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: Jewel Mary Henricks

Heard: January 21-22, 2021 (Misconduct) and May 7, 2021 (Penalty) by electronic hearing in Vancouver, British Columbia
Decision: January 22, 2021 and May 7, 2021
Reasons for Decision: July 26, 2021

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Joseph A. Bernardo	Chair
Barbara E. Fraser	Industry Representative
Michelle Leung	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Jewel Mary Henricks	)	Respondent

I. OVERVIEW

1. The Respondent was registered as a dealing representative with PFSL Investments Canada Ltd. (Primerica), a Member of the Mutual Fund Dealer's Association of Canada (MFDA).

2. On July 6, 2020, the staff of the MFDA (Staff) issued a Notice of Hearing alleging that the Respondent had:

a) In June 2017, deposited funds received from a client into her personal bank account, giving rise to a conflict or potential conflict of interest contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1 (Allegation One).

b) In July 2017, engaged in the same type of misconduct when she deposited the proceeds from a client's account redemptions into her personal bank account (Allegation Two).

c) Between February 2016 and February 2018, recorded her own business and personal email addresses in certain client account applications as belonging to the clients, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2, and 2.5.1 (Allegation Three).

d) Commencing in September 2018, failed to cooperate with an investigation into her conduct, contrary to section 22.1 of MFDA By-Law No.1 (Allegation Four).

3. A hearing took place on January 21 and 22, 2021.

a) Immediately prior to the hearing, Staff sought and was granted leave to amend the Notice of Hearing. The amendments changed certain details of the allegations without altering their substance.

b) After considering the evidence and submissions tendered by the parties, the Hearing Panel ruled that the Respondent had committed the misconduct as alleged.

4. On May 7, 2021, after receiving further evidence and submissions relating to sanction, the Hearing Panel ordered penalties against the Respondent, as documented in the attached Order.

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

II. THE EVIDENCE

6. The relevant evidence admitted into the record consists of:

a) the testimony of the most recent MFDA investigator assigned to the file;

b) the testimony of three Primerica employees who had management responsibilities and interacted with the Respondent at relevant times;

c) documents tendered by Staff, which, among other things, included copies of:

i. Primerica's records relating to the opening of, and activity in, the client accounts that are the subject of the Notice of Hearing;

ii. emails exchanged between the Respondent and Primerica's supervisory and investigative staff at relevant times;

iii. Staff's correspondence directing Primerica to obtain information from the Respondent and Primerica's replies containing her responses;

iv. Primerica's compliance manual and other internal Primerica records;

v. various other documents, records, and correspondence obtained from Primerica;

vi. correspondence between the MFDA and the Respondent; and

d) the testimony of the Respondent.

7. The Respondent did not challenge the material facts of Staff's case.

a) Both in her reply to the Notice of Hearing and in the course of her testimony, the Respondent admitted the facts Staff relied upon to establish Allegations One, Two, and Three.

b) With respect to Allegation Four, under cross-examination the Respondent conceded the sequence of events alleged by Staff.

c) Throughout the proceedings, the Respondent did not dispute the factual particulars of the allegations against her, but rather disagreed with the inferences about her motives and character Staff sought to draw from them.

8. The relevant facts to be derived from Staff's uncontradicted evidence are these:

a) The Respondent was registered in British Columbia as a dealing representative with a Primerica branch located in Prince George from April 9, 2015 to October 9, 2018. She was not registered in the securities industry in any capacity prior to this period or subsequently, and she has not been previously disciplined.

b) Primerica's policies and procedures required Approved Persons to:

i. honestly and accurately complete all account applications and other service forms; and

ii. report to the Member all client dealings that gave rise to conflicts or potential conflicts of interest.

c) When certain clients opened investment accounts with Primerica, the Respondent entered her own business address or personal email address in the client contact information portions of the relevant documentation.

d) She entered her business address as the client's mailing address, on or about:

i. February 2, 2016 and December 29, 2016, in three New Account Application Forms (NAAFs) submitted on behalf of client RL.

ii. November 23, 2016, in a NAAF and another service account submitted on behalf of client WM.

e) She entered her personal email address as the client's email address, on or about:

i. January 30, 2018, in two NAAFs submitted on behalf of client RS.

ii. February 1, 2018, in four NAAFs submitted on behalf of client CM.

iii. February 2, 2018, in two NAAFs submitted on behalf of client JT.

f) On June 9, 2017, client CM made an unscheduled appearance at the Respondent's office.

