients' loan applications that the clients owned properties or other assets (such as cars) which the clients did not own or which the Respondents inflated in value;
- f) failed to report the true nature and extent of the clients' liabilities on the loan applications when many of the clients had material liabilities, and without making adequate or any inquiries to determine whether the clients had any liabilities;
- g) inflated the clients' net worth on the clients' NCAFs and loan applications; and
- h) inflated the clients' income on the clients' NCAFs and loan applications.

21. In addition, the Respondents falsified, fabricated or altered information contained in documents provided by the clients, including bank statements, investment statements, pay stubs, and Canada Revenue Agency Notices of Assessment. The Respondents submitted the client documents to lenders as part of the applications for investment loans.

22. The Respondents engaged in the activities described in paragraph 20 above, without the knowledge or instructions of the clients, to ensure that the information contained in the client documents matched the false information that the Respondents had reported on the clients' NCAFs and loan applications.

23. Prior to February 2012, each of the Respondents falsified, fabricated or altered information in the client documents each of them submitted in support of client investment loan applications.

24. Commencing in or about February 2012, the Respondents arranged for Lieu to falsify, fabricate or alter client documents on their behalf. For every client document Lieu falsified, fabricated or altered, the Respondents paid him a fee.

25. The following table identifies the number of investment loans recommended, and number of falsified documents submitted to WFG and/or the lenders, by each of the Respondents in the manner described above:

Respondent Name	# of Client Loans	# of Altered or Falsified Documents
Attal Golzay	1	2
Mustafa Hashimi	5	11
Sama Tabesh	6	6
Saadet Kolgekaya	11	19
Mahmoud Rihawi	8	21
Roomal Golzay	3	4
Ajmal Golzay	2	2
Zobair Hashimi	2	5
Shameel Rawani	3	4
Anjum Pathan	1	1
Mohammad Masood	3	7
Hammond Lieu	4	9
Rhea Fortes	1	3
Juliene Lima	1	1
Totals	51	95

26. By virtue of the foregoing conduct, the Respondents falsified, fabricated or altered clients' KYC information on account forms submitted to the Member, and information on loan applications and client documents submitted to lenders, in order to obtain at least 51 investment loans to purchase mutual funds on behalf of clients, thereby failing to observe the high standards of ethics and conduct in the transaction of business, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2 – Failure to Ensure Loan Recommendations were Suitable

27. At all material times, WFG’s policies and procedures required its Approved Persons, including the Respondents, to assess and determine whether a leveraged investment recommendation was suitable for a client having regard to certain criteria. In particular, WFG’s policies and procedures stated:

General: It must be kept in mind at all times that leveraging (borrowing for securities purchases), as with any investment strategy, is not suitable for all clients. Before leveraging is used, it is important that you carefully review the matter for suitability based on the specific investment objectives, needs, investing experience, financial position and their capacity to service debt load.

You should carefully review with each client, the risks inherent to leveraging. In particular, the client must be advised that changes in interest rates and/or value of funds can result in the client having to make payments for the loans from other resources.

Leveraging Parameters. Clients must have the following as a minimum:

- A good investment knowledge;
- High risk tolerance;
- A Long term investment horizon;
- No Margin Loan, the borrowed amount SHOULD NOT exceed 50% of the clients’ total net worth; and
- Margin Loan, the borrowed amount SHOULD NOT exceed 50% of the clients’ total liquid assets.
- Clients must be able to afford to service their debt load using their own demonstrated personal income. The following methods to fund a loan are “prohibited”: systematic withdrawal plans (SWP’s) and cash distributions from underlying funds. [Underline added.]

28. The Respondents recommended at least 51 investment loans to clients as described above without taking adequate or any steps to ensure that the loans were suitable for the clients.

29. The majority of the clients had limited to no investment knowledge, had limited to no prior investing experience, and had never previously borrowed monies to invest.

