

Decision (Penalty) and Reasons

File No. 202006



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: Dean Martin Jenkins

Heard: November 3, 2020 by electronic hearing in Toronto, Ontario
Decision (Penalty) and Reasons: January 5, 2021

DECISION (PENALTY) AND REASONS

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Edward Jackson
Kenneth Mann

Chair
Industry Representative
Industry Representative

Appearances:

Paul Blasiak)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Mitchell Fournie)	Counsel for the Respondent
)	
)	
Dean Martin Jenkins)	Respondent
)	
)	

I. MISCONDUCT

1. By Notice of Hearing dated January 15, 2020 (“NoH”), staff of the MFDA (“Staff”) brought 5 allegations against Dean Martin Jenkins (the “Respondent”).
2. The first 2 allegations concerned the same conduct and were pleaded in the alternative. They were that in 2016 the Respondent recommended, sold or facilitated the sale of syndicated mortgages of approximately \$1,080,000 to 11 clients and 5 other investors outside the business of his Member, thereby engaging in outside business activity and/ or securities related business not for the account of his Member, contrary to the Member’s policies and procedures and MFDA Rules 1.1.1, 1.2.1(c), 2.1.1, 1.1.2, or 2.5.1.
3. The third allegation was that the Respondent participated in a referral arrangement in connection with the syndicated mortgages that was not approved by his Member and to which his Member was not a party, contrary to the Member’s policies and procedures and MFDA Rules 2.4.2, 2.1.1, 1.1.2, or 2.5.1.
4. The fourth allegation was that the Respondent in 2017 and 2018 misled his Member regarding compensation he received on referrals, thereby engaging in conduct which is unbecoming and detrimental to the public interest contrary to MFDA Rule 2.1.1.
5. The fifth allegation was that between February 2016 and February 2017 the Respondent obtained, possessed, and in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

II. DECISION AS TO MISCONDUCT

6. The hearing panel determined that, based on the facts and admissions in an agreed statement of facts dated November 2, 2020 (the “ASF”), the submissions of counsel, and considerations of the MFDA Rules referred to in the NOH, on a balance of probabilities, the allegations against the Respondent were proved. The ASF is attached herein as Exhibit “1”.

III. AGREED STATEMENT OF FACTS

7. In the ASF Staff and the Respondent agreed, among other things, as follows:

- (i) The Respondent admitted facts that established that the misconduct alleged in the 5 allegations occurred.
- (ii) Although the Respondent did not admit that there was a referral arrangement, he admitted that there was an arrangement with the promotor of the syndicated mortgages, that he worked to sell them, that he received approximately \$29,000 as compensation for his services, and that his activities relating to the syndicated mortgages were not disclosed to or approved by his Member.
- (iii) The parties requested the hearing panel to determine, on the basis of the ASF, the appropriate penalty to impose on the Respondent.
- (iv) The submissions made by any party with respect to an appropriate penalty will be based only on the agreed facts and no other facts or documents.
- (v) If the hearing panel advises of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent will provide such additional facts only with the consent of both parties.
- (vi) The Respondent may lead evidence at the hearing on the merits that is relevant to the Respondent's remorse, financial circumstances, and any intentions to re-enter the securities industry but only for the purpose of the hearing panel's determination of the appropriate sanction.
- (vii) The Respondent has not previously been the subject of MFDA disciplinary proceedings.

8. The hearing panel determined that the agreement between the parties in the ASF regarding what facts could be provided to the hearing panel if the panel considered knowing them to be necessary in order to determine an appropriate penalty, was inappropriate and not binding on the hearing panel.

9. The MFDA Rules relating to acceptance or rejection of a settlement agreement have a similar provision which is binding on a hearing panel: in considering a settlement agreement, a hearing panel may accept it if the panel determines it is in the public interest to do so; or the panel may reject it if the panel determines it is not in the public interest to accept it; or the panel may reject it if the panel is not provided with sufficient facts to make a determination that it is in the public interest to accept the settlement agreement. In any case the hearing panel will be in a

position to perform its duty to determine whether to accept or not accept the settlement agreement. This provision is appropriate for a settlement agreement.

