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: Marja Grobbink Harmer

Heard: October 19-22, 2021 in Regina, Saskatchewan
Decision (Misconduct) and Reasons: March 22, 2022

DECISION (MISCONDUCT) AND REASONS

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Sean Shore	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Justin Dunphy	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Sakeb Nazim	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Marja Grobbink Harmer	)	Respondent

I. INTRODUCTION

1. On December 14, 2020, the Mutual Fund Dealers Association of Canada ("MFDA") commenced proceedings against Marja Grobbink Harmer ("Respondent") by issuing a Notice of Hearing which contained the following allegations:

> **Allegation #1**: Between June 2013 and February 2017, the Respondent engaged in personal financial dealings with clients by:
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> a) jointly investing with clients in real estate investments through a company that she owned or operated; or
>
> b) opening and maintaining a joint bank account with clients relating to real estate investments,
>
> which gave rise to a conflict or potential conflict of interest that she failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.
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> **Allegation #2**: Between June 2013 and February 2017, the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Member, when she solicited, recommended, sold or facilitated the sale of investments by clients in real estate investments, contrary to MFDA Rules 1.1.1 and 2.1.1.
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> **Allegation #3**: Between June 2013 and February 2017, the Respondent engaged in outside business activities that were not disclosed to or approved by the Member when she:
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> a) solicited, recommended, sold or facilitated the sale of investment by clients in real estate investments;
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> b) incorporated companies or served as the President or Director of the companies; or
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> c) became an independent distributor for a skin care company,
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> contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c)1 (now 1.3.2), 2.1.1, 2.5.1 and 1.1.2.
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> **Allegation #4**: Between December 2013 and February 2017, the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Member, by recommending, selling or facilitating the sale of investment in exempt market or other investment products to clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.1.1, and 2.5.1.
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> **Allegation #5:** Commencing in July 2019, the Respondent failed to cooperate with an investigation by MFDA Staff into her conduct, contrary to section 22.1 of MFDA By-Law No. 1.

2. On January 7, 2021, the Respondent filed a two-page Reply in which she addressed each of the paragraphs set out in the Notice of Hearing, indicating whether she admitted, denied or had no knowledge of the facts alleged and the conclusions drawn by Staff in those paragraphs.

3. For the reasons set out below, the Panel has determined that Staff has proven all five of the Allegations contained in the Notice of Hearing.

II. PROCEDURAL OVERVIEW

4. A first appearance in this matter was held on February 26, 2021. It was attended by Enforcement Counsel, the Respondent, and six members of the public, all of whom participated by videoconference.

5. The purpose of the appearance was to discuss procedural issues relating to the Hearing on the Merits ("Hearing") including scheduling a date for the Hearing.

6. Enforcement Counsel requested that the Hearing be held in person to allow some of the MFDA's witnesses – the individuals who had filed complaints about the Respondent - to testify in person.

7. It was determined that the Hearing would take place from October 19 to October 22, 2021 in Regina, Saskatchewan, at a venue to be determined.

8. It was also determined that a further appearance would be held by videoconference, closer to the time of the Hearing to address COVID 19 related issues. Following the first appearance, the Panel issued an Order, setting out deadlines for the parties to exchange disclosure, witness lists, and will-say statements.

9. The next appearance took place by teleconference on August 31, 2021.

10. At that appearance the parties made further submissions relating to disclosure and the evidence they intended to adduce at the Hearing.

11. Enforcement Counsel requested that one of the witnesses they intended to call be allowed to testify by video conference.

12. The Panel granted that request and set deadlines for the parties to provide written submissions and authorities to the Panel, in advance of the Hearing.

13. There were no discussions regarding COVID 19 related issues.

14. Immediately following that appearance, however, the Panel asked the Corporate Secretary to convey a message to the parties that upon reflection, the Panel was not prepared to hold the Hearing in person because the situation regarding COVID 19 was so uncertain. The Panel expressed the view that knowing that the Hearing would be proceeding remotely, the parties would

have sufficient time to prepare so that there would be no last-minute technical difficulties associated with their participation, including having time to make whatever arrangements they saw fit to assist witnesses with participating remotely, as had been the case for participants in MFDA hearings over the last year and a half.

15. The Panel said that if the parties wished to convene another interim appearance by videoconference to discuss any further procedural issues it would be happy to oblige.

16. Enforcement Counsel requested an interim appearance to be held the following week, to explore other options and on September 9, 2021 a further appearance was convened by videoconference.

17. After discussion between the parties and the Panel, it was agreed and the Panel determined that the Hearing would be conducted as an electronic hearing in a hybrid manner, allowing anyone who wished to participate by attending at the physical location the Corporate Secretary would secure in Regina, to do so. Members of the public were entitled to have access to participate by video conference, in the same manner they had been able to do since the MFDA began conducting electronic hearings in response to the COVID 19 pandemic.

> *Harmer,* MFDA File No. 202061, Hearing Panel of the Prairie Regional Council, Decision (Motion) dated September 9, 2021; Reasons for Decision (Motion) dated October 25, 2021

18. The Hearing took place over the course of four days: October 19-22, 2021.

19. The Respondent attended the Hearing by remote participation. She was not represented by legal counsel.

20. The Respondent chose not to testify but she did cross-examine the witnesses whom Enforcement Counsel called to testify.

21. At the beginning of the Hearing, the Panel made an order under Rule 13.6 of the MFDA *Rules of Procedure* to exclude witnesses from the Hearing until after they had given their evidence, with the exception of Caron Handsaeme, a Senior Investigator with the MFDA.

22. With respect to Ms. Handsaeme, Staff submitted that given the amount of information and in particular documentary material involved in this matter, Ms. Handsaeme's presence throughout the proceedings was necessary to instruct counsel.

23. In making this submission Staff pointed out that Rule 13.6(2) of the MFDA *Rules of Procedure* says that the Panel can make an order to allow a witness to attend throughout the proceeding if their presence is essential to instruct counsel or another party.

24. Staff said that MFDA Panels frequently grant its request to have the investigative witness attend the hearing to provide instructions, in complex hearings such as this one.

25. Staff also pointed out that unlike the other witnesses who were being called to testify, Ms. Handsaeme's evidence would not relate to any of the disputed factual matters which were the subject of the Allegations in the Notice of Hearing; rather her evidence would pertain to the investigation and information gathering aspect of the proceedings.

26. The Respondent took the view that Staff already had their material and should not need anyone to assist them in that regard.

27. The Panel agreed with Staff's submissions that given the nature of the evidence that Ms. Handsaeme would be providing in her role as investigator, the harm that Rule 13 is intended to prevent - that a witness may tailor their evidence to the evidence they hear from others – did not exist.

28. The Panel determined, therefore, that given the volume of documents and extent of information underlying the investigation in these proceedings, together with the nature of the evidence about which Ms. Handsaeme would be called to testify, allowing her to attend throughout the proceedings to assist Staff where necessary, was appropriate.

III. EVIDENCE

29. In making its determination in this matter, the Panel heard testimony from the following individuals: EW, AH, MW, Lee Charlton, Catherine Kelly and Caron Handsaeme.

30. It also considered a number of documents which were entered into evidence as exhibits, including the:

- Notice of Hearing dated December 14, 2020
- Respondent's Reply dated January 7, 2021
- Affidavit and exhibits of EW ("Mrs. WA")
- Affidavit and exhibits of AH ("Mr. H")

- Affidavit and exhibits of MW ("Mrs. WI) and
- Affidavit and exhibits of Caron Handsaeme.

31. In this decision we refer to some but not all of the evidence. However, in making our determination we considered all of the evidence adduced at the Hearing as well as the oral submissions made by both parties and the written submissions and authorities provided by Staff.

Hearsay Evidence and Evidence by Sworn Statement

32. Rule 1.6 of the MFDA *Rules of Procedure* specifically permits hearsay statements to be admitted as evidence:

> (1) Subject to sub-Rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.
>
> (2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.
>
> (3) Nothing is admissible in evidence which would be inadmissible by reason of a statute or a legal privilege.

33. Rule 13.4 also permits evidence to be adduced by way of sworn statements:

> ***13.4 Evidence by Sworn Statement***
>
> (1) The Hearing Panel may allow the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness at the hearing for cross-examination.

34. MFDA Hearing Panels and other regulatory bodies routinely consider and rely on hearsay and affidavit evidence in making findings of fact.

> *Tonnies, MFDA File No. 200503, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 27, 2005 at pp.6-7*

35. Pursuant to all of these authorities, the Panel had no hesitation to admit the affidavits referenced above into evidence.

36. All of the witnesses whose Affidavits were entered into evidence also testified in person and were available to be cross-examined by the Respondent.

37. Enforcement Counsel advised that all of the Affidavits and exhibits which were entered into evidence had also been provided to the Respondent in advance of the Hearing - something which it said it was not required to do but which it did out of an "abundance of procedural fairness and to minimize prejudice" to the Respondent.

38. At the outset of the Hearing, the Panel granted Enforcement Counsel's request to mark the exhibits to the Affidavits as "confidential" to the extent that they contained personal information about an individual, including banking or financial information, in order to protect the individual's privacy. The Panel made its order pursuant to the broad authority given to it under MFDA *Rules of Procedure* 1.5 and 1.8(2):

> 1.5 General Powers of a Panel
>
> (1) A Panel may:
>
> (a) exercise any of its powers under these Rules on its own initiative or at the request of a party;
>
> (b) waive or vary any of these Rules at any time, on such terms as it considers appropriate;
>
> (c) issue directions or make interim orders concerning the practice or procedure to be followed during a proceeding, on such terms as it considers appropriate.
>
> 1.8 Hearings Open to the Public
>
> (1) Subject to sub-Rules (2) and (3), all hearings shall be open to the public unless the Panel orders otherwise.
>
> (2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public. …

39. The Panel ordered that the Corporate Secretary has the ability to redact exhibits before making them available to the public, if such access is requested.

Facts

40. The relevant facts are set out below.

Registration History

41. From August 2002 to February 2017, the Respondent was registered in Saskatchewan as a dealing representative with Investors Group Financial Services Inc., a Member of the MFDA ("Member"). At all material times, the Respondent carried on business in the Regina, Saskatchewan area.

42. The Respondent resigned from the Member on February 1, 2017 and as at the time of the Hearing she was not registered in the securities industry in any capacity.

43. On June 21, 2013, the Respondent incorporated a company called H&H Real Estate Investments Ltd. She was the President and a shareholder of that company (H&H).

44. At all material times, the following individuals were clients of the Member (collectively the "Clients") whose accounts were serviced by the Respondent:

a) EW and RW (spouses) ("Clients WA")
b) MW and LW (spouses) ("Clients WI")
c) CH and AH (spouses) ("Clients H"); and
d) PB and DB (spouses) ("Clients B").

Evidence of Caron Handsaeme - Overview

45. Ms. Handsaeme is a senior investigator with the MFDA.

46. She testified that this matter came to the MFDA's attention via a METS (Member Event Tracking System) event which the Member filed in response to a complaint it received from EW on January 7, 2019.

47. Ms. Handsaeme testified that all the Clients filed complaints with the Member, about the Respondent's conduct.

48. As part of her investigation, Ms. Handsaeme received copies of the complaint investigation summaries that the Member completed for these complaints.

49. She testified that she also interviewed the Respondent and the Clients.

50. Through her investigation Ms. Handsaeme determined that H&H is a company which was incorporated on June 21, 2013 and that the Respondent and her husband are directors and shareholders of that company.

51. Other matters identified by this witness in the course of her investigation are set out later in these Reasons.

Evidence of Clients WA

52. The facts with respect to Clients WA were entered into evidence through the Affidavit and testimony of EW ("Mrs. WA").

53. From November 2002 to February 2017, Clients WA had investment accounts at the Member that were serviced by the Respondent.

54. Clients WA were both employed in the federal service before they retired in 2005 and 2012 respectively.

Robinson Joint Venture Agreement

55. The Respondent approached Clients WA in June of 2013 to offer them an investment opportunity that involved pooling money contributed by various investors to jointly purchase and operate with the Respondent, a rental apartment building located on Robinson Street in Regina, Saskatchewan (the "Robinson Street Property").