30. In addition, the Respondent's knew or ought to have known that the clients could not afford to pay the costs of servicing the investment loans from their own personal income or withstand the risk of investment loss associated with using borrowed monies to invest.

31. The Respondents engaged in the conduct described in paragraphs 19-25 above in order to:

- (a) increase the likelihood that the lenders would approve the clients' investment loans; and
- (b) make it appear to WFG's supervisory and compliance staff as though the clients satisfied WFG's requirements regarding the use of leveraging, as set out in its policies and procedures, when the clients did not satisfy these requirements.

32. By engaging in the conduct described above, the Respondents were able to sell more mutual funds to clients, thereby inflating the sales commissions and fees the Respondents were entitled to receive.

33. By virtue of the foregoing, the Respondents failed to ensure that at least 51 investment loans recommended to clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know-Your-Client" information and financial circumstances, contrary to the Member's policies and procedures, and MFDA Rules 2.2.1 and 2.1.1.

Allegation #3 – The Respondents Misled WFG

34. In December 2013, WFG received a client complaint alleging that Rihawi had recommended unsuitable investment loans in the client's account (the "Rihawi Complaint").

35. In or about February 2014, MFDA Staff commenced an investigation of the Rihawi Complaint. As part of its initial review of the Rihawi Complaint, WFG compliance staff obtained documents from the client, including the client's bank statements, a pay stub and CRA Notices of

Assessment. The client claimed to have provided these documents to Rihawi at the time she applied for an investment loan at Rihawi's recommendation, but the information on those documents did not match the information on the documents contained in her client file at WFG. The information on the documents in the client file appeared to have been falsified, fabricated or altered to inflate the clients' income and assets.

36. On or about June 21, 2014, Rihawi, Attal, Mustafa, Tabesh, Roomal, Rawani, Masood, Fortes, and Lieu attended a meeting to discuss, and devise a collective response to, WFG's investigation.

37. In July 2014, WFG received a client complaint alleging that Kolgekaya had recommended and implemented an unsuitable leveraged investment strategy in the complaining client's account (the "Kolgekaya Complaint"). As part of its initial review of the Kolgekaya Complaint, WFG compliance staff obtained documents from the complaining client, including the client's bank statements, a pay stub and CRA Notices of Assessment. The client claimed to have provided these documents to Kolgekaya at the time she applied for an investment loan at Kolgekaya's recommendation, but the information on those documents did not match the information on the documents located in her client file at WFG. The information appeared to have been falsified, fabricated or altered to inflate the clients' income and assets.

38. In July 2014, further to requests made by MFDA Staff, WFG compliance staff expanded its investigation of the Rihawi and Kolgekaya Complaints to review all leveraged activity at the Branch. In total, WFG compliance staff reviewed approximately 150 leveraged client account files maintained by all Approved Persons operating at the Branch. WFG compliance staff further obtained and reviewed documents from the investment loan companies that had provided loans to those 150 client accounts.

39. In July 2014, all of the Respondents attended a meeting to discuss, and devise a collective response to, WFG's investigation.

40. During both the June 21, 2014 and July 2014 meetings, the Respondents agreed not to reveal to WFG their roles in falsifying, fabricating or altering client information in NCAFs, loan applications, or client documents submitted with the loan applications. Instead, the Respondents agreed to maintain a unified response, and deny any knowledge, responsibility or wrongdoing with respect to the falsified, fabricated or altered documents.

41. By the end of July 2014, WFG determined that documents pertaining to at least 51 client investment loans had been falsified, fabricated or altered. As a result of its findings, WFG compliance staff suspended the Respondents pending a further investigation into their activities.

42. In July and August 2014, WFG compliance staff obtained statements from the Respondents, each of whom stated that they did not know who or why client documents and records at the Branch had been falsified, fabricated or altered.

43. The Respondents therefore provided false and misleading responses to the Member during the course of the Member's investigation into their conduct, contrary to MFDA Rule 2.1.1.