i. He overheard the Respondent telling another person about a "gifting program", under which individuals were encouraged to pay $5,000 on the promise of eventually obtaining a greater amount in return for recruiting other participants.

ii. CM told the Respondent he wished to join the program.

iii. She responded by telling him that: her own knowledge of the program was limited; the program had nothing to do with investment and was not regulated; contributions were not tax deductible; success would depend completely on the integrity of the people running the program, whom she did not know; and there was no time frame for when an outcome might be expected. The Respondent warned CM that he ought not to contribute any money unless he was prepared to lose it, and that participation was no different than going to a gambling casino.

iv. CM nonetheless insisted on participating in the program. For that purpose, he gave her a signed $5,000 cheque dated June 9, 2017. The payee line was left blank, and "Gifting program" was inscribed on the memo line.

g) Some time in June 2017, the Respondent entered her own name in the payee line of CM's cheque and deposited it into her personal bank account.

h) On June 12, 2017, the Respondent paid $5,000 to the program on CM's behalf.

i) On June 26, 2017, the Respondent contributed $5,000 of her own money into the program.

j) On June 27, 2017, the Respondent processed two redemptions on behalf of client RL. These resulted in total net proceeds of $3,509.82.

i. The Respondent caused the redemption cheques to be sent to the client address of record in the relevant NAAF, namely, her own business address.

ii. On or about July 7, 2017, the Respondent deposited the cheques into her personal bank account.

iii. She subsequently met RL in person and provided him with the redemption proceeds in cash.

k) The Respondent did not report to Primerica that she had:

i. designated her business and personal email addresses as client contact addresses in account documentation;

ii. received a $5,000 cheque from CM; or

iii. caused monies belonging to CM and RL to be deposited into her personal bank account.

l) After failing to receive any kind of payment or compensation from the "gifting program" CM eventually registered a complaint with Primerica, which in turn reported it to the Member Event Tracking System.

m) On June 13, 2018, Staff responded to the report by commencing an investigation into the Respondent's conduct.

i. Staff directed questions and requests for documents to the Respondent through Primerica. The Respondent provided the requested information.

ii. On September 17, 2018, Primerica entered into a settlement with CM under which it agreed to pay him back the $5,000 he had contributed to the program.

iii. On September 21, 2018, Staff emailed Primerica requesting that it obtain additional information from the Respondent. Staff wanted her to: identify the friend with whom CM had overheard her discussing the "gifting program"; confirm whether she had herself participated in the program and, if so, when and what returns she had received; identify the persons running the program; and provide copies of the Respondent's bank statements since April 9, 2015, the commencement date of her registration.

iv. On September 28, 2018, Primerica replied to say that due to health issues the Respondent would be unable to respond to Staff's information request until October 15, 2018. This was not true.

v. On October 1, 2018, the Respondent sent an email to a senior Primerica supervisor responding to Staff's September 21, 2018 inquiry. In the email, the Respondent: provided the name of the friend with whom she had discussed the program; confirmed that she had contributed $5,000 to the program on June 27, 2017 and had received nothing in return; stated that the program was run by its participants and not any one person; and advised that the requested bank statements were not available at that time.

vi. On October 9, 2018, the Member terminated the Respondent.

vii. On March 7, 2019, the Respondent received a registered letter from Staff. The letter asked that the Respondent contact Staff to schedule an interview further to its investigation of her conduct.

viii. The Respondent did not reply to the registered letter or otherwise contact Staff to schedule an interview.

ix. On April 5, 2019, a process server personally delivered to the Respondent another letter from Staff. The letter informed her that she was required to advise Staff of her availability for an interview by no later than April 17, 2019 and that if she failed to respond, an interview would be scheduled for June 12, 2019 in Vancouver, British Columbia. The letter further stated that a failure to attend the interview could result in enforcement proceedings being commenced against her.

x. The Respondent did not reply to the letter, failed to contact Staff to schedule an interview, and failed to attend the June 12, 2019 interview.