10. In the case of a contested hearing where the panel has found misconduct, the panel has a duty to determine what the appropriate penalty should be. It cannot perform its duty if essential facts are withheld from it. The panel does not have the ability not to decide on penalty because of insufficient facts and send the matter back to the parties. The parties cannot by agreement among themselves limit the procedure before the panel to deny the panel relevant facts and evidence relating to appropriateness of a penalty that one party is prepared to provide in answer to questions by the panel even if the other party does not consent. This provision is not appropriate in a contested hearing.

IV. SUGGESTION ON PENALTY

11. Staff suggested as an appropriate penalty:

- (i) a permanent prohibition;
- (ii) a fine of \$50,000; and
- (iii) a costs award of \$10,000.

12. Counsel for the Respondent suggested as an appropriate penalty;

- (i) a permanent prohibition;
- (ii) a fine of no more than \$20,000;
- (iii) a costs award of \$2,500.

V. PURPOSE OF PENALTIES

13. The purpose of penalties for MFDA misconduct is not to be punitive but to be prophylactic and preventative. Accordingly, in determining the appropriateness of a penalty in a case before the MFDA, there are two fundamental considerations that stand out over all the other considerations that the precedent cases and the MFDA Sanction Guidelines state. Those two considerations are:

- (i) whether the penalty will be protective of the public interest, and

- (ii) whether the penalty will provide an adequate deterrent to the respondent and to others who may be inclined to pursue the same type of misconduct.

14. In our case, a permanent prohibition will be preventative of future harm by the Respondent as a participant in the industry with a Member.

15. However, since the Respondent has been out of the industry since 2018 and has no intention of returning, the permanent prohibition itself would not provide an adequate deterrent for the Respondent.

16. What is required is a fine that will have a meaningful impact on the Respondent for a significant amount of time without ruining him financially.

17. In coming to a determination as to an appropriate fine, we considered:

- (i) that the Respondent received approximately \$29,000 in referral fees from the sale of the syndicated mortgages;
- (ii) that investors lost approximately \$785,000 through the syndicated mortgages;
- (iii) that apart from referral fees, the Respondent received no other financial benefit from his misconduct; he had no other interests in the syndicated mortgages or the projects connected with them and was not a promotor of the projects connected with them;
- (iv) the precedent cases referred to by the parties;
- (v) the MFDA Sanction Guidelines, and in particular the suggestion that ability to pay, when raised and proved by a respondent, be considered as a factor in determining the amount and payment schedule of fines;
- (vi) the remorse of the Respondent for his misconduct;
- (vii) the fact that the Respondent corrected prior to the commencement of proceedings his misstatements to his Member as to compensation received from referrals, when he realized that when he had made the misstatements he had been frightened and not thinking straight; and

(viii) letters as to character from the Respondent's wife (although we recognized that she was biased) and from a client-friend (who was not an investor in the syndicated mortgages).

18. We gave little weight to the considerations in items (vi) to (viii) of the preceding paragraph.

VI. ABILITY TO PAY

19. We considered financial and other evidence submitted by the Respondent relevant to his ability to pay, including yearly income, assets, debt information, his family and housing situation, his educational and workplace experiences, as well as employment prospects during the Covid-19 pandemic restrictions and likely economic aftermath for him.

20. We concluded that the fine and costs award we ordered were appropriate, fair and reasonable for him, the MFDA, the industry, and the investing public, and would provide a meaningful yet manageable deterrent for the Respondent without driving him to financial ruin.

VII. IIROC PROCEEDING

21. From 2009 to February 12, 2016, the Respondent was registered in Ontario with a dealer member of the Investment Industry Regulatory Organization of Canada ("IIROC"). From February 22, 2016 to March 31, 2018, the Respondent was registered in Ontario with a Member of the MFDA.

22. After the hearing on November 3, 2020 and while the panel was deliberating, it came to the attention of the panel that in June 2020, IIROC had commenced a proceeding (the "IIROC proceeding") against the Respondent for alleged misconduct similar to that in the first 2 allegations in our case but relating to a period of time between November 2013 and February 12, 2016 while he was employed by a dealer under the jurisdiction of IIROC. We also learned that the IIROC proceeding was to be heard on December 8, 2020.