44. On August 21, 2014, WFG terminated each of the Respondents.

Allegation #4 – Attal Failed to Fulfill the Supervisory Responsibilities of a Branch Manager

45. From December 12, 2012 to August 21, 2014, Attal was designated as the Branch Manager of the Branch.

46. During this time, Attal, directly or indirectly through Lieu, falsified, fabricated or altered information contained in at least one NCAF, loan application and/or client document in order to obtain an investment loan for a client he serviced. In addition, Attal knew or ought to have known that the other Respondents at the Branch were engaged in the same practice.

47. Attal failed to report to WFG that the Respondents (including himself) were falsifying, fabricating or altering client KYC information and client documents in order to obtain investment

loans to purchase mutual funds, which prevented the Member from conducting a reasonable supervisory investigation and take such other supervisory measures as may have been warranted in the circumstances contrary to MFDA Rules 2.5.1, 2.5.5, 1.1.2, and 2.1.1, and MFDA Policy No. 2.

Allegations #5 and #6 – The Respondents (Except Lieu and Lima) Failed to Cooperate With an Investigation of the MFDA

48. In October 2014, MFDA Investigations Staff sent letters to the Respondents, by regular mail and registered mail, notifying them that this matter had been escalated to the MFDA's investigations department.

49. Commencing December 18, 2014, MFDA Staff sent letters to each of the Respondents, by regular mail and registered mail, advising that they were required to attend an interview with the MFDA regarding their conduct.

50. All of the Respondents, except Lieu and Lima, failed to cooperate with MFDA Staff's investigation. In particular:

- a) Pathan, Roomal, Zobair, Rawani, and Masood failed to attend at an interview with Staff; and
- b) Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes misled MFDA Staff during interviews and/or failed to produce for inspection copies of documents and records requested by the MFDA Staff during the course of its investigation.

Pathan, Roomal, Zobair, Rawani, and Masood

51. Between December 18, 2014 and July 2015, MFDA Investigations Staff made numerous attempts to secure the attendance and participation of Pathan, Roomal, Zobair, Rawani and Masood at interviews in order to obtain their statements. These attempts included letters delivered by regular mail, registered mail and process servers, as well as communications by email and telephone.

52. Despite MFDA Staff's requests, Pathan, Roomal, Zobair, Rawani, and Masood failed attend interviews with MFDA Staff.

53. The failure of Pathan, Roomal, Zobair, Rawani and Masood to attend interviews has frustrated MFDA Staff from determining the full nature and extent of the Respondents' conduct and its ability to complete its investigation.

54. By failing to attend an interview as requested by the MFDA, Pathan, Roomal, Zobair, Rawani and Masood engaged in conduct contrary to s. 22.1 of MFDA By-law No. 1.

Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes

55. Between March 6, 2015 and June 25, 2015, Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes attended interviews with MFDA Staff.

56. Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya and Fortes each misled Staff during the course of their interviews. Among other things, Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes falsely denied their roles in altering, falsifying or fabricating client documents and NCAFs in spite of evidence presented to them by Staff during their respective interviews to the effect that: (1) they had in fact deliberately altered, falsified or fabricated client documents and NCAFs or instructed one or more of the other Respondents to do so on their behalf; and (2) they conspired with the other Respondents to deny having do so.

57. In addition to misleading MFDA Staff during their respective interviews, Rihawi and Mustafa undertook to provide MFDA Staff with documents including the following:

- a) Copies of their respective personal bank account statements for MFDA Staff to verify that the bank account statements they submitted to investment loans for the implementation of a leveraged investment strategy in their own personal WFG accounts had not been altered, falsified or fabricated; and

- b) Letters authorizing MFDA Staff to contact Rihawi's former employer in order to confirm and verify the income and job title he had recorded on his own personal WFG NCAF and investment loan application (collectively, the "Undertaking Documents").