56. Mrs. WA testified that the Respondent came to her home where she told Clients WA about this investment. She told them it was a real estate investment which involved purchasing an apartment. She said if they contributed $100,000 they would get a 10% share of the building and after the first year would receive a cash flow of $400 a month. She also told them that at the end of five years they would get their initial $100,000 investment back and would continue to receive the cash flow payments.

57. Mrs. WA testified that the Respondent recommended Clients WA finance their investment by obtaining what she described as an "investment loan" which consisted of obtaining a home equity line of credit and borrowing the funds from this line of credit to invest in the Robinson Street Property.

58. On June 7, 2013, after the initial discussion the Respondent had with Clients WA at their home, she sent them an email, to which she attached a document which included photographs and information about a property identified as *Property featured by 3D Real Estate Investments Ltd.*, located on Robinson Street. The email said:

> Good morning;
>
> We have an Investment Opportunity in a 18 unit complex in Regina.
>
> Our plan is to take possession July 19 so time is of the essence.
>
> Please let me know if you have any questions or need any clarification.
>
> Thank you for your consideration.

59. The document attached to the email identified the following information about the property:

> This property presents a value-add opportunity through sound management with rental increases.
>
> We want to raise $400,000 to close on the property.
>
> The money will be a Shareholder Loan and we are offering 40% ownership for the $400,000. Minimum required investment is $100,000 and will give you a 10% ownership.
>
> The Investor Principal will come back to the Investor at the end of the five year term when we refinance. At the point our mortgage paydown will equate to $266,000 and the value of the building is projected to be $2.5 Million.
>
> Cash flow will be $400/mth per $100,000 – a cash on cash return of 4.8%. Mortgage paydown will be about $50,000 per year, another 5% per year and at 3% projected equity appreciation the building will have appreciated by another $325,000, another 6.5% per year or about 16% annual return on investment.

60. The document also included a financial analysis which referred to matters such as "projected rents" and concluded with the statement:

> Cash flow to Investor with $100,000 is $400/mth at the end of Year One as we will increase the capital Repair and Maintenance Fund to $1,070/mth.

61. Mrs. WA said that in discussing this investment opportunity the Respondent made no mention of the concept of risk. She simply sold it as an investment saying that they should get the equity in their home working for them.

62. In July 2013, acting on the Respondent's recommendation, Clients WA obtained a loan of $100,000 to invest in the purchase of the Robinson Street Property.

63. Mrs. WA testified that she believed that the Robinson Street Property was an investment which was associated with the Member because the Respondent was their financial advisor who

worked for the Member and because the Respondent never said that it was not a Member sponsored investment.

64. On October 9, 2013 Clients WA signed a joint venture agreement with respect to their participation in the purchase and operation of the Robinson Street Property (the "Robinson Joint Venture Agreement"). Other individuals who signed the joint venture agreement included Clients B and WI.

65. The Robinson Joint Venture Agreement was also signed by the Respondent on behalf of her company H&H and by someone named EK on behalf of her company 3D Real Estate Investments Ltd. ("3D").

66. Later, on October 23, 2013, Clients H signed an Addendum which added them to the Robinson Joint Venture Agreement.

67. Pursuant to the Robinson Joint Venture Agreement, Clients WA contributed $100,000 in exchange for receiving a 10% ownership interest in the Robinson Street Property.

68. Neither the Respondent nor her company H&H contributed money towards the purchase price of the Robinson Street Property, but H&H received a 12.5% ownership interest in the property.

69. Similarly, neither EK nor her company 3D contributed money towards the purchase of the Robinson Street Property but 3D received a 47.5% ownership interest in the property.

70. Title to the Robinson Street Property was held by 101270256 Saskatchewan Ltd. (the "Robinson Company") which was incorporated on November 25, 2014.

71. The Respondent and EK were the directors of the Robinson Company. Clients H, B, WA and WI all became shareholders of the Robinson Company as did 3D and H&H.

72. The Robinson Joint Venture Agreement stated that the investors would each receive $400 per month after the first year of the agreement and would receive the return of the entire amount of their principal investment at the end of the fifth year (or earlier).

73. Mrs. WA testified that with respect to the fact that neither EK nor the Respondent contributed money in exchange for their investments in the Robinson Street Property, she understood that the contribution of those individuals would be in the nature of work because the

Respondent had told them that she and EK would be responsible for operations and management of the Robinson Street Property.

74. Starting in or about February 2015 and continuing until about September 2018, Clients WA received quarterly principal repayments totaling $17,600. Cheques representing those sums were sent to them by EK on behalf of 3D.

75. Mrs. WA testified that other than this sum, she and her husband have not received any further returns or repayments from their investment.

76. Mrs. WA testified that in or around February 2016, EK obtained a mortgage of $150,000 on the Robinson Street Property, without the knowledge or approval of any of the Clients.

77. Mrs. WA testified that she understood that the $150,000 was never used for the benefit of the Robinson Street Property. She has no knowledge as to where the funds went. She said she did not discover the existence of the mortgage until they were viewing the Robinson Street Property's accounts in 2019.

78. Mrs. WA described the current financial situation of the Robinson Street Property as being "grim".

79. She testified that they have monthly expenses, some of which involve servicing the debt which was left behind on the building and that, for a number of reasons, the rental income is limited. She summarized by saying that to date she and her husband had contributed approximately $225,000 towards that investment in return for which they have received a total of $17,600.

Vaughn Joint Venture Agreement

80. On December 6, 2013, the Respondent sent Mrs. WA the following email:

> Attached is a new opportunity, just thinking that you might be interested.
>
> Have a great day!

81. The email was signed in the following manner:

Marja G Harmer

NuCerity International

Independent Distributor

cell# 306-527-7732

mgharmer@accesscomm.ca

www.mynucerity.com\harmerm

H&H Real Estate Investments Ltd

Practice is just as valuable as a sale. The sale will make you a living; the skill willmake you a fortune. by Jim Rohn

82. Attached to the email was a two page document entitled *Property Featured by 3D Real Estate Investments Ltd.* which included a photograph of a property located on Vaughn Street (the "Vaughn Street Property") in Regina, Saskatchewan and a general description of the property.

83. The document was very similar to the document the Respondent had sent Clients WA with respect to the Robinson Street Property, before they signed the Robinson Joint Venture Agreement.

84. It said:

> We want to raise $700,000 to close on the property. The money will be a Shareholder Loan and we are offering 40% ownership for the $700,000. Minimum required investment is $100,000 and will give you 5.714% ownership.

85. The document also contained a financial analysis which included information about cash flow and "projected rents".

86. Clients WA received a second email from the Respondent on December 6, 2013 with the subject: *Christmas Party/New Apartment* which said:

> Look forward to seeing you on the 21st.

87. Attached to the email was the following invitation:

3D Real Estate Investments Ltd

3drealestate@sasktel.net 306-536-6266

P.O. Box 908 Stn Main White City SK S4L 5B1

Christmas Party

When: December 20th, 2013 7:00 PM

Where: 5134 Aviator Place

What: Festive Drinks and Hor d'oeuvres

Why: Appreciation and Celebration

3D Real Estate has acquired shares in a new business venture and now is 50% owner in the new home construction business TAMEO HOMES (2013) Ltd.

As a valued Investor we invite you to please come out to our show home and celebrate with us.

We will be announcing a couple new investment opportunities that are in the works so please bring a friend who may be interested.

RSVP by December 14th

To Edna: 3drealestate@sasktel.net

88. Clients WA received another email from the Respondent with respect to the Vaughn Street Property on December 11, 2013 that said:

> Good morning;
>
> Good morning;
>
> Attached is our new opportunity, if you are interested in this opportunity or have any questions just call me on my cell 306-527-7732.
>
> As always there is a time limit on the this opportunity, so let me know if you are interested.
>
> For the investors; Save the date Dec 21st, we are planning a get together cocktails and bites, also planning a viewing of a suite at the Robbinson [sic] Street apartment block, and a viewing of 27 Vaughn street apartment block.

RSVP back to me; for Dec 21st

more details to come

Talk soon

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H&H Real Estate Investments Ltd

Practice is just as valuable as a sale. The sale will make you a living; the skill will make you a fortune. by Jim Rohn

89. On December 19, 2013, Clients WA received another email from the Respondent with the subject: *Christmas Party Agenda* which said:

December 21st is the date

Agenda

Hi Everyone,

Looking forward to seeing you all this Saturday. The agenda for the evening will be as follows:

7PM to 8PM — Social Hour — Festive Drinks and appies

8PM to 8:30PM — Update on current Real Estate Market, and a couple new opportunities.

8:30PM to 10PM — We will play the cash flow game — this is a fun educational game.

See you Saturday.

90. Mrs. WA testified that on receiving these emails she contacted the Respondent who told her that the investment opportunity for the Vaughn Street Property was the same as the one with respect to the Robinson Street Property except that they would only get a 5.714% interest in the property for their $100,000 because it was a bigger property.

91. Mrs. WA testified that she and her husband went to the December 2013 Christmas party where the Respondent introduced them to EK as being the Respondent's partner. Mrs. WA said that EK spoke with them about investing in the Vaughn Street Property and also mentioned investing in something called Walton.

92. After the Christmas party, Clients WA spoke to the Respondent about the Vaughn Street Property. She told them she thought it was a good investment and they should drive by the building. She also said that she thought Walton would be a good investment and another way to diversify their portfolio and that they could invest in it using their RRSP funds instead of having to use cash.

93. The Respondent advised Clients WA to take out a second investment loan to invest in this property. In February 2014, acting on that advice, Clients WA obtained a loan of $100,000 to fund their investment in the Vaughn Street Property.

94. On February 27, 2015, Clients WA along with Clients WI and H signed a joint venture agreement for the purchase and operation of the Vaughn Street Property (the "Vaughn Joint Venture Agreement"). Other individuals who signed the joint venture agreement included Clients B and WI.

95. The Respondent's company H&H and EK's company 3D, and two other investors also signed as parties to the Vaughn Joint Venture Agreement.

96. On August 26, 2015, four additional investors signed an Addendum to the Vaughn Joint Venture Agreement and were added as parties to that agreement.

97. Pursuant to the Vaughn Joint Venture Agreement, Clients WA contributed $100,000 in exchange for a 5.714% ownership interest in the Vaughn Street Property.

98. Neither the Respondent, nor her company H&H contributed capital towards the purchase of the Vaughn Street Property but received a 12.5% ownership interest in the Vaughn Street Property.

99. Neither EK nor her company 3D contributed any capital but received a 38.78% ownership interest in the Vaughn Street Property.

100. The Vaughn Joint Venture Agreement stated that the investors would receive between $400 and $700 per month after the first year of the agreement and would receive the return of their entire investment within five to seven years.

101. Title to the Vaughn Street Property was held by a numbered company: 101290286 Saskatchewan Ltd. (the "Vaughn Company") which was incorporated on October 7, 2015.

102. The Respondent and EK were directors of the Vaughn Company. The Clients along with the other investors became shareholders of the Vaughn Company as did H&H.

103. With respect to the Vaughn Joint Venture Agreement, between 2017 and 2019 Clients WA received cash calls that required them to contribute additional payments of $17,829 to cover cash shortfalls.

104. They received one quarterly principal repayment of $3,157 and have not received any further returns or repayments from their investment in the Vaughn Street Joint Venture.

105. Mrs. WA testified that she understood the Vaughn Street Joint Venture to be an investment which was made through the Member because the Respondent was their advisor at the Member.

Montague Joint Venture

106. Mrs. WA testified that in March 2014 the Respondent met with her and her husband at their home, to discuss their TFSA accounts and to follow up on the information they had received at the Christmas party concerning Walton. During the course of that meeting the Respondent proposed that they invest in a rental property with her in her portfolio. Mrs. WA said that when she and her husband expressed concern that they knew nothing about rental properties, the Respondent said that she would take care of the property management.

107. Following this meeting, Mrs. WA sent an email to the Respondent to summarize the meeting.

108. In her email she noted that they had discussed: Clients WA's TFSA accounts; the manner in which Clients WA would invest in Walton; that Clients WA would have their home assessed for market value to renegotiate the line of credit at their bank; and that the Respondent would be responsible to identify a suitable property to be purchased and managed by Clients WA and the Respondent respectively, for which Clients WA and the Respondent would share in rental revenue.