9. In her testimony, the Respondent sought to frame her conduct in what she believed was its proper context. She explained that:

a) She had operated a tax planning and preparation business out of Prince George for many years. She had not had any involvement in the securities industry until Primerica had recruited her to become a dealing representative.

b) The Respondent had done nothing to encourage CM's investment in the "gifting program", and her receipt of his $5,000 was unrelated to either her tax business or her role as a dealing representative for Primerica.

i. She reaffirmed that CM had appeared at her office unannounced and that she had not promoted the program to him. Rather, he became insistent about participating in the program after overhearing her discussing it with someone else.

ii. She emphasized that she had informed CM that her own knowledge of the program was limited. She did not recommend that he participate, and that if he chose to do so it would be at his own risk. Despite this, he would not take no for an answer. CM, who was about to leave Prince George to work in Fort MacMurray, Alberta, came up with the idea of giving the Respondent a $5,000 cheque with payee line left blank, and it was further to his instructions that she directed the funds to the program.

iii. She adopted her reply to the Notice of Hearing as part of her testimony. This indicates, among other things, that on October 2, 2018 she refunded the $5,000 to CM by means of two electronic transfers, and sent an email confirming the same to members of Primerica's supervisory and investigative staff.

c) Prior to becoming a Primerica client, RL had been a client of the Respondent's tax preparation business for about six years.

d) Due to a marriage breakdown, RL was living in a motorhome that he moved from location to location due to the nature of his work as a truck driver in northern British Columbia. It was for this reason that he used the Respondent's business address to receive all his personal and business mail. He had been doing this before he became a Primerica client and the practice simply continued afterwards.

e) The Respondent had other clients whose work situations similarly made it difficult for them to maintain permanent addresses of their own. These included WM, RS,

and JT, the other individuals in whose NAAFs she had recorded her business and personal email addresses as their own. Like CM and RL, they travelled to relatively remote locations for work, did not reside permanently in any one place, and were pre-existing tax clients who had started using the Respondent's addresses before she became an Approved Person.

f) One of the services the Respondent offered to tax clients in this situation was assistance in managing their personal affairs. Allowing them to use her business address as a mail drop was part of that service, and was typically arranged by way of a written agreement that permitted her to open the client's correspondence. This enabled her to pay their bills in a timely way and on their behalf attend to other matters that might need prompt attention.

g) It was on this basis that the Respondent deposited RL's redemption proceeds into her personal bank account:

   i. RL had a bank account with the Bank of Nova Scotia but at the time of the redemptions was working in Fort St. James, British Columbia, which did not have a branch of the bank.

   ii. Due to the long hours RL worked as a truck driver, he was unable to come to Prince George from Fort St. James to deal with the redemption cheques.

   iii. RL was aware at the time that the Respondent would soon be travelling to a location between Prince George and Fort St. James. He therefore asked that she cash the cheques and then meet him in Vanderhoof, British Columbia, to hand over the proceeds, which she did.

h) In the Respondent's view, she was acting in two distinct capacities when she assisted RL with his affairs. In the language of her reply to the Notice of Hearing, she was exercising "dual agency". She believed that in facilitating the redemptions she was acting as a "Primerica agent", whereas in receiving RL's mail and using her personal bank account to cash his cheques she was acting in her capacity as RL's "financial manager". In her understanding, assisting RL with his personal finances was unrelated to her role as a Primerica dealing representative. This is why the Respondent did not inform Primerica either about RL using her business address to receive his mail or about depositing his redemption cheques.

i) The Respondent received little guidance from her Primerica supervisors. Her relationship with her first branch manager was, in the Respondent's words,

"estranged". She was subsequently assigned to work under another branch manager, who acted as the Respondent's immediate supervisor for the balance of her employment with Primerica. Although she found this branch manager to be helpful, their working relationship was also strained. At one point, the manager locked the Respondent out of the branch's inner office. These interpersonal difficulties were compounded by knee problems. These made it difficult for the Respondent to even attend the branch office and led to her working largely out of her own office. The Respondent believed that she had fully co-operated with Staff while she was employed by Primerica, and had answered all of its inquiries to the best of her ability. After she was terminated, the Respondent faced difficult family issues and continuing health problems. It was at this juncture that she received Staff's letter informing her that she risked enforcement proceedings if she did not make herself available for an interview. She did not respond because she felt she had nothing further to add that would be useful.

III. MISCONDUCT

10. The Respondent used her personal bank account to receive funds that belonged to CM and RL. By doing so, she created two situations that by definition placed her in potential conflicts of interest with those clients.

11. Under MFDA Rule 2.1.4, an Approved Person who becomes aware of any conflict or potential conflict of interest is required to immediately disclose it to their employing Member. The Approved Person and the Member then become jointly obligated to exercise responsible business judgment to address the situation in the client's best interests.

12. The Rule also requires Members to include procedural measures in their written policies and procedures that ensure this is done. Further to this mandate, Primerica's policies and procedures explicitly required Approved Persons to report potential conflicts of interest.