58. On March 9, 2015 and March 20, 2015, letters from MFDA Staff were personally served on Rihawi requesting that he provide the Undertaking Documents to MFDA Staff no later than March 27, 2015. The letters also reminded Rihawi of his obligations as a former Approved Person of the MFDA to cooperate with Staff during the course of an investigation and that any failure to provide the Undertaking Documents, as requested, could result in disciplinary proceedings being commenced against him. Rihawi later responded to MFDA Staff that he would not provide the Undertaking Documents.

59. On March 20, 2015 and April 6, 2015, letters from MFDA Staff were personally served on Mustafa requesting that he provide the Undertaking Documents to MFDA Staff no later than April 10, 2015. The letters also reminded Mustafa of his obligations as a former Approved Person of the MFDA to cooperate with Staff during the course of an investigation and that any failure to provide the Undertaking Documents, as requested, could result in disciplinary proceedings being commenced against him. No response to these letters was ever received by MFDA Staff from Mustafa.

60. To date, neither Rihawi nor Mustafa have provided the Undertaking Documents to MFDA Staff. As a result, MFDA Staff has been unable to determine the full nature and extent of the Rihawi's and Mustafa's activities.

61. By engaging in the conduct described above, Rihawi, Mustafa, Tabesh, Attal, Ajmal, Kolgekaya, and Fortes engaged in conduct contrary to section 22.1 of MFDA By-law No. 1.

NOTICE is further given that the Respondents 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 Respondents:

- have failed to carry out any agreement with the MFDA;
- have 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;
- have failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- have 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 Respondents 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 Respondents must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of 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, ON M5H 3T9
Attention: Francis Roy
Email: froy@mfd.ca

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

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

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

- b) transmitting one (1) copy of the **Reply** to the Office of 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 Office of the Corporate Secretary permits otherwise; or
- c) transmitting one (1) electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.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 Respondents fail:

- 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 Respondents, 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.

Appendix “2”

Agreed Statement of Facts

File No. 201727



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: Sama Tabesh

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated February 28, 2017, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Sama Tabesh (the “Respondent”), among other Respondents, pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: Between 2008 and August 21, 2014, the Respondents falsified, fabricated or altered:

- a) clients’ Know-Your-Client (“KYC”) information such as income, net worth, investment objectives, and risk tolerance on account forms submitted to the Member, including new account application forms; and

- b) information on loan applications and client documents submitted to lenders, including bank statements, investment statements, pay stubs, or Canada Revenue Agency Notices of Assessment;

in order to obtain at least 6 investment loans to purchase mutual funds on behalf of clients, thereby failing to observe the high standards of ethics and conduct in the transaction of business, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

Allegation #2: Between 2008 and August 21, 2014, the Respondents failed to ensure that at least 6 investment loans recommended to clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know-Your-Client" information and financial circumstances, contrary to the Member's policies and procedures, and MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Commencing December 2013, the Respondents engaged in conduct unbecoming Approved Persons by providing false and misleading responses to the Member during the course of the Member's investigation into their conduct, contrary to MFDA Rule 2.1.1.

Allegation #6: Commencing in March 2015, the Respondent misled MFDA Staff during an interview conducted pursuant to an investigation, contrary to section 22.1 of MFDA By-law No. 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. Subject to the determination of the Hearing Panel, Staff and the Respondent jointly request that the Hearing Panel impose the following penalties and costs:

- a) A permanent prohibition on the Respondent's authority to act and be registered as a mutual fund salesperson (now known as a dealing representative), pursuant to section 24.1(e) of By-law No. 1;
- b) A fine in the amount of \$10,000, pursuant to s. 24. 1.1(b) of MFDA By-law No. 1; and
- c) Costs of the investigation and hearing in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No.1.