109. On March 19, 2014, the Respondent sent Clients WA an email saying she had found a house located at 3249 Montague Street ("Montague Street Property") and she would call them to talk about it.

110. She provided Clients WA with a seven page document entitled *Property Featured by 3D Real Estate Investments Ltd.* which, like the information which she provided with respect to the Robinson Street and Vaughn Street properties, included photos and information about the property. The last page of the document stated:

> Initial Investment is $71,500 for this property. You qualify for the mortgage, provide the down payment, legal costs and reserve funds.

111. The document also contained a financial analysis which, among other things, gave information about rents and cash flow and concluded with the statement: "Cash flow to Investor = $343/mth or 6% cash on cash return".

112. Mrs. WA said that the Respondent recommended they borrow from their home equity line of credit to fund this investment. To facilitate that the Respondent arranged for an appraisal of their home so that they could increase their line of credit. Acting on this advice, Clients WA obtained a loan from their line of credit to purchase the Montague Street Property.

113. On March 25, 2014 Clients WA and the Respondent opened a joint bank account to facilitate the receipt of rental income from and the payment of expenses associated with the operation and maintenance of the Montague Street Property.

114. On October 9, 2015 Clients WA signed a joint venture agreement with the Respondent's company H&H for the purchase and operation of the Montague Street property (the "Montague Joint Venture Agreement").

115. Clients WA contributed $70,000 to purchase a 50% share of the net profit from the Montague Street Property. The Respondent through her company H&H contributed $1.00 in exchange for receiving a 50% share of the net profit from the Montague Street Property.

116. Clients WA held title to the Montague Street Property.

117. In May 2019 the Respondent informed them she would no longer be involved with the Montague Street Property and Clients WA have been managing it since that time.

118. Mrs. WA testified that as of October 2020 she and her husband had contributed approximately $150,000 towards the Montague Joint Venture Agreement including the initial investment, operating expenses, interest payments and legal expenses.

Walton Exempt Market Products

119. As discussed above, in December 2013 the Respondent invited Clients WA to a Christmas party, the invitation for which stated, among other things, that there would be announcements about a couple of "new investment opportunities" that were in the works.

120. Mrs. WA testified that when they were at the Christmas party, EK gave an overview about an investment called Walton. Clients WA discussed Walton with the Respondent who said it would be a good investment for them because they could use their RRSP money and it would help diversify their portfolio.

121. This was the product the Respondent discussed with Clients WA when she met with them at their home in March 2014. Mrs. WA said that the Respondent told them Walton was a good investment because it had never lost any money and would provide about an 8% return.

122. On March 7, 2014 the Respondent sent Clients WA an email to which she attached information about: a "New Walton Investment Offering".

123. On May 8, 2014 the Respondent invited Clients WA to attend a financial investment seminar where a Walton representative was to present various Walton Investments. Clients WA attended that seminar as did the Respondent and EK.

124. On August 26, 2014, to facilitate their investment in Walton, the Respondent met with Clients WA at their home to obtain their signatures on transfer authorization forms that enabled them to redeem approximately $100,000 of monies which were held in their RRSP account at the Member, to transfer to new accounts they opened at a company called Olympia Trust Company.

125. Mrs. WA testified that the documents they signed to open accounts at Olympia Trust Company were filled out by the Respondent before she brought them the documents.

126. On October 9, 2014 the Respondent met with Clients WA at their home to obtain Mrs. WA's signatures on a subscription agreement which the Respondent had prepared for her to sign, in order to facilitate the investment of $50,000 in Walton Investments.

Other Exempt Products

127. Finally, Mrs. WA testified that on February 19, 2015, on the recommendation of the Respondent, Mr. WA entered into three additional subscription agreements for the purchase of the following products:

OmniArch Class C Bond

Royal Oak Income Trust II

SecureCare Series F 5 year Bond

Cross-examination

128. In cross-examination, the Respondent asked Mrs. WA why she thought the Robinson, Vaughn and Montague properties were investments through the Member when she herself was an investor in those properties.

129. Mrs. WA replied that it was because the Respondent was their investment advisor at the Member and she had sold the investments to them.

Evidence of Clients H

130. Mr. H is an accountant.

131. He testified that the Respondent serviced the investment accounts which he and his wife held at the Member.

Robinson Joint Venture Agreement

132. Mr. H testified that he and his wife met with the Respondent on October 9, 2013 at which time she provided them with information about the Robinson Street Property.

133. He said that the Respondent gave him an information document about that property. The Panel notes that document was the same document that was provided to Clients WA.

134. The Respondent also provided him with a document entitled *Multiple Ways to Wealth – Creating Your Prosperous Lifestyle,* written by EK. He testified that he met EK a substantial time after making initial investments through the Respondent.

135. Mr. H said that the Respondent recommended that he and his wife invest in the Robinson Street Property and that as a result of her recommendation they decided to invest $100,000 towards that property.

136. On October 23, 2013 Clients H signed the Robinson Joint Venture Agreement.

137. This was the same agreement which Clients WA signed, as described above.

138. Pursuant to the Robinson Joint Venture Agreement, Clients H contributed $100,000 in exchange for a 10% ownership interest in the Robinson Street Property.

139. Similar to the evidence of Mrs. WA, Mr. H said that neither the Respondent nor her company H&H contributed money towards the purchase price of the Robinson Street Property but H&H received a 12.5% ownership interest in the property.

140. Similarly, neither EK nor her company 3D contributed any money toward the purchase of that property but 3D received a 47.5% ownership interest in the Robinson Street Property.

141. Starting in February 2015 and continuing until September 2018, Clients H received quarterly principal repayments totaling $16,400 but have not received anything further with respect to their participation in the Robinson Joint Venture Agreement.

Vaughn Joint Venture Agreement

142. On November 28, 2013, the Respondent sent an email to Mr. H forwarding an email from EK with the subject: *3D Investor Opportunity*, to which was attached information about a property located at 27 Vaughn Street including a financial analysis which discussed projected rents and cash flow. This was the same information about the Vaughn Street Property that was provided to Clients WA, as described above.

143. In this email, the Respondent said:

> Here is the opportunity, let me know what you think

144. Mr. H's evidence was that as a result of the Respondent's recommendation, he and his wife decided to invest $100,00 towards the Vaughn Street Property.

145. On February 27, 2014 they signed the Vaughn Joint Venture Agreement along with Clients WA and WI.

146. Clients H contributed $100,000 in exchange for receiving a 5.714% ownership interest in the Vaughn Street Property.

147. As noted above, neither the Respondent nor H&H contributed any monies toward the purchase of the property but H&H received a 12.5% ownership interest in the Vaughn Street Property.

148. Similarly, neither EK nor 3D contributed any funds towards the purchase of that property but received a 38.788% ownership interest in the property.

149. Mr. H testified that his understanding as to why 3D and H&H did not put any money towards the purchase of the property was because the Respondent said they were going to provide in-kind services for the joint venture.

150. Mr. H testified that other than receiving one principal repayment of $3,142, he and his wife have not received any further returns or repayments from investing in the Vaughn Joint Venture Agreement.

151. In fact, between 2017 and 2019 Clients H received cash calls that required them to contribute additional payments totaling approximately $17,829 to cover cash shortfalls, pursuant to the terms of the Vaughn Joint Venture Agreement.

152. In February 2020 Clients WA, WI and H commenced a civil claim for damages against the Respondent and EK pertaining to the Vaughn Joint Venture Agreement.

Hillcrest Joint Venture

153. Mr. H testified that in September 2015 the Respondent brought another property to his attention – Hillcrest Apartments.

154. The Respondent sent him an email on September 22, 2015 with the subject: *FW: Apartment Investment*. Attached to the email was a document regarding: *Hillcrest Apartments*.

155. In the email, the Respondent said:

> Hi there!

> Edna did send this to you last week. We talked this morning, she asked me to resend it as it came back to her. I guess she had the wrong address for some reason. Lol
>
> Attached is the new apartment block that is available, not the one I spoke to you about though. This one looks very nice, let us know what you think if you have any questions contact Edna @306 536 6266, she has all the information.
>
> Have a great day!

156. The attachment contained photographs and other information describing what was identified as an "investment opportunity" to invest in a joint venture partnership in the Hillcrest Apartments.

157. Mr. H testified that based on the Respondent's recommendation, he and his wife decided to invest $100,000 towards the Hillcrest property. To that end, on October 26, 2015 they signed a joint venture agreement further to the purchase and operation of the Hillcrest property (the "Hillcrest Joint Venture Agreement").

158. The Hillcrest Joint Venture Agreement provided that in exchange for their contribution of $100,000, Clients H received a 6.154% interest in the joint venture.

159. Mr. H's evidence was that neither the Respondent nor her company H&H contributed any funds towards the purchase of the Hillcrest property but H&H received a 2.5% ownership in the joint venture.

160. Further, neither EK nor her company 3D contributed any funds towards the purchase of the Hillcrest property but received a 15.38% ownership in that property.

161. Title to the Hillcrest property was held by 101287398 Saskatchewan Ltd. as nominee on behalf of the investors (the "Hillcrest Company").

162. Mr. H testified that he and his wife have not received any return on their investment in the Hillcrest Property through the joint venture. Between 2016 and 2018, however, they received cash calls which required them to contribute three payments totaling approximately $17,354 to cover cash shortfalls, pursuant to the terms of the Hillcrest Joint Venture Agreement.

163. In March 2019 Clients H sold their interest in the Hillcrest Joint Venture and received a total of $7.20 for their shares.

Kensington Development Mortgage Investment

164. Mr. H testified that in August 2016 the Respondent and EK presented him with an investment opportunity to finance a real estate development project located in Calgary, Alberta (the "Kensington Development").

165. He said that he was told by the Respondent that this investment could be held in his RRSP.

166. Mr. H testified that the Respondent told him to take money out of his RRSP be held at the Member and roll it over to a company called Olympia Trust and then he could invest in the Kensington Development.

167. He testified that acting on the Respondent's recommendation, he and his wife took money out of their investment account at the Member and transferred it to Olympia Trust. The Respondent prepared the paperwork for this transfer of funds.

168. He said the Respondent sent him an email enclosing a number of Olympia Trust forms that she asked him to initial and sign. On August 9, 2016 Mr. H signed a transfer authorization form transferring $100,000 from his RRSP with the Member, to a registered plan with Olympia Trust Company.

169. The Respondent is identified on the Olympia Trust forms as the dealing representative for the Olympia Trust account.

170. The monies which Mr. H invested at Olympia Trust Company were used to finance a mortgage for the Kensington Development.

171. On October 17, 2017 Mr. H received an annual interest payment of 3% and on March 8, 2018 he received his principal payment of $100,000 along with a partial interest payment of $1,216.45, relating to the Kensington Development.

172. His evidence was that he was also entitled to receive an additional $9,916.66 in equity payments but that that amount was rolled into another real estate development project.

173. In this regard, on August 9, 2018, the money that Mr. H received from the Kensington Development, along with the $9,916.66 in equity payments that he was entitled to receive, was rolled into a new real estate development project referred to as: *Three Hills Lifestyle Living Estates*

Ltd. ("Three Hills") which, Mr. H said, was an investment that he learned about through the Respondent and EK.

174. Mr. H testified that as a result of financial losses associated with the investments he and his wife made in the Robinson, Vaughn and Hillcrest properties, they have experienced financial and emotional distress.

Cross-examination

175. In cross-examination, Mr. H denied the Respondent's suggestion that all of the investments he described were made through EK and 3D. He said that from the very beginning, it was the Respondent who provided the information to him and his wife with respect to all those investments.

176. He acknowledged that the financial analysis documents relating to the Robinson and Vaughn Street properties had 3D's heading on them and that the Respondent did not "look after the financials"; it was EK who looked after that information. He also acknowledged that the Respondent was also an investor.

177. Mr. H also agreed that during his conversations with the Respondent about their investments, the Respondent often said, in response to questions he raised, that she would have to ask EK because she did not know the answer.