13. The Respondent's reference to a notion of "dual agency" reflects a flawed understanding of the MFDA Rules and their significance for client relationships.

14. The MFDA Rules impose prescriptive obligations on an Approved Person that are quite different and far more extensive than those owed by agents to their principals. Without belabouring the point, the explicit requirements of the MFDA Rules establish a framework of objective standards of conduct. Once a person becomes a mutual fund client, an Approved Person's

relationship with that person is mediated entirely by those standards. There is never any need to interpret whether or not the MFDA Rules apply to an Approved Person's interactions with a client — because they apply to all of them without exception.

15. This comprehensive application of the MFDA Rules is an aspect of the "closed system" of securities regulation, the paramount objective of which is investor protection. This is why Approved Persons are required to report all outside business activities and all potential conflicts of interest: the Members that employ and supervise them are themselves under an obligation to scrutinize and oversee every interaction that has the potential to place their clients at financial risk.

16. The Respondent's defense to Allegations One and Two was, essentially, that she was doing her best to help clients whose circumstances did not permit them to do their own banking. She pointed out that in both instances she had directed the funds precisely as instructed by her clients, and argued that nothing in the evidence supports any suggestion that she deprived them of money or otherwise acted with dishonest intent.

17. That is all true. It is also not relevant to whether the misconduct took place.

18. The MFDA Rules are to be followed to the letter because they are part of a prescriptive system of regulation that is specifically designed to protect investors from harm, which can result just as easily from negligence as from dishonesty. A person's subjective intent is not relevant to establishing misconduct unless outright fraud has been alleged, which is not the case here.

19. In *Larson (Re)*, a case where the respondent directed redemption proceeds into his personal bank account, the hearing panel stated:

> [I]t is axiomatic that, having chosen to direct client funds outside the auspices of the Member, the Respondent was engaging in personal financial dealings with the clients in breach of Rules 2.1.4 and 2.1.1.
>
> *Larson (Re)*, 2009 LNCMFDA 30 at para. 88.

20. By placing client monies under her personal control, even briefly, the Respondent created a risk of conflict arising at some point between her and her clients over the disposition of their funds. Failing to notify her employing Member compounded the problem, by effectively putting potentially harmful financial arrangements beyond its supervisory capacity. In CM's case, the potential for conflict eventually crystallized into the real thing when he filed his complaint, a situation that might never have arisen had the Respondent made proper disclosure.

21. The evidence supports the Respondent's claim that her only purpose in depositing the cheques into her bank account was to implement the wishes of her clients, and nothing in the surrounding circumstances hints at any intention to derive personal profit. It is equally clear to the Hearing Panel, however, that her understanding of the purpose and scope of the MFDA Rules was, at best, incomplete. The result was that, as alleged under Allegations One and Two, she neither exercised the vigilance needed to avoid conflicts of interest nor met her reporting obligations, contrary to MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1.

22. The Respondent's defense to Allegation Three similarly relied on the misconception that her professional relationships with individuals who were both mutual fund and tax clients could somehow be bifurcated into regulated and non-regulated interactions.

23. Her original purpose in permitting tax clients without fixed residential addresses to use her business and e-mail addresses was to make it easier for them to stay on top of important correspondence. In the Respondent's view, subsequently representing her addresses in NAAFs as belonging to the clients simply carried forward a practical arrangement that served their interests. She appears to have assumed that Primerica's permission to continue her outside tax business meant she was also free to continue into the mutual fund context all her pre-existing arrangements with those clients.

24. Again, this discloses a misunderstanding of the nature of the MFDA Rules and her role as an Approved Person.

25. As Enforcement Counsel submitted in argument, Members must have accurate client contact information in order to meet their mandatory disclosure and reporting obligations. This goes beyond confirming transactions, sending account statements, and effecting other normal course communications. A Member cannot have any doubt whatsoever about its ability to forward redemption proceeds to a client, reach them in urgent circumstances, or simply discuss issues with them in the absence of the Approved Person who normally services the account.

26. The potential for severe client harm in an Approved Person recording her own address in NAAFs is exemplified by the Respondent's receipt of RL's redemption cheques. Notwithstanding that it was further to RL's wishes and he did not suffer harm, the mail drop arrangement by definition put his ability to receive redemption proceeds at the mercy of the Respondent's discretion. Enforcement Counsel's analogy with the prohibition against the possession of pre-signed forms is on point: the MFDA Rules do not contemplate any circumstances whatsoever

under which an Approved Person is permitted to be in a *de facto* position to exercise discretion over a client's financial affairs.