6. The Respondent requests that the proposed fine and costs (totaling \$15,000) should be payable over a period of 30 months from the date of an order of the Hearing Panel. The Respondent states that he does not have the resources required to pay the proposed fine and costs any sooner on the basis of his recent bankruptcy, from which he was fully discharged on July 26, 2017.

7. Staff would ordinarily take the position that all fines and costs be paid within 12 months of the date of a Hearing Panel order. However, in the unique circumstances of this case, and in particular as a consequence of the Respondent's recent discharge from bankruptcy, Staff consents to the Respondent's payment proposal that the fine and costs be paid over a period of 30 months from the date of an order of the Hearing Panel (30 payment in the amount of \$500).

IV. AGREED FACTS

8. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

9. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

The Respondent's Registration History and Work History at WFG

10. The Respondent is one of 14 named Respondents in this proceeding.² He, along with all of the other named Respondents, operated out of the same branch office of WFG Securities Inc. (“**WFG**”) or one of its predecessor companies, located in Mississauga, Ontario (the “**Branch**”).

11. From March 7, 2008 to August 21, 2014, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with WFG.

12. Commencing December 2012, the Respondent's (and the Branch's) branch manager was one of the other named Respondents to this proceeding, Attal Golzay (“**Attal**”).

13. While working at the Branch, the Respondent held the title of Senior Marketing Director (“**SMD**”). The SMD designation meant that the Respondent was entitled to receive a portion of commissions and fees payable to other mutual fund salespersons who reported to him.

² After issuance of the Notice of Hearing in this matter on February 28, 2017, Staff of the MFDA withdrew all allegations made as against Juliene da Rosa Lima.

14. The other SMDs at the Branch were the following individuals, all of whom are named Respondents to this proceeding: Attal, Saadet Kolgekaya (“**Kolgekaya**”), Sayed Mohammed Zobair Hashimi (“**Zobair**”), Mustafa Sayed Hashimi (“**Mustafa**”) and Mohammad Yunas Masood (“**Masood**”).

Allegation #1 – Falsification of KYC Information and Client Documents

15. Between 2008 (when he first became a registered Approved Person of WFG) and August 21, 2014 (when his registration was terminated by WFG), the Respondent participated with the other named Respondents in this proceeding in a Branch-wide practice of recommending to clients that they borrow monies and use the proceeds of the investment loans to purchase mutual funds for their accounts at WFG.

16. Along with the other Respondents, the Respondent engaged in a widespread scheme at the Branch which involved falsifying, fabricating or altering clients’ Know-Your-Client (“**KYC**”) information on account forms submitted to WFG including new account application forms, and information on client documents submitted to lenders such as bank statements, investment statements, pay stubs, or Canada Revenue Agency Notices of Assessment, in order to obtain investment loans to purchase mutual funds in client accounts.

17. In particular, in the course of assisting the clients to obtain the investment loans, the Respondent, along with the other named Respondents in this proceeding, prepared and submitted new client account forms (“**NCAFs**”) and loan applications, which he knew or ought to have known contained falsified, fabricated, incorrect, and/or misleading information. Among other things, the Respondent:

- a) inflated the market values of the clients’ residences on the loan applications without consulting the clients about the market values of their residences or by ignoring the market value estimates provided by the clients;
- b) reported on the loan applications and/or NCAFs that the clients held cash or liquid assets which the clients did not hold or which the Respondent inflated in value;

- c) reported on the clients' loan applications that the clients held other investments which the clients did not in fact hold or which the Respondent inflated in value;
- d) reported on the loan applications and/or NCAFs that the clients had "good" investment knowledge and a "high" risk tolerance when the clients had limited to nil investment knowledge and a risk tolerance less than "high";
- e) reported on the clients' loan applications that the clients owned properties or other assets (such as cars) which the clients did not own or which the Respondent inflated in value;
- f) failed to report the true nature and extent of the clients' liabilities on the loan applications when many of the clients had material liabilities, and without making adequate or any inquiries to determine whether the clients had any liabilities;
- g) inflated the clients' net worth on the clients' NCAFs and loan applications; and
- h) inflated the clients' income on the clients' NCAFs and loan applications.