178. He testified, however, that the reason he asked the Respondent the questions and not EK was because it was the Respondent who was his investment representative.

179. When the Respondent suggested to Mr. H that she was his investment representative for the Member but not for real estate, Mr. H disagreed, saying it was the Respondent who got them into real estate.

Clients B

180. Clients B did not testify; nor did they swear affidavits.

181. Ms. Handsaeme testified that the Member's investigation summaries which she received identified that the Respondent was the consultant for Clients B and that on October 9, 2013 Clients B entered into a joint venture agreement regarding the Robinson Street Property by making an initial investment of $100,000 in exchange for which they received 10% ownership. The source of their funds was their line of credit at TD. Their return on investment was $17,600.

Clients WI

182. Clients WI are retired farmers.

183. The Respondent became their investment advisor in February 2003 when they sold their farm and invested the proceeds of that sale with the Member.

Robinson Joint Venture Agreement

184. In June of 2013 the Respondent met with Clients WI at their home and offered them an investment opportunity which she described to them as a "cash flow investment".

185. Mrs. WI testified that the Respondent sent them information about a property on Robinson Street. The information came through the mail in an envelope on which the Respondent had stroked out the Member's address and put on her own but, the witness testified, the ink stamp showed that it was the Member that paid the postage for the mail.

186. Based on the Respondent's recommendations, Clients WI decided to invest $100,000 towards the purchase and operation of the Robinson Street Property.

187. The money came from Clients WI's investment accounts at the Member that were managed by the Respondent.

188. On October 9, 2013 Clients WI signed the Robinson Joint Venture Agreement, along with other investors.

189. This was the same joint venture agreement referenced above which Clients WA and Clients H signed.

190. Starting in 2015 and continuing until around September 2018 Clients WI received quarterly principal repayments totaling $17,600 but have not received any further monies from their investment.

191. Mrs. WI said she thought the reason why EK and the Respondent did not make any initial contribution towards the purchase of the Robinson Street Property was because, since they were looking after the property, they simply had not put their money in yet. She testified she thought they would actually be putting in more money than the other investors, which would explain why they were getting bigger percentages.

192. In February 2020 Clients WA, WI and H commenced a civil claim for damages against the Respondent pertaining to the Robinson Joint Venture Agreement and in April 2020 the Respondent and EK reached an agreement with the remaining investors including Clients WI, whereby H&H and 3D transferred their shares and liabilities in the Robinson Street Company, to the remaining investors.

Vaughn Joint Venture Agreement

193. In May 2014 the Respondent met with Clients WI in their home and offered them an investment opportunity that involved pooling money contributed by investors to jointly purchase and operate a rental apartment building with the Respondent - the Vaughn Street Property.

194. Clients WI invested $100,000 towards the purchase of this property which they financed by redeeming another $90,000 from their investments held at the Member to which they added $10,000 – funds that remained in their savings account from what had been redeemed relating to investing in the Robinson Street Property.

195. On February 27, 2015 they signed the Vaughn Joint Venture Agreement.

196. Clients WI received a 5.714% ownership interest in the Vaughn Street Property.

197. This is the same Vaughn Joint Venture Agreement in which Clients WA, B and H participated.

198. Clients WI received one principal repayment of $1,628 from the Vaughn Joint Venture Agreement and have not received any further returns or repayments from that investment.

199. Between 2017 and 2019 Clients WI received cash calls that required them to contribute additional funds totaling approximately $17,829 to cover cash shortfalls pursuant to the terms of the Vaughn Joint Venture Agreement.

200. The Respondent declined to cross-examine Mrs. WI because, she said, she could see that Mrs. WI was upset and she did not want to put her through cross-examination.

Facts Admitted by the Respondent

201. As noted earlier in these Reasons, in her Reply dated January 7, 2021, the Respondent admitted a number of facts that were particularized in the Notice of Hearing regarding the

allegations about the Robinson, Vaughn, Montague and Hillcrest Joint Ventures. Specifically, the Respondent admitted the following particulars:

Robinson Joint Venture Agreement

- In or around October 2013, the Clients WA, WI, H and B each signed a joint venture agreement with respect to their participation in the purchase and operation of the Robinson Street Property (the "Robinson Joint Venture Agreement"). [NoH para 11]

- The parties to the Robinson Joint Venture Agreement were the Clients, H&H and 3D. [NoH para 12]

- Pursuant to the Robinson Joint Venture Agreement, Clients WA, H, WI and B each contributed $100,000 in exchange for a 10% ownership interest in the Robinson Street Property. [NoH para 13]

- Neither the Respondent, nor her company H&H, contributed money towards the purchase price of the property ("capital") but received a 12.5% ownership interest in the Robinson Street Property. [NoH para 14]

- On or around April 15, 2020, the Respondent and EK reached an agreement with the Clients whereby H&H and 3D transferred their respective shares and liabilities in the Robinson Company to the Clients. [NoH para 24]

Vaughn Joint Venture Agreement

- On or around February 27, 2015, Clients WA, WI, and H each signed a joint venture agreement for the purchase and operation of the Vaughn Street Property (the "Vaughn Joint Venture Agreement"). The Respondent's company, H&H, EK's company 3D, and two other investors who were not clients of the Member were also parties to the Vaughn Joint Venture Agreement. [NoH para 27]

- On or around August 26, 2015, four additional investors who were not clients of the Member signed an addendum to the Vaughn Joint Venture Agreement and were added as parties to the agreement. [NoH para 28]

- Clients WA, WI and H each contributed $100,000 each in exchange for a 5.714% ownership interest in the Vaughn Street Property. [NoH para 29]

- Neither the Respondent, nor her company H&H, contributed capital but received a 12.5% ownership interest in the Vaughn Street Property. [NoH para 30]

- Neither EK, nor her company 3D, contributed capital but received a 38.78% ownership interest in the Vaughn Street Property. [NoH para 31]

- Clients WA received one quarterly principal repayment of $3,157, Clients WI received $1,628, and Clients H received $3,142. Clients WA, WI and H have not received any further returns or repayments from their investments. [NoH para 37]

- Between 2017 and 2019, Clients WA, WI and H were each recipients of cash calls that required them to contribute additional payments of $17,829 each to cover cash shortfalls pursuant to the terms of the Vaughn Joint Venture Agreement. [NoH para 38]

- On or around September 30, 2019, Clients WA, WI, and H, and other individuals commenced a civil claim for damages against the Respondent and EK pertaining to the Vaughn Joint Venture Agreement. [NoH para 39]

- To date, Clients WA, WI and H have not recovered their principal investment or the amounts contributed pursuant to cash calls in respect of the Vaughn Company except to the extent referenced in paragraph 37 above. [NoH para 40]

- The Respondent recommended that Clients WA invest, and provided them with marketing materials to promote this investment opportunity. The marketing materials had not been disclosed to or approved by the Member. [NoH para 42]

Montague Joint Venture Agreement

- On or around October 9, 2015, Clients WA signed a joint venture agreement with the Respondent's company H&H for the purchase and operation of the Montague Street Property (the "Montague Joint Venture Agreement"). [NoH para 43]

- Clients WA contributed $70,000 to purchase a 50% share of the net profit from the Montague Street Property. Title to the Montague Street Property was held by Clients WA. [NoH para 44]

- The Respondent, through her company H&H, contributed $1 to purchase a 50% share of the net profit from the Montague Street Property. [NoH para 45]

- On or around March 25, 2014, the Respondent and Clients WA opened a joint bank account to facilitate the receipt of rental income from and the payment of expenses associated with the operation and maintenance of the Montague Street Property as a rental property. [NoH para 47]

Hillcrest Joint Venture Agreement

- Clients H contributed $100,000 to purchase a 6.154% interest in the Hillcrest Joint Venture Agreement. [NoH para 53]

- Neither the Respondent, nor her company H&H, contributed capital but received a 2.5% interest in the Hillcrest Joint Venture Agreement. [NoH para 54]

- Clients H never received any returns on their investments. Clients H received cash calls that required them to contribute additional payments of $17,354 to cover cash shortfalls pursuant to the terms of the Hillcrest Joint Venture Agreement. Ultimately, the Hillcrest Property ended up being unprofitable, and in 2019 Clients H sold their ownership interest to another investor for $7.20. [NoH para 57]

- The Respondent entered into the Joint Venture Agreements with clients for the purchase and operation of rental properties. [NoH para 65]

- Through the Joint Venture Agreements, the Respondent, through H&H, obtained ownership interests in the property, a percentage of the net profit from rental operations, or a percentage interest in the joint venture. [NoH para 66]

The Member's Policies and Procedures

Outside Business Activities

Evidence of Catherine Kelly

202. Staff called Catherine Kelly to testify. She has been with the Member for a total of 30 years.

203. She has been a Senior Manager with the Member's Compliance Investigation Department since 2018. Prior to that, starting in 2011 she was Manager of the Member's Compliance Policy and Communications Team.

204. Ms. Kelly testified that as of 2013 the Member had in place a Consultant Compliance Manual (the "Manual") which contained the Member's policies and procedures.

205. She testified that all consultants (of which the Respondent was one) were expected to be aware of and follow the policies and procedures in the Manual. The Manual could also be accessed online.

206. She said the Member also sends updates to policies and procedures to consultants by email. These are also available online.

207. The Manual was entered into evidence. It included a section entitled: *Mutual Fund Dealers Association of Canada ("MFDA")*. This section confirmed that the Member is a member of the MFDA and that all consultants it employs have signed an undertaking to be bound by the MFDA's Rules.

208. The section discussed the significance of the Member's MFDA membership and the fact that the Member and its consultants are subject to the MFDA's By-laws and Rules. It provided a summary of key MFDA Rules which included such matters as the requirement that all of a

consultant's securities-related business be done through the Member and that consultants could not engage in any securities-related activity outside of the Member.

209. The Manual also included a warning that consultants must always be aware of the possibility of conflicts of interest arising in connection with business conducted by them for a client and must immediately disclose, in writing, to the client, any conflict of interest that arises or may arise.

210. To summarize, during the timeframe referenced in the Notice of Hearing, the Member's policies and procedures, which were set out in the Manual:

a) required that Approved Persons (also described as "consultants") sell only those products that are specifically authorized by the Member;
b) required that Approved Persons obtain prior approval from the Member's Regional Director and Vice-President, Financial Services, before engaging in any Outside Business Activity ("OBA");
c) prohibited Approved Persons from entering into any investment arrangements or business relationships with clients; and
d) prohibited Approved Persons from making recommendations on or effecting trades in securities, investments or insurance products which are not offered through or sponsored by the Member.

211. With respect to seeking approval of an OBA, Ms. Kelly testified that the consultant would have to complete an OBA approval form and worksheet that would be given to their Regional Director and the Area Vice-President for review and approval.

212. She testified that the concerns the Member would look for in deciding whether to grant approval would relate to: potential conflicts of interest; whether there would be a significant time commitment on behalf of the consultant; and whether the activity was consistent with what would be expected of a financial planning professional.

213. If the OBA were approved, she said the consultant would be advised whether the Member still had any concerns and, in some cases, would be required to provide a disclosure letter any time they dealt with clients, that outlined that the outside activity was wholly separate from the Member and that the Member had no supervision or oversight over the activity including having no responsibility for any losses.

214. She said that if a consultant ever wanted to change the OBA for which they had received approval they would need to update the Member accordingly.

215. Ms. Kelly testified that in response to the MFDA's investigation which led to these proceedings, her Department conducted a review to see if any OBA's had been disclosed by the Respondent to the Member.

216. The only document which was found was a document entitled *Outside Business Activity and/or Dual Occupation Approval Request and Checklist* which was signed by the Member's Regional Director and Area Vice-President on November 15, 2011.

217. In discussing this document, Ms. Kelly testified that the activity for which the Respondent sought approval in 2011 was identified as a "rental property". The name of the activity or business was described as "purchasing rental property" and opposite the line asking: "Position, Expected Duties, and Responsibilities of the OBA and/or Dual Occupation", the Respondent had indicated: "no duties – we have a property manager that looks after everything".

218. In the line on the document which asked for an explanation about any potential conflicts of interest with the duties and responsibilities as a consultant with the Member, the Respondent had said: "No conflicts of interest".