Price (Re), 2011 CanLII 72458 at paras. 122-124.

27. MFDA Rule 2.1.1 requires Approved Persons to observe high standards of conduct in the transaction of business and to refrain from detrimental practices. In the recent *Pekel (Re)* case, the respondent was found to have represented his own address as the client's in account opening documentation. The hearing panel reviewed how MFDA Rule 2.1.1 had been interpreted in previous decisions involving similar conduct. It determined that the address required to be entered in a Member's records is "not a postal address, or an address of convenience, but the address where the person resides." The reasons are practical and straightforward: mail drop arrangements can easily be used to conceal misconduct and undermine a Member's ability to supervise the Approved Person. As such, the practice is inherently detrimental and contravenes MFDA Rule 2.1.1.

Pekel (Re) (2021), MFDA File No. 202007 at paras. 31-37.

28. In the Notice of Hearing, Staff characterized the Respondent as having "falsely" recorded client contact information. That language implies an intention to deceive that the evidence does not support. Nothing in the evidence indicates that the Respondent set out to deliberately mislead Primerica or that entering her business and email in NAAFs served to advance her own interests in some fashion. It is more accurate to say that the Respondent engaged in a detrimental business practice and to leave it at that. It is on that basis that the Hearing Panel finds the Respondent liable under Allegation Three for having contravened MFDA Rules 2.1.1, 1.1.2, and 2.5.1.

29. With respect to Allegation Four, it must be observed that the Respondent co-operated with the investigation up until she was terminated on October 9, 2018. At that juncture, the only outstanding information request was that contained in Staff's September 21, 2018 email to Primerica asking for the Respondent's bank statements. Up to that point, there had been no suggestion of recalcitrance, or that the Respondent otherwise did not intend to provide the bank statements in due course. That changed with her termination.

30. While employed by Primerica, the Respondent learned of Staff's information requests and responded to them through the Member's auspices. Upon the end of her relationship with Primerica, it is conceivable the Respondent may have mistakenly concluded that Staff's interest in her bank statements had also come to an end. If so, that misapprehension could no longer be

reasonably sustained once she began receiving correspondence from Staff that directly confirmed the investigation was continuing and, moreover, Staff was determined to interview her.

31. About five months after she was terminated, Staff sent the Respondent a letter asking her to contact Staff to arrange an interview. She did not respond. About a month later, Staff sent a follow up letter that: repeated the request; informed the Respondent of a default date for her interview if she again failed to reply; and warned her that failing to attend the interview could result in enforcement action being taken against her. The Respondent did not respond to that letter either.

32. Under cross-examination the Respondent acknowledged that she had received Staff's letters, knew Staff wished to interview her, and was aware of Staff's warning. She testified that the letters arrived at a time when she was facing difficult family issues and health problems. If those challenges were so onerous as to require deferring the interview for a time, the Respondent could have contacted Staff to explain her situation. Indeed, the very point of Staff's letters was to start a dialogue that would result in an interview being scheduled for a mutually convenient time.

33. Section 22.1 of MFDA By-law No.1 states, among other things, that:

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

34. It is a truism that an Approved Person's failure to cooperate with an investigation severely undermines the MFDA's ability to fulfill its regulatory mandate. As the hearing panel stated in *Vitch (Re)*, there can be no exceptions to the obligation of Members and Approved Persons to co-operate with investigations. The reason is eminently pragmatic. The MFDA does not have

> …statutory power to search and seize or to compel the production of documents. Without the cooperation of Members and Approved Persons, the MFDA's ability to investigate and discipline its Members and Approved Persons is gravely fettered.
>
> *Vitch (Re)*, 2011 LNCMFDA 63 at paras. 55-56.

35. Moreover, "the duty to cooperate includes the duty to do so fully and in a timely way". It is not unknown for individuals in the possession of relevant information to be erratic in their responsiveness or to outright stop co-operating in the face of uncomfortable questions. A partial failure to co-operate can just as easily prevent an investigation from reaching its proper conclusion as a complete failure to do so.

Crompton (Re), 2015 LNCMFDA 41 at paras. 21-22.

36. Section 24.1.4 of MFDA By-law No.1 provides that an individual who ceases to be an Approved Person remains subject to their Section 22.1 obligation to co-operate with investigations for a period of five years.