23. We decided that we could not ignore what had come to our attention. However, under our system of adversarial advocacy it would be improper for the panel to consider the relevance, if any, for our determination of an appropriate penalty, of the misconduct alleged in the IIROC proceeding without hearing from Staff and Respondent's counsel.

24. Accordingly, we asked them to comment on, among other things:
- (i) whether the misconduct alleged in the IIROC proceeding was relevant as prior similar misconduct that resulted in disciplinary proceedings, that could be relevant to our determination of an appropriate penalty in our case; and
 - (ii) whether the fact that the Respondent may face financial penalties from the IIROC proceeding was something we should figure into the ability of the Respondent to pay a fine in our case.
25. We heard from Staff and counsel for the Respondent on December 21, 2020.
26. We were satisfied and agreed with the submissions we received from them.
27. We determined that we should not take into consideration the IIROC proceeding in determining an appropriate penalty in our case for three reasons:
- (i) The misconduct alleged in the IIROC proceeding was unproven at the time of our hearing. (We believe that the parties should have brought the IIROC proceeding to our attention at the hearing and then should have argued, as they did in their submissions, that we should ignore it as unproven allegations that we should not consider because to do so would constitute unfairness to the Respondent at that time.)
 - (ii) Any misconduct proved in the IIROC proceeding will result in any penalty that IIROC deems appropriate as a consequence of such misconduct. (IIROC found on December 8, 2020 that the misconduct alleged in the IIROC proceeding was proved.)
 - (iii) IIROC decided in its decision of December 8, 2020, as outlined in its reasons dated December 18, 2020, to wait until our panel had determined an appropriate penalty in our case before IIROC determined sanctions in its case. (This will provide IIROC with the opportunity to determine, if it sees fit, an appropriate global fine [an adequate and appropriate deterrent] as a consequence of the misconduct in our case and in the IIROC proceeding. We leave that to IIROC).

VIII. PENALTY DECISION

28. We determined that in the circumstances of this case a global fine, rather than a fine for each of the allegations proved, was appropriate.

29. Staff submitted a bill of costs for approximately \$10,000. It appeared to be reasonable, and did not include charges for several items that could have been included. Under normal circumstances we would have approved a costs award of \$10,000.

30. Taking into account the ability of the Respondent to pay we reduced the amount of the fine and the costs award we would have otherwise ordered.

31. However, we determined that, since a fine and costs award of \$32,500 with payment terms was manageable and within the Respondent's ability to pay, and the benefit received by the Respondent was \$29,000, the appropriate fine could and therefore, should be at least equal to or greater than the benefit the Respondent received from his misconduct.

32. Accordingly, we determined that the penalty in our case should be:

- (i) a permanent prohibition;
- (ii) a fine of \$30,000; and
- (iii) a costs award of \$2,500.

33. We determined that these amounts may be paid in 60 monthly instalments of \$541.67 each, without interest, on the first day of each month, with the first instalment commencing July 1, 2021. If any instalment is not paid when due, the unpaid balance of the fine and costs award shall become due and payable unless the MFDA agrees otherwise.

IX. FORMAL ORDER

34. We order the following sanctions:

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

- (ii) The Respondent shall pay a fine of \$30,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (iii) The Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of MFDA By-law No. 1;
- (iv) These amounts may be paid in 60 monthly instalments of \$541.67 each, without interest, on the first day of each month, with the first instalment commencing July 1, 2021; and
- (v) If any instalment is not paid when due, the unpaid balance of the fine and costs award shall thereupon become due and payable unless the MFDA provides otherwise by order of a hearing panel.

DATED this 5th day of January, 2021.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Edward Jackson”

Edward Jackson
Industry Representative

“Kenneth Mann”

Kenneth Mann
Industry Representative

Exhibit “1”

Agreed Statement of Facts

File No. 202006



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: Dean Martin Jenkins

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated January 15, 2020, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Dean Martin Jenkins (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: In 2016, the Respondent recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, or 2.5.1.

Allegation #2: In 2016, the Respondent engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors

that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c))¹, 2.1.1, 1.1.2, or 2.5.1.

Allegation #3: In 2016, the Respondent made referrals in respect of the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby participating in a referral arrangement that was not approved by the Member and to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 1.1.2, or 2.5.1.