18. In addition, the Respondent:

- a) falsified, fabricated or altered information; and/or
- b) requested and had Lieu falsify, fabricate or alter information;

contained in documents provided by the clients. These falsified, fabricated or altered client documents included, among other things, bank statements, investment statements, pay stubs, Canada Revenue Agency Notices of Assessment, T4s, etc.

19. The Respondent submitted the falsified, fabricated or altered client documents to lenders as part of the applications for investment loans he had prepared for clients.

20. The Respondent states that he engaged in the activities described in paragraph 16-21 above along with all of the other named Respondents within the Branch: Mahmoud Rihawi ("**Rihawi**"), Attal, Ajmal Golzay, Roomal Golzay ("**Roomal**"), Mustafa, Zobair, Kolgekaya, Hammond Lieu ("**Lieu**"), Rhea Galias Fortes ("**Fortes**"), Shameel Rawani ("**Shameel**"), Anjum Pathan and Masood.

21. The Respondent further states that, along with the other SMDs at the Branch (Attal, Kolgekaya, Zobair, Mustafa and Masood), he devised and implemented the scheme and activities described in paragraphs 15-20 above.

22. The Respondent engaged in the activities described in paragraph 16-21 above, without the knowledge or instructions of the clients, to ensure that the information contained in the client documents matched the false information that the Respondent had reported on the clients' NCAFs and loan applications. In particular, the Respondent engaged in these practices in order to make it appear as though the clients satisfied WFG's requirements regarding the use of leveraging and to increase the likelihood that the lenders would approve the investment loans.

23. Between 2008 and August 21, 2014, the Respondent recommended to at least 6 clients for which he was the servicing mutual fund salesperson that they obtain investment loans that he knew or ought to have known the clients could otherwise not afford and for which, without the clients' knowledge, he falsified at least 6 documents submitted to WFG and/or the lenders in the manner described above.

24. Commencing in or about February 2012, the Respondent and the other named Respondents to this proceeding arranged for Lieu to falsify, fabricate or alter all client documents on their behalf. The Respondent states that he and the other Respondents requested Lieu do so on the basis that Lieu was more adept and quicker at doing so than all of the other named Respondents.

25. The Respondent states that for every client document that he requested Lieu falsify, fabricate or alter, he paid Lieu a fee of between \$30 and \$300, depending on the complexity of the necessary alteration(s). In total, the Respondent states that he paid Lieu approximately \$900 for Lieu's alterations, fabrications or falsifications of client documents.

Allegation #2 – Failure to Ensure Loan Recommendations were Suitable

26. At all material times, WFG's policies and procedures required its Approved Persons, including the Respondent, to assess and determine whether a leveraged investment

recommendation was suitable for a client having regard to certain criteria. In particular, WFG's policies and procedures stated:

General: It must be kept in mind at all times that leveraging (borrowing for securities purchases), as with any investment strategy, is not suitable for all clients. Before leveraging is used, it is important that you carefully review the matter for suitability based on the specific investment objectives, needs, investing experience, financial position and their capacity to service debt load...

As per MR 0069, it is important to provide your clients with a balanced presentation that includes a full review of the risks of leveraging as well as the benefits. Your notes must be kept for any meeting or conversation that is part of the planning process or that leads to a transaction of any kind. These notes should be maintained in the client's file.