219. Ms. Kelly testified that this was the only OBA form that the Respondent filed with the Member.

Conflicts of Interest

220. Ms. Kelly also testified that the Member had a policy on conflicts of interest.

221. In the section of the Manual relating to *Conflict of Interest*, the Manual said:

> You should avoid business relationships with clients, (i.e.: investing in a business), buying or selling property or other items from or to a client.

222. Section 10.2 of the Manual had a specific heading: *Conflict of Interest and Personal Financial Dealings with Clients*.

223. Under this heading the Manual stated that consultants with the Member:

> .. are not permitted to become involved with clients in investment arrangements where the Consultant and the client invest together, except for members of your immediate family. Examples of inappropriate investment arrangements would be joint accounts with clients, investment clubs, or investments involving client funds that are to be directly or indirectly managed by the Consultant. (emphasis added)

224. Ms. Kelly testified that the reason why entering into business with clients is a concern is because of the potential risk that the consultant might exert undue influence over the client when it came to their investments and handling their accounts. Entering into business with a client could also lead to client confusion as to where the line is drawn between the consultant's involvement as their financial planner versus their involvement with the client as a business partner.

Securities-Related Business Outside the Member

225. With respect to an Approved Person's ability to conduct securities related business outside the Member, Ms. Kelly testified that consultants are only permitted to provide the financial planning products that are listed or available through the Member.

226. She explained that the reason for this restriction is because those are the only products and activities over which the Member has an ability to provide supervision.

227. She referred again to the Manual which specifically said that:

> all of a Consultant's securities-related business must be done through the Member and Consultants cannot engage in any securities or insurance related activities outside the Member.

228. The Manual explained that this provision was intended to make sure that the Member is able to supervise all of the securities and insurance activities of its consultants.

229. Ms. Kelly also testified that, consistent with the provisions in the Manual, consultants were not allowed to: enter into joint venture agreements with clients; enter into investments with clients; share accounts with clients; or sell any product that was not one of the Member's products.

230. She testified that if a consultant such as the Respondent entered into real estate joint venture agreements with clients during the period 2013 to 2017, the joint venture agreement would not have been something that was on the Member's "product shelf" and therefore would not be something that would have been approved of as an OBA.

231. The Respondent did not cross-examine Ms. Kelly.

Lee Charlton

232. Mr. Charlton held the position of Divisional Director with the Member from February 4, 2013 until December 16, 2020. He is currently employed with the Member as an associate consultant. A Divisional Director is a position within the Member's management structure whose responsibilities include sourcing new consultants, training, recruiting, mentoring, and coaching consultants as well as fulfilling compliance duties.

233. At the time that he was employed as a Divisional Director, Mr. Charlton was also registered as a Branch Manager with the Member.

234. He testified that he became the Respondent's Divisional Director on February 4, 2013. In that capacity he held supervisory responsibility over her from February 4, 2013 until the Respondent retired on February 1, 2017.

235. He also described the role of Regional Director which, he said, is fairly similar to a Divisional Director's role in terms of responsibilities; the difference being that the Regional Director is responsible for everyone within the region and a region is larger than a division.

236. He testified that the Member's review process for approving Outside Business Activities required the Approved Person or consultant to provide details of what the OBA would entail. Approval would be based on matters such as time commitment, potential for conflicts of interest to arise, monetary considerations and education.

237. He explained that a Divisional Director would typically gather the information about the OBA from the consultant and then given it to the Regional Director to review. The information would be sent to the Compliance Department as well. If approved, the request would also have to go through the Area Vice-President.

238. He testified that he had never dealt with such a request from any of the consultants for whom he provided supervision.

239. With respect to the type of restrictions that the Member might impose if an OBA were approved, he said that generally some of the restrictions might include restrictions prohibiting financial involvement with clients including prohibiting borrowing from or lending money to

clients or in any way entering into a relationship with them that would give rise to a perceived conflict of interest.

240. Mr. Charlton explained that one of the things a Member is concerned about when determining whether to give approval with respect to an OBA is that clients not misconstrue that activity as being the activity or business of the Member.

241. With respect to securities related business outside the Member, Mr. Charlton confirmed that the Member had restrictions which would prevent an Approved Person from being able to sell or recommend investments or products that were not approved for sale through the Member.

242. He testified that these restrictions had been in place for as long as he had worked with the Member.

243. He also testified that to his knowledge, as of 2013, the Member had a policy on conflicts of interest which required that if a conflict arose between a consultant and a client it needed to be disclosed in writing to both the client and the Member.

244. Examples of such conflicts of interest that he gave included - borrowing money from a client, lending money to them or entering into business with them.

245. With respect to whether the Respondent had ever disclosed her involvement in an OBA to him, Mr. Charlton testified that she had told him that she owned rental property within a company that she jointly owned with her husband – H&H.

246. He said he understood that that company purchased and managed rental homes or had someone manage them and collect income off the rent from the properties.

247. He said that the Respondent never disclosed any joint venture or other real estate arrangements to him.

248. He testified that the approval the Respondent received from the Member with respect to H&H and her rental properties was provided before he became a Divisional Director and that there were no OBA's that he was aware of, for which the Respondent sought approval during his time as a Divisional Director.

249. He also testified that during his tenure as Divisional Director he was not aware of any exempt market products with respect to which the Respondent sought approval to sell, including the Walton Investments products.

250. The Respondent did not cross-examine this witness.

Evidence of Caron Handsaeme with respect to the Respondent's disclosures to the Member

251. Ms. Handsaeme testified that during the course of her investigation, the Member advised:

a) The Respondent did not disclose her involvement in the joint venture agreements to the Member, nor obtain approval to be a Director or Shareholder of the companies that she used to enter into the joint venture agreements;
b) The Respondent failed to disclose to the Member that a conflict or potential conflict of interest arose as a result of her personal financial dealings with the Clients when she solicited the investment of monies from them;
c) The Respondent failed to disclose to the Member that she opened a bank account with Clients WA to manage the Montague Street Property; and
d) None of the joint venture agreements were investments which were approved by, or carried on for the account or through the facilities, of the Member.

252. She further testified that the Member confirmed that the Respondent did not disclose to it the following four activities as being OBA's in which she was involved:

a) Director of H&H;
b) Director of 101270256 Saskatchewan Ltd.;
c) Director of 101290286 Saskatchewan Ltd.; and
d) Independent Distributor for NuCerity International.

253. The Member also provided Ms. Handsaeme with responses from the Respondent's former supervisors: Lee Charlton and Randy Colenutt as to their knowledge of the Respondent's OBA's.

254. Mr. Charlton's response to the Member was consistent with his testimony referenced above.

255. Mr. Colenutt's response was set out in his email dated July 25, 2019 which was attached as an exhibit to Ms. Handsaeme's Affidavit.

256. In that email Mr. Colenutt said he was only aware of the Respondent's involvement with a real estate project after her retirement from the Member because she approached him to get involved with a monetary investment, which he declined.

257. He went on to say that he was unaware of any involvement in real estate she may have had during her active time with the Member. He testified that no clients had called or complained to him about the Respondent while he was a Regional Director.

258. Ms. Handsaeme also discussed the emails which the Respondent sent to Clients WA referenced above, where her email signature identified her as: "Marja G. Harmer, NuCerity International, Independent Distributor".

259. Ms. Handsaeme testified that between 2013 and 2014 the Respondent worked as an Independent Distributor for a skin care company called NuCerity International.

260. She said that NuCerity International is a multi-level marketing company that offers various skin care products for sale.

261. Ms. Handsaeme said that during the course of her interview of the Respondent, the Respondent told her that she used NuCerity as a means of attempting to recruit new clients. Ms. Handsaeme testified that she asked the Respondent whether the Respondent had disclosed her involvement with NuCerity to the Member and although the Respondent said she had, Ms. Handsaeme testified she could not find any evidence of that disclosure.

Evidence of Caron Handsaeme regarding the Respondent's Failure to Co-operate

262. Ms. Handsaeme interviewed the Respondent on July 10, 2019. Following that interview, on July 12, 2019, she sent the Respondent a letter via registered mail and regular mail asking for further information about when she began working as an Independent Distributor for NuCerity International and when she discontinued the role. She also asked for additional information about the name of an individual involved in the Kensington and Three Hills investments and for information about how the Respondent obtained her interest in the Robinson Street Joint Venture.

263. The July 12, 2019 registered letter was returned to the MFDA as not having been picked up although the letter which was sent by regular mail was delivered to the Respondent's home address and was not returned as being undelivered to an incorrect address.

264. The Respondent did not reply to Ms. Handsaeme's July 12, 2019 letter.

265. On November 19, 2019, Ms. Handsaeme sent another letter to the Respondent via both registered and regular mail in which she repeated the questions contained in the July 12, 2019 letter.

266. She testified that the registered letter was signed for by the Respondent. The Respondent did not, however, respond to the letter.

267. On January 7, 2020 Ms. Handsaeme sent another letter to the Respondent repeating the questions in her letters of July 12 and November 19, 2019. That letter was delivered to the Respondent by personal service and was also sent by secure email and registered mail.

268. An Affidavit of Service from the process server indicated that they were able to personally serve the letter on the Respondent.

269. The Respondent did not, however, provide a response to Ms. Handsaeme.

270. Ms. Handsaeme testified that in addition to not responding to these three letters, the Respondent had refused to provide information during the course of her interview on July 10, 2019.

271. In particular, the Respondent had refused to clarify how she obtained the 12.5% interest in the Robinson Street Property without contributing any capital.

272. Ms. Handsaeme testified that as a result of not receiving responses to that question or to the letters she sent, she was unable to determine: the full extent of the Respondent's involvement in NuCerity International as an OBA; the name of the individual involved in the Kensington Development; and how the Respondent obtained her interest in the Robinson Street Property.

273. By not receiving this information, Ms. Handsaeme testified, she was not able to conduct a full investigation into the Respondent's conduct and the allegations that form the subject of these proceedings.

Cross-examination

274. The only question on cross-examination the Respondent asked of this witness was for her to confirm that Randy Colenutt and Lee Charlton said that she had not disclosed NuCerity and H&H, to them, even though she was certain she had.

275. In response, Ms. Handsaeme repeated her evidence that both of those individuals said they were not aware of the Respondent's involvement in either of those activities.

IV. THE LAW

MFDA Jurisdiction over the Respondent

276. As a dealing representative of a mutual fund dealer in Saskatchewan and as an Approved Person of a Member of the MFDA, the Respondent submitted to the jurisdiction of the MFDA and agreed to keep herself informed about and be bound by, observe and comply with the MFDA's Rules as amended or supplemented, from time to time.

Burden of Proof and Standard of Proof

277. In making the findings of fact in this decision, we have applied the standard of proof known as the "balance of probabilities", taking into account the evidence which was put before us and deciding whether it was more likely than not that certain events took place. This standard, of course, is markedly different from the criminal standard of proof known as "beyond reasonable doubt".

278. To satisfy the balance of probabilities test, evidence must be sufficiently clear, convincing and cogent.

F.H. v. McDougall, 2008 SCC 53 at para. 46

279. A Hearing Panel must be satisfied that the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the relevant time.

Faryna v. Chorney, 1951 CanLII 252 (BCCA) at para. 8

280. It is also well accepted that the validity of evidence does not depend in the final analysis on whether it remains uncontradicted.

281. In *McDougall, supra*, the Supreme Court held that a decision maker should not consider the evidence of one witness in isolation but must look at the totality of the evidence to assess the

impact of any inconsistencies in a witness' evidence on questions of credibility and reliability pertaining to the core issues in the case.

282. Accordingly, we have considered the evidence of each witness in the context of the totality of the evidence which was adduced in these proceedings.

283. Based on the totality of the evidence adduced in this matter, including the testimony of all of the witnesses, the documents entered into evidence, and the admissions made by the Respondent in her Reply, the Panel is satisfied that the facts alleged in the Notice of Hearing have been established on a balance of probabilities, on the basis of clear and cogent evidence.