Allegation #4: The Respondent misled the Member and MFDA Staff during the course of an investigation into his conduct when he:

- a) on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages; and
- b) on January 11, 2018, in response to a request for information from MFDA Staff, provided another misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages;

thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #5: Between February 2016 and February 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

II. IN PUBLIC/IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA *Rules of Procedure*.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which

¹ Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents, subject to paragraph 7 below. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Staff and the Respondent agree that the Respondent may lead evidence at the hearing on the merits that is relevant to the Respondent's remorse, financial circumstances, and any intentions to re-enter the securities industry. This evidence will be tendered solely for the purpose of the Hearing Panel's determination of the appropriate sanction and for no other purpose. Staff may lead any responding evidence at its discretion, and may cross-examine the Respondent and any witnesses tendered by the Respondent.

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

Registration History

9. From 2009 to February 12, 2016, the Respondent was registered in Ontario with a Dealer Member of the Investment Industry Regulatory Organization of Canada.

10. From February 22, 2016 to March 31, 2018, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

- 11. The Respondent is not currently registered in the securities industry in any capacity.
- 12. At all material times, the Respondent conducted business in the St. Catharines, Ontario area.

Tier 1 Syndicated Mortgages

13. Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and First Commonwealth Mortgage Corporation (“First Commonwealth”) were mortgage brokerages licensed by the Financial Services Commission of Ontario (“FSCO”) (now known as the Financial Services Regulatory Authority of Ontario).

14. Tier 1 Transaction Advisory Services Inc. (“Tier 1 Transaction”) was a company that was affiliated with Tier 1 Mortgage and First Commonwealth.

15. Tier 1 Mortgage, First Commonwealth and Tier 1 Transaction were engaged in the distribution of syndicated mortgage investments (the “Tier 1 SMIs”) to investors.

16. In or about 2013, the Respondent met JC. JC was involved in the distribution, marketing and promoting of Tier 1 SMIs. JC discussed the Tier 1 SMIs with the Respondent, and he provided brochures and other materials regarding the Tier 1 SMIs to the Respondent.

17. The Respondent subsequently entered into an arrangement (the “Arrangement”) with JC to facilitate the sale of Tier 1 SMIs to investors, in exchange for JC paying the Respondent compensation equal to 2.5% to 3% of the amount that each investor invested.

18. In 2016, during the period that the Respondent was registered with FundEX, the Respondent recommended, sold, or facilitated the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, as described in the table below:

Investor	Tier 1 SMI	Amount
Client DD	445 Princess Street	\$28,000
Client DF	445 Princess Street	\$25,500
MR	445 Princes Street	\$51,000
	Hazelton	\$25,500

Investor	Tier 1 SMI	Amount
PD	445 Princess Street Hazelton	\$65,000 \$105,000
Client AH	445 Princess Street Hazelton	\$75,000 \$40,000
Client JH	445 Princess Street	\$76,000
Client SS	445 Princess Street	\$38,700
Client MP	445 Princess Street	\$25,500
Client TK	445 Princess Street	\$48,750
Client CP	445 Princess Street	\$59,900
Client ### Ontario Inc.	445 Princess Street Hazelton 774 Bronson	\$85,000 \$40,000 \$65,000
KB	445 Princess Street	\$25,500
CH	445 Princess Street Hazelton	\$30,000 \$46,000
GVS	Hazelton	\$34,000
Client JF	445 Princess Street	\$65,000
Client SW	445 Princess Street	\$25,000
TOTAL		\$1,079,350

19. Between April 2016 and August 2016, pursuant to the Arrangement, the Respondent received compensation from JC totaling approximately \$28,970.17. The compensation was paid into the account of the Respondent's corporation, Kingsman Wealth Management Group Inc.

20. The Respondent did not disclose to FundEX that he was recommending, selling or facilitating the sale of Tier 1 SMIs to clients and other investors.

21. None of the Respondent's activities with respect to the Tier 1 SMIs were approved by FundEX or conducted through its facilities.