Leveraging Parameters. Clients must have the following as a minimum:

- Clients must have a risk tolerance of 100% medium or higher;
- The total borrowed funds to invest must not exceed 30 % of a client's verifiable net worth and 50% of the client's verifiable liquid net worth;
- The client's total debt payments must not exceed 35% of the client's gross income;
- Client investment knowledge must be good or above;
- Minimum income must be \$25,000 or more;
- Client investment horizon must be long term;
- Client must be able to afford to service their debt load using their own demonstrated personal income. The following methods to fund a loan will not be included as income when applying for approval: systematic withdrawal plans (SWP's) and cash distributions from underlying funds;
- For portfolios in excess of \$25,000 representatives should consider diversifying to a number of individually chosen funds or a managed portfolio product offered by WFG approved providers;
- Independent legal advice ("ILA") may be required for all loans of \$250,000 or more. If this is already a requirement of the lender you will not be required to obtain additional ILA.

27. The Respondent recommended investment loans to at least 6 clients, as described above, without taking adequate or any steps to ensure that the loans were suitable for the clients.

28. The clients to whom the Respondent recommended a leveraged investment strategy had limited to no investment knowledge, had limited to no prior investing experience, and had never previously borrowed monies to invest.

29. In addition, the Respondent knew or ought to have known that the 6 clients could not afford to pay the costs of servicing the investment loans from their own personal income or withstand the risk of investment loss associated with using borrowed monies to invest.

30. The Respondent engaged in the conduct described in paragraphs 16-27 above in order to:
- a) increase the likelihood that the lenders would approve the clients' investment loans; and
 - b) make it appear to WFG's supervisory and compliance staff as though the clients satisfied WFG's requirements regarding the use of leveraging, as set out in its policies and procedures, when the clients did not satisfy these requirements.

31. By engaging in the conduct described above, the Respondent was able to sell more mutual funds to clients, thereby inflating the sales commissions and fees he otherwise would have been entitled to receive.

Allegation #3 – The Respondent Misled WFG

32. In December 2013, WFG received a client complaint alleging that Rihawi, one of the other Approved Persons at the Branch and a named Respondents to this proceeding, had recommended unsuitable investment loans in the client's account (the "**Rihawi Complaint**").

33. Upon receipt of the Rihawi Complaint, WFG commenced an investigation.

34. On June 13, 2014, the Respondent, along with Rihawi, Attal, Mustafa, Roomal, Rawani, Masood, Fortes and Lieu, all of whom were Approved Persons at the Branch and are named Respondents to this proceeding, attended meetings to discuss, and devise a collective response to, WFG's investigation.

35. During the June 13, 2014 meetings, the Respondent and the other named Respondents to this proceeding agreed not to reveal to WFG the scheme described at paragraphs 15-26 above or

their roles in falsifying, fabricating or altering client information in NCAFs, loan applications, or client documents submitted with the loan applications. Instead, the Respondents agreed to maintain a unified response, and deny any knowledge, responsibility or wrongdoing with respect to the falsified, fabricated or altered documents.

36. In July 2014, WFG received a client complaint alleging that Kolgekaya had recommended and implemented an unsuitable leveraged investment strategy in the complaining client's account (the "**Kolgekaya Complaint**").

37. In July 2014 WFG compliance staff expanded its investigation of the Rihawi and Kolgekaya Complaints to review all leveraged activity at the Branch, including activity pertaining to the Respondent's conduct.

38. By the end of July 2014, WFG compliance staff suspended all of the named Respondents to this proceeding, including the Respondent, pending a further investigation into their activities.

39. On July 31, 2014, WFG compliance staff obtained statements from the Respondent, who falsely stated to WFG, among other things, that he did not know who or why client documents and records at the Branch had been falsified, fabricated or altered.

40. The Respondent therefore provided false and misleading responses to the Member during the course of the Member's investigation into his conduct.

41. On August 21, 2014, WFG terminated the Respondent as a result of the conduct described in this Agreed Statement of Facts.

Additional Factors

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

43. In admitting the facts and contraventions in this Agreed Statement of Facts, the Respondent provided MFDA Staff with evidence pertaining to:

- a) his and the Branch's practice of falsifying, fabricating or altering clients' KYC information on account forms submitted to the Member;
- b) information on loan applications and client documents submitted to lenders in order to facilitate and obtain investment loans to purchase mutual funds for clients which loans the clients did not otherwise qualify for; and
- c) his (and the other named Respondents to this proceedings) efforts to mislead, and conceal from, WFG about his and the Branch's misconduct.