37. The Respondent became aware that the MFDA's investigation was still active on March 7, 2017, when she received her first direct communication from Staff seeking to arrange an interview. That amounted to notice that Staff's outstanding request for her bank statements also remained active. When she received Staff's second letter on April 5, 2019, the Respondent became aware that she would be expected to attend a default interview on June 12, 2019 if she did not work out an alternative date with Staff beforehand.

38. The evidence is that the Respondent never provided the bank statements, failed to attend the June 12, 2019 interview, and never made any effort to communicate with Staff about either matter. As alleged under Allegation Four, this constituted a failure to co-operate with the MFDA's investigation contrary to section 22.1 of MFDA By-law No.1.

IV. PENALTY ANALYSIS

Allegations One, Two, and Three

39. The Hearing Panel is not satisfied that financial penalties are warranted for the misconduct identified by Allegations One, Two, and Three.

40. The purpose of sanctions in MFDA enforcement proceedings is to protect the investing public, which in turn serves to foster confidence in the mutual fund industry. Penalties in the MFDA regulatory context are not meant to be retrospective or punitive, but forward looking. This means that before ordering a penalty a hearing panel must be satisfied that doing so will serve to prevent likely future harm. There is no other justification for ordering sanctions.

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

41. In determining forward looking sanctions, general deterrence is a critical consideration.

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

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

42. Whether general deterrence deserves to be given greater or lesser weight in any given case very much depends on the facts. It is not an absolute value that justifies defaulting to ordering harsh penalties in every case. To be reasonable, a penalty in the regulatory context must be supported by rational analysis that establishes the penalty as proportional to the misconduct.

Cartaway, supra, at para. 64.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at paras. 14, 85.

43. On November 15, 2018, the MFDA issued sanction guidelines to assist hearing panels in their sanction deliberations. These are consistent with the direction provided by the Supreme Court of Canada, namely, that penalties must be demonstrably proportional to the character of the actual misconduct. Among other things, the guidelines state that:

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

44. The substance of the law and guidance just referenced is that a penalty can be rationally justified on the grounds of general deterrence only if it:

a) can reasonably be expected to deter similarly situated individuals from engaging in similar misconduct; and
b) is proportionate to the misconduct.

45. When a respondent has been found to have breached standards of conduct, it is rarely necessary to ask whether it is appropriate to order financial penalties for general deterrence purposes. In this case, however, the evidence discloses troubling indications that the Respondent may not always have received the guidance she needed in her development as an Approved Person.

a) It appears from the testimony of the Primerica witnesses that the Member made active efforts to recruit the Respondent. It is certainly clear that prior to the

Respondent joining Primerica the Member was well aware that she had a tax business and a pre-existing client base.

b) One of the Primerica witnesses was the Respondent's first branch manager when she started working for the Member. In the following exchange, Enforcement Counsel asked the witness about the guidance she had given the Respondent about how to manage her outside business in compliance with the MFDA Rules:

> Q: Do you recall if you discussed with Ms. Henricks about how MFDA rules might or might not apply to Ms. Henricks when she's dealing with clients who are both clients of her outside business activity and Primerica funds?
>
> A: Sorry, can you ask that again?
>
> Q: Sorry, my question was did you discuss with Ms. Henricks about how the MFDA rules might or might not apply when she's dealing with -- let's call them dual clients, clients who were both her outside business activity clients and they're also PFSL clients?
>
> A: I don't know about her business, but yes, our business has strict rules on outside business activity and that they have to keep them totally separate.
>
> Q: Did you have any discussion about how the MFDA rules might apply where someone has an outside business activity?
>
> A: I don't recall having a discussion at this time, no.

c) The Respondent testified that her working relationships with this witness and her subsequent branch manager had both been marred by a degree of acrimony. When cross-examined, both witnesses more or less agreed.

d) The Respondent had no experience whatsoever in the securities industry prior to joining Primerica. She worked for the Member for three and a half years, from April 2015 to October 2018. During that period, she worked largely from her own facilities because difficulties with her knees hindered her ability to work out of Primerica's offices.

e) In other words, the Respondent's circumstances were such that her opportunity to learn the business in a shared working environment and consult with more experienced colleagues was limited. It appears, rather, that the principal sources of guidance available to the Respondent while at Primerica were the Member's written policies and procedures, and annual training sessions.

f) It follows that the Respondent had little, if any, practical experience dealing with the normal course operational demands of a mutual fund dealer's office. Yet for reasons that were not explained, Primerica at some point saw fit to encourage the Respondent to qualify for the branch manager designation by taking the branch

compliance officer course, which she did. Following this, she served as the alternate branch manager for the Primerica office out of which she worked, but did not regularly attend. These events support, but by themselves do not establish, the inference that Primerica expected the Respondent to carry out her responsibilities more or less independently.

g) Primerica did not inform the Respondent of the settlement it entered into with CM on September 17, 2018. This led to her unwittingly transferring $5,000 to CM on October 2, 2018 to resolve his complaint, resulting in his receiving double compensation. Whatever else this episode signifies, it raises questions about Primerica's priorities in communicating with the Respondent.