22. The Respondent did not personally invest in the Tier 1 SMIs.

23. In October 2016, FSCO issued an interim order suspending the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction. The interim order stated, among other things, that:

Examinations of the First Commonwealth and Tier 1 Mortgage and other enquiries by FSCO staff revealed a number of serious contraventions of the *[Mortgage Brokerages, Lenders and Administrators]* Act. The contraventions are widespread and reveal systemic disregard for the basic consumer protection measures set out

in the Act. The most serious contraventions relate to the failure to provide written disclosure of material risks, disclosure of conflicts of interest, the failure to ensure that syndicated mortgage investments (“SMIs”) (a mortgage for which there is more than one lender or investor) were suitable for the investor to whom they were presented and the provision of false and misleading information as to the characterization of appraisals as reflecting the “as is” value of the relevant properties when such appraisals were actually premised on the successful completion of the proposed development.

These contraventions exacerbate the risk inherent to the type of SMIs sold by the brokerages in this case. Such SMIs function as a form of mezzanine-like financing provided by individual, consumer lenders, which allows the developer to finance early development costs. Where the value of the property is misrepresented to investors whose security will be subordinated to senior ranking construction loans and where investors are provided with incomplete disclosure, the risks to investors are significant.

24. In October 2016, following the interim order issued by FSCO described above, the Ontario Superior Court of Justice (Commercial List) appointed a trustee (the “Trustee”) to protect the interests of investors in the Tier 1 SMIs.

25. In January 2018, FSCO revoked the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction.

26. The Trustee has advised that: the recovery to investors in the 445 Princess Street Tier 1 SMI is nil; the recovery to investors in the Hazelton Tier 1 SMI is 101.1% of their investment; and the recovery to investors in the 774 Bronson Tier 1 SMI is 7.1% of their investment.

27. The investor losses are summarized in the table below:

Tier 1 SMI	Recovery to Investors	Approximate total amount of investment that the Respondent recommended, sold, or facilitated the sale of	Approximate Investor Loss
445 Princess Street	Nil	\$723,850 to 15 investors	\$723,850
Hazelton	101.1% of the investment	\$290,500 to 6 investors	None
774 Bronson	7.1% of the investment	\$65,000 to one investor	\$60,385
TOTAL		\$1,079,350	\$784,235

28. Of the clients listed in the table above at paragraph 18, clients JF and SW, who were investors in the 445 Princess Street Tier 1 SMI, complained to the Member. Clients JF and SW subsequently accepted payments of compensation from the Member in the amounts of \$50,000 and \$12,769, respectively.

29. The Respondent states that other than recommending, selling or facilitating the sale of Tier 1 SMIs, he was not involved in the day-to-day operations of Tier 1 Mortgage, First Commonwealth or Tier 1 Transaction.

Securities Related Business Outside the Member

30. At all material times, FundEX's policies and procedures required that its Approved Persons only offer products that FundEX had approved for sale, and that all products be sold through FundEX.

31. In addition, FundEX's policies and procedures stated the following: "FundEX does not authorize the sale of or referral to [...] Syndicated Mortgage Investments ("SMI") by its Representatives."

32. As described above at paragraph 18, the Respondent recommended, sold, or facilitated the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member.

33. In the course of engaging in the conduct described above, the Respondent:

- a) informed investors of the opportunity to invest in the Tier 1 SMIs;
- b) provided investors with brochures regarding the Tier 1 SMIs;
- c) offered to contact JC on behalf of the investors if they had questions about the Tier 1 SMIs;
- d) obtained investment documents in relation to the Tier 1 SMIs from JC and provided the investment documents to investors for completion and signature; and
- e) on behalf of investors, returned completed investment documents to JC for processing.

34. In addition, as described above at paragraph 19, the Respondent received compensation from JC totaling approximately \$28,970.17 in respect of the sale of Tier 1 SMIs.

35. The Respondent did not disclose to FundEX that he was recommending, selling, or facilitating the sale of Tier 1 SMIs to clients and other investors.

36. FundEX did not approve the Tier 1 SMIs for sale to its clients by its Approved Persons, including the Respondent.

37. None of the purchases of the Tier 1 SMIs by clients were carried on for the account of FundEX or through its facilities.