44. The Respondent takes responsibility and expresses remorse for his actions.

45. In recognition of the Respondent's admissions and cooperation with Staff, and taking into account the Respondent's recent bankruptcy and current financial situation, Staff has agreed to the proposed penalties and costs set out in paragraph 5 above.

Misconduct Admitted

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

- a) between 2008 and August 21, 2014, he falsified, fabricated or altered:
 - i. clients' Know-Your-Client ("KYC") information such as income, net worth, investment objectives, and risk tolerance on account forms submitted to the Member, including new account application forms; and
 - ii. information on loan applications and client documents submitted to lenders, including bank statements, investment statements, pay stubs, or Canada Revenue Agency Notices of Assessment;

in order to obtain at least 6 investment loans to purchase mutual funds on behalf of clients, thereby failing to observe the high standards of ethics and conduct in the

transaction of business, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1;

- b) between 2008 and August 21, 2014, he failed to ensure that at least 6 investment loans recommended to clients were suitable for the clients and in keeping with the clients' investment objectives, having regard to the clients' relevant "Know-Your-Client" information and financial circumstances, contrary to the Member's policies and procedures, and MFDA Rules 2.2.1 and 2.1.1; and
- c) Commencing December 2013, the Respondents engaged in conduct unbecoming Approved Persons by providing false and misleading responses to the Member during the course of the Member's investigation into their conduct, contrary to MFDA Rule 2.1.1.

Execution of Agreed Statement of Facts

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

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

DATED this 15th day of May, 2018.

"Sama Tabesh"

Sama Tabesh

"Shaun Devlin"

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Appendix “3”

Fines Sought By Staff against the Individual Respondents

Attal (the branch manager)

- Fine of \$50,000 in respect of Contraventions #1 and#2
- Fine of \$20,000 in respect of Contravention #3 (misleading the Member)
- Fine of \$15,000 in respect of Contravention #4 (branch manager failure)
- Fine of \$50,000 in respect of Contravention #6 (failure to cooperate with Staff)

Mustafa. Kolgekava, Rihawi and Ajwal

- Fine of \$50,000 in respect of Contraventions #1 and#2
- Fine of \$20,000 in respect of Contravention #3 (misleading the Member)
- Fine of \$50,000 in respect of Contravention #5 (failure to cooperate with Staff)

Fortes

- Fine of \$50,000 in respect of Contraventions #1 and#2
- Fine of \$20,000 in respect of Contravention #3 (misleading the Member)
- Fine of \$25,000 in respect of Contravention #5 (failure to cooperate with Staff)

Note: The fine sought against Fortes in respect of Contravention #5 is lower than the standard \$50,000 normally sought in failure to cooperate cases. This is in recognition of Fortes eventually admitting to Staff her misconduct during an interview (though she initially mislead Staff and denied any misconduct), which Staff considers to be a mitigating factor with respect to this contravention.

Roomal. Zobair, Rawani and Masood

- Fine of \$50,000 in respect of Contraventions #1 and#2
- Fine of \$20,000 in respect of Contravention #3 (misleading the Member)
- Fine of \$50,000 in respect of Contravention #6 (failure to cooperate with Staff)

Pathan

- Fine of \$25,000 in respect of Contraventions #1 and#2
- Fine of \$20,000 in respect of Contravention #3 (misleading the Member)
- Fine of \$50,000 in respect of Contravention #5 (failure to cooperate with Staff)

Note: The fine sought against Pathan in respect of Contraventions #1 and 2 is lower than the fine sought against the other Respondents for the same contraventions on the basis that, though

still extremely serious, the investment loan obtained by Pathan with false information was for only done for his and his wife's benefit, not other clients.