Allegation #1:

Personal Financial Dealings and Conflict of Interest – Rules 2.1.4 and 2.1.1

284. Staff submitted that by soliciting and accepting investments from the Clients in the Robinson, Vaughn, Montague and Hillcrest Joint Venture Agreements ("Joint Ventures") as described above, in which the Respondent also participated, and by structuring the investment terms to obtain an ownership interest for herself despite not having made any financial contribution to the projects, the Respondent engaged in personal financial dealings with the Clients which gave rise to a conflict or potential conflict of interest that she failed to disclose to the Member or to the clients or address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to the policies and procedures of the Member and to MFDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

285. At all material times, MFDA Rule 2.1.4 relating to conflicts of interest, required that:

> **2.1.4 Conflicts of Interest**
>
> (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
>
> (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
>
> (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.

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

286. With respect to personal financial dealings with clients, in 2005 MFDA Staff issued Notice MSN-0047 which discussed how Members and Approved Persons must address the conflicts and potential conflicts of interest that may arise in their dealings with clients (the "Notice").

MSN-0047, October 3, 2005

287. The Notice confirmed that under Rule 2.1.4 Members and Approved Persons must be aware of the possibility of conflicts of interest arising in connection with business conducted by them for clients and that any such conflicts must be addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

288. It specifically said that:

> Responsible business judgment requires the use of reasonable care and diligence as necessary in the circumstances to address the conflict or potential conflict in the best interests of the client. The appropriate course of action will depend on the nature of the conflict of interest and the client's circumstances. In situations involving a potentially significant conflict of interest, the exercise of responsible business judgment may require a prohibition on the type of transaction giving rise to the conflict. (emphasis added)

289. The guidance provided in the Notice is consistent with the findings of MFDA Hearing Panels. For example, in *Tonnies Re,* the Hearing Panel stated:

> The phrase "responsible business judgment" which is contained in the Rule, is not defined by the Rules. However, a reasonable interpretation would suggest that it requires the exercise of care and diligence in the circumstances to address the conflict or potential conflict of interest always subject to being in the best interests of the client … In cases involving a significant and actual conflict of interest, the exercise of responsible business judgment may require a blanket prohibition, or refusal to proceed with, the type of transaction giving rise to the conflict.
>
> *Tonnies Re,* MFDA File No. 200503 at para. 26

290. The Notice also gave specific examples of the type of conduct that is contrary to Rule 2.1.4. In particular, the Notice said that borrowing and lending arrangements between Approved Persons and clients should always be prohibited.

291. One of the rationales for prohibiting Approved Persons from having personal financial dealings with clients, is the potential for the relationship to impede the Approved Person's ability to provide rational investment advice on the basis of what is in the best interest of the client as opposed to their own best interest.

292. Under the heading *Private Investment Schemes with Clients* the Notice also stated:

> MFDA Staff have become aware of situations where Approved Persons have become involved with clients in various private investment schemes that raise significant and direct conflicts of interest where the exercise of responsible business judgment would require a prohibition of the arrangements. These include: … arrangements where client funds are put into investments that are to be directly or indirectly managed by the Approved Person.

293. The Notice explained that the rationale for prohibiting private investment arrangements is not only because those arrangements tend to give rise to significant and direct conflicts of interest but also because they may run afoul of MFDA Rule 1.1.1 which requires that all securities-related business be conducted through the Member.

294. Staff submitted that in this case, the Respondent's conduct of soliciting the Clients' money for investment in real estate ventures that she controlled clearly gives rise to the type of significant and direct conflict of interest that is prohibited by Rule 2.1.4.

295. In support of their submission, Staff cited a number of MFDA decisions where Hearing Panels found that when Approved Persons solicit and accept monies from clients for investment in businesses that they control or ventures in which they have an interest, such conduct gives rise to conflicts of interest that cannot conceivably be addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

> *Visneskie,* MFDA File No. 201553, Hearing Panel of the Central Regional Council Decision dated December 7, 2017, at paras. 15-20
>
> *Brauns*, MFDA File No. 201203, Hearing Panel of the Central Regional Council Decision (Misconduct) dated October 15, 2013, at paras. 58-61 and 83-85
>
> *Nunweiler*, MFDA File No. 201030, Hearing Panel of the Pacific Regional Council Decision dated July 4, 2011, at para. 17
>
> *Frank*, MFDA File No. 201407, Hearing Panel of the Central Regional Council Decision (Misconduct) dated May 5, 2015, at paras. 75-77
>
> *Tonnies*, *supra,* at pp. 13-16

296. As one Hearing Panel stated:

> Where an Approved Person borrows money from a client, or arranges investments by clients in companies in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the

> client. It is patently obvious that facilitating investments by a client in your company, or borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client.
>
> *Nunweiler, supra,* at para.17

297. The Panel agrees with Staff's submission and find that the facts in this matter fall squarely within the description of conduct which is prohibited by Rule 2.1.4.

298. We also note, having regard to the facts of this case, MFDA Hearing Panels have specifically held that when an Approved Person purchases real property with clients for the purposes of an investment, such circumstances give rise to a conflict of interest within the meaning of Rule 2.1.4.

> *Luong Dao,* MFDA File No. 201971, Hearing Panel of the Central Regional Council Decision dated April 9, 2021, at paras. 17, 20 and 24
>
> *Notis Re,* MFDA File No. 201953, Hearing Panel of the Central Regional Council Decision dated December 4, 2019, at paras. 44-45
>
> *Mawer,* MFDA File No. 201331, Hearing Panel of the Prairie Regional Council Decision on Misconduct dated April 3, 2014, at para. 26

299. MFDA Hearing Panels have also held that when an Approved Person maintains a joint bank account with a client as the Respondent did with Clients WA, such circumstances give rise to a conflict of interest within the meaning of Rule 2.1.4.

> *Luong Dao, supra,* at paras. 18-20
>
> *Bott,* MFDA File No. 2016101, Hearing Panel of the Central Regional Council Decision dated April 18, 2017, at para. 12
>
> *Wang,* MFDA File No. 201762, Hearing Panel of the Pacific Regional Council Decision dated October 2, 2017, at para. 16

300. The Panel finds that by recommending and entering into the Joint Ventures with the Clients, and by opening a joint bank account with clients, the Respondent's conduct created a conflict of interest between her interests and those of the Clients.

301. Pursuant to both Rule 2.1.4 and the Member's Policies, the Respondent was required to disclose those conflicts to the Member and ensure that the conflicts were addressed by the exercise of responsible business judgment influenced only by the best interests of the client.

302. The Panel finds that the Respondent never informed the Member that she was soliciting client money for an investment in the Joint Ventures in which she also had a financial interest or

that she was operating bank accounts in which client money and money in which she or her company had an interest, was co-mingled.

303. Based on the totality of the evidence, therefore, the Panel finds that the Respondent engaged in personal financial dealings with clients which gave rise to a conflict of interest that she failed to disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the clients. It is clear to the Panel, therefore, that the Respondent's conduct which is the subject of these proceedings constituted a violation of MFDA Rule 2.1.4.

304. The Panel finds that this conduct of the Respondent also constitutes a breach of the MFDA standard of conduct rule, Rule 2.1.1.

305. The Rule states:

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

306. This Rule prescribes the general standard of conduct applicable to all registrants in the mutual fund industry.

307. The Rule has been interpreted and applied in a purposive manner in a wide range of circumstances considered to be central to the MFDA's mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

> *Breckenridge,* MFDA File No. 200718, Hearing Panel of the Central Regional Council Decision dated November 14, 2007, at paras .63-64

308. MFDA Hearing Panels have consistently held that where an Approved Person engages in financial dealings with a client their conduct contravenes MFDA Rule 2.1.1.

> *Rosicki,* MFDA File No. 201826, Hearing Panel of the Central Regional Council Decision dated June 25, 2019, at paras. 63, 67 and 70

Tonnies, supra

309. The Panel notes that in particular, MFDA Hearing Panels have consistently held that where an Approved Person engages in personal financial dealings with a client that give rise to a conflict of interest relating to purchasing investment properties and fails to take appropriate action to disclose or address the conflict of interest with a client, such conduct is contrary to MFDA Rule 2.1.1.

Luong Dao, supra, at paras. 24

Notis, supra, at para. 4

Mawer, supra, at para. 27

Contravention of the Member's policies and procedures – Rules 1.1.2 and 2.5.1

310. As the evidence disclosed, the Member had policies and procedures in place that specifically prohibited its Approved Persons from: 1) becoming involved with clients in an investment arrangement; 2) opening or maintaining joint bank accounts with clients; and 3) entering into business relationships with clients including by buying or selling property or other items from or to a client.

311. These policies and procedures are consistent with the requirements of Rule 2.1.4.

312. Indeed, MFDA Rule 2.5.1 requires Members to establish policies and procedures to ensure that the handling of their business complies with MFDA By-laws, Rules and Policies and applicable securities legislation. Approved Persons have a corresponding obligation to comply with those policies and procedures, pursuant to Rule 1.1.2.

313. MFDA Hearing Panels have confirmed that the interaction between Rules 2.5.1 and 1.1.2 establishes that Approved Persons must comply with their Member's policies and procedures.

Botha, 2021 LNABASC 3 (QL), at paras. 113, 152-155

314. As the Hearing Panel in *Franco* stated:

> The obligation of the Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.
>
> *Franco,* MFDA File No. 201016, Hearing Panel of the Prairie Regional Council Decision dated May 6, 2011 at para. 38

315. The Hearing Panel in *Frank* made the following helpful description of the importance of the interaction between these two Rules:

> MFDA Rule 2.5.1 requires Members to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation.
>
> Such policies and procedures are meaningless and cannot achieve their intended objectives if Approved Persons are not required to comply with them. MFDA Rule 1.1.2 is clear that Approved Persons share the responsibility of ensuring that obligations set out in the MFDA Rules are followed and must do their part to support the Member's obligations to be compliant with its regulatory obligations.
>
> In the context of policies and procedures of a Member, and <u>especially policies designed to facilitate regulatory supervision by the Member</u>, the failure of an Approved Person to comply with the Member's policies constitutes a regulatory violation. (emphasis added)
>
> *Frank, supra,* at paras. 56-58

316. MFDA Hearing Panels have held, therefore, that where an Approved Person engages in a conflict of interest and in turn fails to comply with the Member's policies and procedures, the Approved Person contravenes MFDA Rules 2.5.1 and 1.1.2.

> *Luong Dao, supra,* at paras. 21-22

317. By failing to disclose her personal financial dealings with the Clients in the Joint Ventures and jointly held bank accounts described above to the Member, the Respondent failed to comply with the Member's policies and procedures and deprived the Member of an opportunity to fulfill its own obligations to ensure that the conflicts of interest which arose from the Respondent's personal financial dealings with the Clients were addressed by the exercise of responsible business judgment influenced only by the best interests of the Clients; including that the conflicts be immediately disclosed to the Clients.

318. The evidence of Ms. Kelly was that the Respondent's activities with the Clients involving the various Joint Ventures would not have been approved by the Member had the Respondent disclosed them.

319. The Panel finds that by failing to comply with the Member's policies and procedures that prohibited personal financial dealings with clients, and by failing to disclose her dealings to the Member, the Respondent interfered with the Member's ability to provide appropriate regulatory supervision in accordance with its own regulatory obligations.

320. Such conduct is particularly serious because it deprived the Clients of the protection of the Member's supervision and oversight.

321. In her final argument, the Respondent submitted that EK was the person who initiated the investments in the Joint Ventures and that she herself has lost over $1M from her investments in the Joint Ventures.

322. In response, Staff submitted that EK's conduct is irrelevant to these proceedings and that the evidence establishes on a balance of probabilities that it was the Respondent's actions that led the Clients to invest in the real estate properties and securities described in the Notice of Hearing.

323. The Panel agrees with Staff on this point. We find that the Clients invested in the Joint Ventures because the Respondent brought those opportunities to their attention. She did this by providing them with information which we find and with respect, at least to the Montague Property which the Respondent herself admitted, was "marketing material". The Respondent also facilitated the financial and legal transactions which enabled the Clients to enter into the Joint Ventures.