46. Looking at the circumstances surrounding the misconduct identified under Allegations One, Two, and Three, it is clear that something went wrong in the Respondent's training as an Approved Person. As to the cause of her inadequate development, it is important to stress, the evidence does not allow for definitive conclusions. For the same reason, however, the Hearing Panel cannot conclude that financial penalties for the misconduct are rationally justifiable on the grounds of general deterrence.

47. The Respondent's failure to co-operate is another matter.

Allegation Four

48. Time and again, hearing panels have emphatically stated that breaches of Section 22.1 of By-law No.1 present an intolerable risk to the MFDA's public protection mission. Simply, in any inquiry into suspected misconduct the witnesses with the most relevant information will always be the registered persons who were involved or associated with the episode. Without their co-operation, the MFDA's ability to arrive at a full accounting of events becomes severely hampered. Barring truly exceptional circumstances, this is why findings of failing to co-operate uniformly result in the firmest of disciplinary responses.

49. Typically, a failure to co-operate leads to a permanent prohibition and a financial penalty of not less than $50,000. This is irrespective of whether it was the sole breach or part of a larger pattern of misconduct. Staff's sanction submissions included a number of previous decisions in which the failure to co-operate occurred in circumstances roughly analogous to the Respondent's, namely, cases in which there was no evidence of client harm or the harm was minimal. In each

instance, the sanction order included a permanent prohibition and a financial penalty that ranged between $50,000 and $75,000.

Vitch, supra

Lipovetsky (Re), 2013 LNCMFDA 43

McKenzie (Re), 2017 LNCMFDA 27

Rombough (Re), 2018 LNCMFDA 235

Yang (Re), 2018 LNCMFDA 36

Hylton (Re), 2018 LNCMFDA 254

50. Staff's priority in its investigation was getting to the bottom of the Respondent's involvement in the "gifting program".

a) It had learned that an Approved Person had been sharing information about a dubious investment scheme with at least one mutual fund client. That alone was sufficient to engage the MFDA's public protection mandate.

b) On top of that, the Respondent had outright facilitated the client's participation in the program by assuming control over $5,000 of his money and acting as a go between.

c) That, and the fact that the Respondent herself was a participant, made determining the depth of her involvement with the program a question that urgently needed to be answered. Obtaining the Respondent's bank statements and interviewing her were integral to that.

51. In the Notice of Hearing, Staff characterized the "gifting program" as a pyramid scheme and in sanction submissions identified the Respondent's involvement in it as an aggravating factor.

52. This is a profoundly serious assertion. It amounts to claiming the Respondent aided in the commission of criminal fraud when she facilitated CM's participation in the program. Citing it as an aggravating factor is not supportable unless the fraudulent features of the program, and the Respondent's knowledge of them, have both been established on a balance of probabilities.

Anderson v. British Columbia (Securities Commission), 2004 BCCA 7, at para. 29.

Cheema (Re), 2020 LNCMFDA 64.

53. The relevant evidence regarding the nature of the program consists of:

a) Six slides consisting of flow diagrams and summary language that appears to refer to a cash contribution process, all excerpted from a promotional presentation the Respondent provided to Primerica further to Staff's inquiries. It is not possible to discern the meaning of the slides in isolation.

b) The Respondent's written response to Staff's inquiries about how the program worked. This consisted of her explanation of what she told CM about the program, and a brief, obscure description of how participants eventually cycled out of the program after new ones joined.

c) The Respondent's testimony recapitulating what she told CM about the program and disavowing any deep understanding of it.

54. From this evidence it is impossible to draw any conclusions about how the program even purportedly worked, let alone conclude on a balance of probabilities that it was a pyramid scheme. What the evidence confirms is this: the Respondent knew enough about the "gifting program" to know it was not any kind of normal investment, but rather a form of unlicensed gaming. For sanctioning purposes, this is the true relevance of the Respondent's involvement in the program.