38. None of the compensation that the Respondent received from JC flowed through the books and records of FundEX.

39. By virtue of the foregoing, the Respondent engaged in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1.

Undisclosed and Unapproved Outside Business Activity

40. At all material times, FundEX's policies and procedures prohibited its Approved Persons from engaging in outside business activities that were not disclosed to and approved by FundEX.

41. In the event that the Respondent's activities described above did not constitute securities related business contrary to MFDA Rule 1.1.1, then the Respondent engaged in outside activities with respect to the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member as described above.

42. At no time did the Respondent disclose his activities relating to the Tier 1 SMIs to FundEX, and FundEX did not approve these activities.

43. By virtue of the foregoing, the Respondent engaged outside activities relating to the sale of syndicated mortgages that were not disclosed to and approved by the Member, contrary to the

Member's policies and procedures and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c)), 2.1.1, 1.1.2, and 2.5.1.

Misleading the Member

44. As described in the table above at paragraph 18, in 2016, client JF invested \$65,000 in a Tier 1 SMI.

45. In or about December 2017, client JF submitted a complaint to FundEX alleging, among other things, that the Respondent had failed to disclose the compensation that he received as a result of client JF's investment in the Tier 1 SMI.

46. On December 5, 2017, FundEX provided a copy of client JF's complaint to the Respondent, and requested a written statement from the Respondent concerning the complaint.

47. On or about December 20, 2017, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading because, in response to client JF's allegation described above in paragraph 45, the Respondent failed to inform FundEX of the compensation that he received from JC in relation to the sale of Tier 1 SMIs. In particular, the Respondent stated the following in his written statement: "At no time have I been compensated by Tier One or through a mortgage Broker. I have no referral arrangement with either Tier One or Mortgage Broker."

48. In fact, as described above in paragraph 19, between April 2016 and August 2016, the Respondent received compensation from JC totaling approximately \$28,970.17 in relation to the sale of Tier 1 SMIs.

49. On January 3, 2018, FundEX requested an additional written statement from the Respondent concerning his involvement in the sale of syndicated mortgages. FundEX advised the Respondent that his written statement was required by MFDA Staff for the purposes of its investigation. Among other things, FundEX specifically requested that the Respondent provide a response to the following question: "Detail any fees, commissions or any other remuneration you have received in relation to the recommendation/sale/referral of syndicated mortgages and indicate the name of the entity these fees/commissions were paid to."

50. On January 11, 2018, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading because he falsely indicated that he had not received compensation related to the sale of syndicated mortgages. In particular, the Respondent stated the following in response to FundEX's question described above in paragraph 49: "There is no commissions and remuneration [sic] for sale/referral of syndicated mortgage from [JC]."

51. By virtue of the foregoing, the Respondent engaged in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Pre-Signed Account Forms

52. At all material times, FundEX's policies and procedures prohibited its Approved Persons from holding pre-signed account forms.

53. Between February 2016 and February 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients.

54. The pre-signed account forms consisted of Nominee Systematic Instruction Forms, Self-Directed Account Application Forms, New Client Application Forms, Transfer Authorization Forms, Order Entry Forms, a KYC Update Form, an Internal Transfer Form and an Education Savings Plan Application Form.

55. By virtue of the foregoing, the Respondent failed to adhere to the standard of conduct, contrary to MFDA Rule 2.1.1.

Additional Factors

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

57. There is no evidence that the Respondent received any financial benefit from obtaining or using the pre-signed account forms described above beyond any commissions or fees that he would ordinarily be entitled to had the transactions been carried out in the proper manner.

58. With regard to the pre-signed account forms described above, there is no evidence of client complaints, client loss or lack of authorization for the underlying transactions.

Misconduct Admitted

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

- a) in 2016, he recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1;
- b) in 2016, he engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c))², 2.1.1, 1.1.2, and 2.5.1;
- c) he misled the Member during the course of an investigation into his conduct when he:
 - i. on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages; and
 - ii. on January 11, 2018, provided another misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages;
thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and
- d) between February 2016 and February 2017, he obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

² Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

Execution of Agreed Statement of Facts

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

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

DATED this 2nd day of November, 2020.

“Dean Martin Jenkins”

Dean Martin Jenkins

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

DM 790051