324. Having considered the totality of the evidence adduced in these proceedings, the Panel is satisfied that all of the factual elements of Allegation #1 have been proven and that the conduct which is the subject of that allegation constitutes a breach of MDA Rules 2.1.4, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2:

Securities Related Business Outside the Member – the Joint Venture Agreements

325. Allegation #2 relates to the Respondent allegedly engaging in securities related business that was not carried on for the account or through the facilities, of the Member. In particular, Staff alleged that the Respondent solicited, recommended, sold or facilitated the sale of investments to clients in real estate investments through the Joint Ventures.

326. MFDA Rule 1.1.1 requires Approved Persons to conduct all securities related business for the account of the Member and through the facilities of the Member. Rule 1.1.1(a) states:

> 1.1.1 **Members**. No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

> (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than: …

327. As Staff said in its written submission, the purpose of MFDA Rule 1.1.1 is to ensure that Members can implement effective oversight of any products about which their Approved Persons are providing advice or selling to clients.

328. By directing all securities related business to be conducted through the Member, clients are protected by the oversight, due diligence and risk appraisals which Members undertake.

329. This oversight includes the trade reviews Members conduct to ensure that each recommendation made and each order accepted, is suitable for the client and in the case of the sale of an exempt product, that available exemptions are applicable.

330. This purpose of the Rule has been discussed by MFDA Hearing Panels. For example, in *Caicco*, the Hearing Panel, citing an earlier MFDA decision (*Laverdière* File No. 200936 at para. 5) commented on some of the principles which underlie the Rule:

> MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person [sic] is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision.
>
> *Caicco*, MFDA File No. 201503, Hearing Panel of the Central Regional Council Decision dated August 4, 2015 at para. 23

331. In its written submission, Staff submitted that compliance with Rule 1.1.1(a) ensures that the Member has an opportunity to assess whether the product should be sold to its clients at all and if so whether any conditions should be placed on identifying for whom the product is suitable.

Was the activity carried on through the account of the Member

332. The first thing to consider in determining whether there has been a violation of Rule 1.1.1 is whether the activity was carried on through the account of the Member. If it was, then the Rule has not been breached.

333. In this regard, Staff submitted that it is clear that none of the Joint Ventures were investments which were offered by the Member nor were they entered into through the Member's facilities.

334. The Panel agrees.

What is securities related business

335. The next question to be answered in determining whether the Rule has been breached is whether the conduct constituted engaging in "securities related business" either directly or indirectly. This determination requires a fairly extensive analysis especially with respect to the Respondent's conduct involving the Joint Ventures.

336. MFDA By-law No. 1 defines "securities related business" as follows:

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

337. As the Hearing Panel in *Phillips* determined, "securities related business" is given a broad definition under MFDA By-law No. 1. It encompasses "activity that is not carried on for gain" as well as "indirect activity" and specifically includes exempt market securities.

> *Phillips Re,* MFDA File No. 201631, Hearing Panel of the Prairie Regional Council Decision (Penalty) December 9, 2016 at para. 17

338. To fall within the MFDA's definition of "securities related business", the business or activity must constitute "trading or advising in securities" as defined under applicable securities legislation in Canada.

> *Phillips Re, supra,* at para. 17

Trading or Advising in Securities

339. The By-law does not define "trading or advising ". Staff therefore referred the Panel to the *Securities Act* of Alberta, which defines "advising in securities or derivatives" as including:

> giving, offering or agreeing to give advice to another person or company about investing in or buying or selling securities or derivatives;

Securities Act, RSA 2000 c S-4, section 1(a.1)

340. Staff submitted that although the conduct which is the subject of these proceedings took place in Saskatchewan, because the Saskatchewan *Securities Act* defines "trading" but not "advising", if the Panel were not able to conclude that the Respondent's activity constituted "trading" as defined in the Saskatchewan *Securities Act*, it could refer to the definition of "advising" as defined in the Alberta *Securities Act*.

341. However, for the reasons set out below, the Panel finds that the Respondent's conduct which was the subject of these proceedings does constitute "trading" within the meaning of *The Securities Act* of Saskatchewan.

342. The definition of "trade" in the Saskatchewan *Securities Act* is very broad:

> (i) any transfer, sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subclause (iv), a transfer, pledge, mortgage or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
>
> …
>
> (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
>
> *The Securities Act 1988,* c S-42.2

343. As Staff pointed out, the definition of what constitutes "trading" under this legislation is much broader than simply buying and selling and "acts in furtherance of a trade" therefore do not need to involve an actual purchase or sale.

344. In this regard, Staff directed the Panel to a decision of the Ontario Securities Commission ("OSC") - *Momentas Corp*, where the Commission held that the jurisprudence on what constitutes "acts in furtherance of a trade", requires a contextual approach – an examination of the totality of the conduct and the setting in which the acts have occurred. The primary consideration of this examination is the effect the acts had on those to whom they were directed.

Momentas Corp (2006) 29 OSCB 7408 (OSC) at para. 77

345. In *Momentas Corp,* the OSC went on to say that a final sale is not a necessary element of "an act in furtherance of a trade" and that the inclusion of the word "indirectly" in the definition of

"acts in furtherance of trades" reflects the Legislature's intention to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly.

Momentas Corp, supra, at para. 79

346. The OSC found that examples of activities that fall within the definition of "an act in furtherance of a trade" include: … b) distributing promotional materials concerning potential investments.

Momentas Corp, supra, at para. 79

347. Staff in this matter submitted that the facts in these proceedings fall squarely within the type of activity which the cases say amounts to "acts in furtherance of a trade". They submitted that the evidence was uncontroverted that the Respondent met with the Clients and/or provided emails to them to bring the Joint Venture investments to their attention. She provided them with information about those prospective investments and facilitated the financial and legal aspects of their transactions which resulted in their investing in the Joint Ventures.

348. The Panel agrees. We find that with respect to the Joint Ventures: the Respondent introduced those investment opportunities to the Clients; provided the Clients with marketing materials about the subject properties; and facilitated the financial and legal aspects of the transactions which led the Clients to have an ownership interest in the various real estate properties that were the subject of the Joint Ventures.

349. We therefore find that looking at the totality of the Respondent's conduct set out above and the effect of that conduct on the Clients, the Respondent engaged in "acts in furtherance of trading" in the Joint Ventures.

Were the Joint Ventures "Securities"

350. "Security" is defined in the Saskatchewan *Securities Act* as follows:

> "security" includes:
>
> …
>
> (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;
>
> …

(xiv) any investment contract;

The Securities Act 1988, c S-42.2

351. Staff submitted that the Joint Ventures fall within the Act's definition of "security" because they were "investment contracts" or in the alternative, because they can be considered to be documents "constituting evidence of title to or interest in the capital assets, property, profits, earnings or royalties of any person or company".

352. With respect to the alternative definition, Staff submitted that the facts clearly show that the Clients were going to receive interest and income and return of capital in exchange for their investment in the Joint Ventures.

353. Staff focused its submissions, however, on encouraging the Panel to find that the Joint Ventures fell within the definition of "security" because they are "investment contracts".

What is an investment contract

354. The most helpful decision on this point is a decision of the MFDA Central Regional Council: *Are (Re).* In that case the respondent was involved in transactions whereby mutual fund clients and other individuals obtained promissory notes relating to a farming business. The notes bore interest and the principal investment was repayable at the end of three years.

355. The first allegation of misconduct in that matter was that the respondent had engaged in securities related business that was not carried on for the account and through the facilities of the Member contrary to MFDA Rule 1.1.1.

356. A key issue for the Panel, therefore, was whether the promissory notes were "securities" within the meaning of the MFDA Rules.

357. In determining that they were, the Panel relied on the definition of "security" in *The Securities Act* of Ontario which included "any investment contract".

358. The Panel in *Are* cited *Pacific Coast Coin Exchange v Ontario Securities Commission*, [1978] 2 SCR 112 where the Supreme Court of Canada held that the test for determining whether a document is an "investment contract" is whether it is an investment of money in a common enterprise with profits to come from the efforts of others. The Panel found that the promissory

notes met that test and thus reinforced their view that the notes were "securities" under Ontario law.

> *Are Re,* MFDA File No. 201231, Hearing Panel of the Central Regional Council Decision dated October 20, 2014; 2014 LNCMFDA 104 at para. 23

359. Based on this analysis, Staff submitted that all of the Joint Ventures were clearly "investment contracts" because when they invested their money, the Clients were not simply purchasing real estate; rather they were putting money towards a common enterprise with the profits to come from others – i.e., the Respondent, EK, H&H and/or 3D.

360. Finally, in support of its position that the Joint Ventures constituted "securities" within the definition of MFDA By-law No. 1, Staff cited a decision of the Alberta Securities Commission: *Land Development Co* where the Commission stated:

> It is well established that a simple sale of real estate, whether for investment or personal occupation, is not a 'security' under the Act. [*Securities Act* of Alberta] **However, if the sale of real estate includes collateral arrangements through which the purchaser may earn a return on income through the managerial efforts of a promoter or manager in their operation of the enterprise associated with the real estate (such as rental pool agreements, cash flow deficiency guarantees or rental management services), such transactions are generally characterized as investment contracts**. See *Beer et al. v. Townsgate I Limited et al*, [1995] O.J. No. 3009 (Ont. Ct. (Gen. Div.) (Beer); *Sunfour Estates N.V.* (1992), 15 O.S.C.B. 269 (O.S.C.) (Sunfour). (emphasis added)
>
> *Land Development Co (Re),* [2002] A.S.C.D. No. 468, at para. 32

361. The Alberta Securities Commission noted that there is a considerable body of case law on the question of what constitutes an "investment contract". Canadian courts and securities commissions have regularly looked to jurisprudence in the United States when addressing this question. In this regard, the Commission discussed the *Howey* test which describes an investment contract as:

> ...a contract, transaction or scheme whereby a person invests his money in a common enterprise and is lead to expect profits solely from the efforts of the promoter or a third party ...
>
> *Land Development Co (Re), supra,* at para. 34 citing *In the Matter of Paul Dennis Charbonneau et al (1997),* 6 A.S.C.S. 3076 at p. 3080, citing in turn *Pacific Coast Coin Exchange of Canada, supra*

362. In applying the *Howey* test, the Alberta Securities Commission identified three elements that needed to be satisfied: investment of money and intention to earn a profit; common enterprise; and expectation of profits produced by the efforts of others.

363. Applying this test to the facts in this case, the Panel finds that with respect to the Joint Ventures: the Clients clearly invested money with an intention to earn a profit; the Joint Ventures constituted a common enterprise between the investors who included the Clients, the Respondent, her company H&H and others; and the Clients had an expectation of profits produced by the efforts of others, namely: the Respondent, EK, H&H and/or 3D.

364. For all of the above reasons, the Panel finds that the Joint Ventures entered into by the Clients clearly constituted "securities" within the definition of MFDA By-law No. 1. We find that the Respondent's conduct in recommending and facilitating the Clients' investments in the Joint Ventures, which was not done through the Member, contravened MFDA Rule 1.1.1(a).

Breach of Standard of Conduct – Rule 2.1.1

365. Rule 1.1.1(a) exists to enhance investor protection and uphold confidence in the mutual fund industry because it ensures that all investments sold and all transactions processed by Approved Persons are subject to the Member's supervision.

Breckenridge, supra

366. Conduct which gives rise to a violation of Rule 1.1.1 has been considered by MFDA Hearing Panels to also be a violation of the general standard of conduct codified in MFDA Rule 2.1.1.

Caicco, supra,

Phillips, supra

367. Accordingly, the Panel finds that by engaging in securities related business that was not carried on for the account or through the facilities of the Member - when she solicited, recommended, sold and facilitated the sale of investments by the Clients in the Joint Ventures - the Respondent breached both MFDA Rules 1.1.1 and 2.1.1.

368. For all the above reasons, the Panel finds that Allegation #2 has been proven.

Allegation #4:

Securities related Business Outside the Member – Exempt and other investment products

369. Staff alleged that between December 2013 and February 2017, the Respondent recommended, sold or facilitated the sale of investments in exempt market or other investment

products to Clients WA and H, contrary to the Member's policies and procedures and to MFDA Rules 1.1.1, 1.1.2, 2.1.1 and 2.5.1.