55. The risks the Respondent outlined when cautioning CM indicate she was well aware that the program had a high potential to be a scam. As an Approved Person, she was obligated under MFDA Rule 2.1.1 to refrain from any "business conduct or practice which is unbecoming or detrimental to the public interest". Given her knowledge of the risks involved, facilitating CM's participation in the program was inconsistent with that obligation. Moreover, the fact that she was both in a position to act as a facilitator and willing to do so indicated that whatever the depth of her involvement might be, it was not superficial. This meant there was a very real possibility that other clients had been harmed or exposed to a risk of harm. This was the urgent question at the centre of Staff's investigation, which it was blocked from answering by the Respondent's failure to co-operate. Impeding the MFDA from identifying potential victims is an aggravating factor.

V. ORDERS

56. Staff sought an Order with the following terms:

a) a permanent prohibition;

b) a fine of not less than $50,000; and

c) costs of $10,000, the request for which was supported by an itemized Bill of Costs.

57. The evidence in this case is unambiguous in establishing misconduct, but far from clear in other important respects. The uncertainties about the quality of the Respondent's supervision are such that for the misconduct under Allegations One, Two, and Three sanctions on the grounds of general deterrence cannot be justified with any confidence. What is not in doubt, however, is that the Respondent's failure to cooperate undercut the MFDA's ability to fulfill its public protection mandate. The misconduct under Allegation Four, therefore, demands a deterrent response that is commensurate with the objective risk of serious potential future harm that it undeniably represents.

58. Determining sanctions that are fair and at the same time sufficient to protect the public interest requires a nuanced appreciation of what the facts of a case establish and what they do not. The terms proposed by Staff reflect such a balanced understanding of the evidence. The Hearing Panel therefore granted the requested Order.

DATED this 26th day of July, 2021.

"Joseph A. Bernardo"
Joseph A. Bernardo
Chair

"Barbara E. Fraser"
Barbara E. Fraser
Industry Representative

"Michelle Leung"
Michelle Leung
Industry Representative

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

IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Jewel Henricks

ORDER

(ARISING FROM PENALTY HEARING ON MAY 7, 2021)

WHEREAS on July 6, 2020, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 (the "Notice of Hearing") in respect of a disciplinary proceeding commenced against Jewel Mary Henricks (the "Respondent");

AND WHEREAS appearances were held in this matter before a public representative of the Pacific Regional Council of the MFDA on September 8, 2020 and November 6, 2020;

AND WHEREAS on January 21-22, 2021, a hearing panel of the Pacific Regional Council (the "Hearing Panel") conducted a hearing with respect to the allegations described in the Notice of Hearing amended with leave of the Hearing Panel by Order dated January 22, 2021;

AND WHEREAS after hearing the evidence and the submissions from the Respondent and Staff, the Hearing Panel found that the Respondent:

a) in June 2017, accepted a $5,000 cheque from a client to place in a "gifting program", which the Respondent deposited into her personal bank account, thereby engaging in personal financial dealing with a client that gave rise to a conflict or potential conflict of interest that the Respondent did not disclose to the Member or address by the exercise of responsible business judgment influenced only by the

best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1;

b) on or around July 7, 2017, deposited proceeds of redemptions from the account of a client at the Member totaling $3,508.82 into her personal bank account, thereby engaging in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest that she did not disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 1.1.2, and 2.5.1;

c) between February 2016 and February 2018, recorded the home address of two clients using her own business address on five client account application forms and recorded the email addresses of three clients using her own personal email address on eight client account application forms, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 1.1.2, and 2.5.1; and

d) commencing on or about September 21, 2018, failed to cooperate with MFDA Staff's investigation into her conduct, contrary to section 22.1 of MFDA By-law No. 1.

AND WHERAS on May 7, 2021, the Hearing Panel heard submissions from the Respondent and Staff concerning the appropriate sanctions to impose on the Respondent.

IT IS HEREBY ORDERED THAT:

1. The Respondent is permanently prohibited from conducting securities related business while in the employ of or in association with a Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1.

2. The Respondent shall pay a fine in the amount of $50,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1.

3. The Respondent shall pay costs in the amount of $10,000, pursuant to section 24.2 of MFDA By-law No. 1.

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party

without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this 7th day of May, 2021.

"Joseph A. Bernardo"
Joseph A. Bernardo
Chair

"Barbara Fraser"
Barbara Fraser
Industry Representative

"Michelle Leung"
Michelle Leung
Industry Representative

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