370. Staff submitted that the Panel, in determining whether Allegation #4 has been proven, should apply the same analysis it applied to determine whether Allegation #2 has been proven.

371. Both Allegations allege that the Respondent engaged in securities related business that was not carried on for the account or through the facilities of the Member.

372. The difference between Allegations #2 and #4 is factual. Allegation #2 relates to real estate investments, i.e. the Joint Ventures, whereas Allegation #4 relates to the Respondent's activity in recommending, selling or facilitating the sale of investments in exempt market or other investment products namely: the Kensington Development which was invested in by Client H and which through a number of iterations was rolled into the Three Hills investment; Walton; and three other exempt market products in which Clients WA invested - OmniArch, Royal Oak and SecureCare.

373. Applying this analysis, the Panel starts by finding that all of the products listed above were not carried on for the account or through the facilities of the Member.

374. Next, the Panel must determine whether the Respondent's conduct and her dealings with the Clients with respect to these products constituted "acts in furtherance of a trade".

375. Staff submitted that the Respondent's conduct in facilitating Clients H's investment in the Kensington Development was an "act in furtherance of a trade". In this regard, Staff pointed to Mr. H's testimony that it was the Respondent who brought the Kensington Development to his attention. The evidence also established that the Respondent provided the Olympia Trust account opening documentation to Mr. H in order to facilitate that investment and the Respondent was identified as the dealing representative on that documentation.

376. Staff submitted that this investment clearly falls within the definition of a "security" and the Respondent's conduct in facilitating the purchase of that investment amounts to "acts in furtherance of a trade".

377. The Panel agrees.

378. With respect to the Walton investment which was purchased by Clients WA, Staff pointed to the Christmas party invitation which the Respondent sent to them where the agenda for the party included a discussion of the Walton Investments.

379. Mrs. WA's evidence confirmed that the attendance at that party was to discuss the Walton investment.

380. The evidence also showed that the Respondent forwarded marketing materials about Walton to Clients WA. There were also emails exchanged between the Respondent and Mrs. WA inviting them to a seminar about the Walton product.

381. Staff submitted that helping to facilitate meetings and investor education about Walton constituted "acts in furtherance of a trade" whereby the Respondent facilitated Clients WA's investment in the Walton exempt product.

382. The Panel agrees.

383. With respect to the other three investments that Clients WA purchased: OmniArch, Royal Oak and SecureCare, again the evidence from Mrs. WA confirmed that the Respondent introduced Clients WA to these products and facilitated their investment in them.

384. The Panel finds that the investment products that are the subject of Allegation #4: the Kensington Development; Walton; OmniArch; Royal Oak; and SecureCare are all clearly "securities" within the definition of MFDA By-law No. 1 – none of which were offered through or sponsored by the Member.

385. The Panel finds, therefore, that the Respondent's conduct in recommending and facilitating the purchase of exempt market and other investment products to Clients WA and a mortgage investment to Clients H constituted a breach of both MFDA Rule 1.1.1 and Rule 2.1.1.

Contravention of the Member's policies and procedures – Rule 1.1.2 and 2.5.1

386. As identified above, at all material times the Member's policies and procedures prohibited its Approved Persons from making recommendations of or effecting trades in securities or investment products which were not offered through or sponsored by the Member.

387. The evidence was clear that none of the exempt market and other investment products which the Respondent recommended and facilitated the purchase of for Clients WA and H were carried on for the account or through the facilities of the Member.

388. We find that in recommending and facilitating Clients WA and H's investments in products which were not offered or sponsored by the Member, the Respondent breached MFDA Rules 1.1.2 and 2.5.1.

389. For all of the above reasons, the Panel finds that Allegation #4 has been proven.

Allegation #3:

Outside Business Activities

390. Staff submitted that the facts which form the basis of Allegations #1 and #2 also demonstrate that the Respondent engaged in outside activities that were not disclosed to or approved by the Member, in violation of MFDA Rules 1.2.1(1), 2.1.1, 2.5.1 and 1.1.2. Staff submitted that the Respondent's conduct in becoming an independent distributor for a skin care company called NuCerity International, again without the Member's knowledge or approval, also violated these Rules.

391. The Panel agrees.

392. Based on the totality of the evidence, the Panel finds that between June 2013 and February 2017, the Respondent engaged in the following outside business activities that were not disclosed to or approved by the Member:

a) soliciting, recommending, and facilitating the sale of investments by clients in real estate investments through the Joint Ventures;
b) incorporating companies or serving as the president or director of companies including the numbered corporations which were parties to the Joint Venture Agreements; and
c) becoming an independent distributor for a skin care company;

393. MFDA Rule 1.2.1(c)[1] stated in part:

[1] Effective March 17, 2016 Rule 1.2.1(c) was amended and re-numbered as MFDA Rule 1.3.2

1.2.1 Salespersons

(c) Dual Occupations. An Approved Person may have, and continue in, another

gainful occupation, provided that:

…

(iii) Member approval. The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation;

(iv) Member procedures. Such Member establishes and maintains procedures to ensure continuous service to clients and to address potential conflicts of interest;

…

(vi) Disclosure. Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member; and

394. MFDA Hearing Panels have not confined the meaning of "gainful occupation" under MFDA Rule 1.2.1(c) to cases where an Approved Person is engaged in activities that actually generate an income or profit. It is sufficient to establish that an Approved Person expected or hoped to derive some compensation, profit or other benefit from their activities to establish that those activities constituted a "gainful occupation" within the meaning of the Rule.

Mawer, supra, at para. 35

Bingyay, MFDA File No. 201238 Hearing Panel of the Central Regional Council Decision dated July 22, 2013 at para. 34

395. In this matter Staff submitted that whether or not the Respondent actually derived income or profit from promoting investments in the Joint Ventures, it is reasonable to conclude from the circumstances that she at least hoped to derive some compensation, profit or other financial benefit from those activities.

396. The rationale for this Rule was described by the Hearing Panel in *Vitch* as follows:

The need for a Member to know what other occupations and businesses its employee might be engaged in is obvious. … The first is that a failure to know about an employee's other commercial activities impinges upon the Member's ability to properly supervise its employee. The second … that the Member could be exposed to litigation alleging that the Approved Person's activity was within the scope of his/her employment with the Member.

Vitch, MFDA File 201103, Hearing Panel of the Central Regional Council, Decision dated September 22, 2011 at para. 53

397. Staff further submitted that the objective of protecting the interests of clients, Members and other stakeholders, supports a broad and purposive interpretation of the requirement to disclose to and obtain approval from the Member before engaging in an outside activity.

398. MFDA Hearing Panels have described the regulatory framework regarding outside activities as "being a pillar of securities regulation and … designed to protect clients". This regulatory framework ensures that Members can effectively oversee any products that their Approved Persons recommend to clients, through appropriate oversight, due diligence and risk appraisals.

> *Monfortin,* MFDA File No. 201673 Hearing Panel of the Central Regional Council Decision dated January 19, 2017 at paras. 9-12

399. As the Hearing Panel in *Giuliani*, explained, an Approved Person's failure to disclose and obtain approval of their outside activities is serious misconduct because it deprives the Member of a proper opportunity to supervise the Approved Person, prevent the Approved Person from contravening regulatory requirements and to protect itself from the risk of litigation.

> *Giuliani*, MFDA File No. 2017103 Hearing Panel of the Central Regional Council Decision dated June 13, 2018 at para. 8

400. Although the Respondent submitted that she had disclosed her involvement regarding H&H's activities to the Member, and that the Member also knew about her involvement with NuCerity, the Panel finds, on a balance of probabilities that the Respondent's recollection in this regard, was clearly not accurate.

401. The only evidence regarding the Respondent's disclosure of her involvement in outside business activities to the Member, was the approval form which she submitted in November 2011. That form, however, although it mentioned H&H, did not disclose her involvement in any of the activities which form the subject of these proceedings.

402. Further, none of the witnesses from the Member said they were aware of these outside business activities while the Respondent was employed with the Member.

Breach of Standard of Conduct – Rule 2.1.1

403. Staff submitted that by engaging in undisclosed and unapproved outside activities and by soliciting clients to invest in or participate in those unapproved outside activities, the Respondent clearly contravened the standard of conduct required by MFDA Rule 2.1.1.

404. The Panel agrees. When an Approved Person engages in unapproved and undisclosed outside activities, particularly when such activities involve clients of the Member, the Approved Person contravenes the standard of conduct requirements codified in MFDA Rule 2.1.1.

405. Such conduct clearly falls short of the expectation placed on Approved Persons to: deal fairly, honestly and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

406. Accordingly, the Panel finds that between June 2013 and February 2017, the Respondent engaged in outside business activities that were not disclosed to or approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now 1.3.2), 2.1.1, 2.5.1 and 1.1.2.

407. We therefore find that Allegation #3 has been proven.

Allegation #5:

Failure to Co-operate

408. The MFDA's regulatory system consists of by-laws, rules and policies, all of which are aimed at protecting clients, fostering public confidence in the markets and in the securities industry as a whole.

409. The privilege of membership in the MFDA is conditional on agreeing to comply with and be bound by these by-laws, rules and policies.

410. Enforcement is a fundamental part of any regulatory system.

411. When a Member or Approved Person refuses to fully comply with their obligation to co-operate with Staff's enforcement efforts to investigate complaints and concerns, they prevent the MFDA from performing its obligation to ensure the regulatory system achieves its goals of protecting the investor and fostering public confidence in the markets and securities industry as a whole.

412. As part of its enforcement activity, pursuant to section 21 of MFDA By-law No. 1, the MFDA has a duty to conduct examinations and investigations of Approved Persons as it considers

necessary or desirable in connection with any matter relating to that Approved Person's compliance with the by-laws, rules and policies of the MFDA.

413. In carrying out this duty, the MFDA is authorized to request and require a Member, Approved Person or any other person under its jurisdiction to: a) submit a report in writing with regard to any matter involved in any investigation; b) produce for investigation and provide copies of the books, records and accounts of such persons relevant to the matters being investigated; c) attend and give information respecting such matters; and d) make any of the above information available through any directors, officers, employees, agents and other persons under the direction or control of the Member, Approved Person or other person under the jurisdiction of the MFDA.

MFDA By-law No. 1, section 22.1

414. The Member, Approved Person or other person under the jurisdiction of the MFDA has a corresponding obligation to co-operate with the MFDA's investigation by producing the records or information requested by MFDA Staff pursuant to section 22.1 of MFDA By-law No. 1.

415. This obligation is consistent with the duties owed by all members of self-governing professions. As the court stated in: *Artinian v College of Physicians & Surgeons (Ontario)*, for example: "Fundamentally, every professional has an obligation to cooperate with his self-governing body."

Artinian v. College of Physicians and Surgeons of Ontario [1990] O.J. No. 1116 at p. 4

416. MFDA Hearing Panels consistently find that an Approved Person must provide Staff with information and documentation that is relevant to an MFDA investigation when they are asked to do so. To hold otherwise would hinder the MFDA's ability to investigate the conduct of its Members and Approved Persons and prevent it from fulfilling its regulatory mandate to protect the public.

Armani, MFDA File No. 201701 Hearing Panel of the Central Regional Council Decision dated August 3, 2017 at para. 9

417. In this matter, the evidence of the senior investigator Ms. Handsaeme clearly establishes that the Respondent failed to answer certain questions when she was interviewed and then failed to respond to Staff's request for information following her interview.

418. Having been registered in the industry since 2002 the Respondent ought to have known that complying with Staff's requests for information during an investigation was a fundamental obligation of her registration.

419. We find, therefore, that commencing in July 2019, the Respondent failed to cooperate with an investigation by MFDA Staff into her conduct, contrary to section 22.1 of MFDA By-law No. 1 and therefore, Allegation #5 has been proven.

420. For all of the reasons set out above, the Panel finds that the Allegations set out in the Notice of Hearing which was issued against the Respondent on December 14, 2020 have been established.

DATED this 22nd day of March, 2022.

"Sherri Walsh"
Sherri Walsh
Chair

"Sean Shore"
Sean Shore
Industry Representative

"Greg Wiebe"
Greg Wiebe
Industry Representative

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