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: Paula Louise Kendrick

Heard: October 17, 2017 in Calgary, Alberta
Misconduct Decision: October 17, 2017
Decision & Reasons (Penalty): January 16, 2018

DECISION AND REASONS (PENALTY)

Hearing Panel of the Prairie Regional Council:

Graham Price, QC	Chair
M. Elaine Bradley	Industry Representative
Kathleen Jost	Industry Representative

Appearances:

Justin Dunphy	)	Counsel for the Mutual Fund Dealers Association of Canada
Brett Code, QC	)	Counsel for the Respondent
Paula Louise Kendrick	)	Respondent, In Person

Introduction

1. By Notice of Hearing dated April 19, 2017, served upon Paula Louise Kendrick ("Respondent") by the Mutual Fund Dealers Association of Canada ("MFDA") a disciplinary hearing was held in Calgary on October 17, 2017. The Respondent did not file and serve a Notice of Reply. Nothing turns on this, as is apparent from the manner in which the hearing proceeded.

2. The parties tendered an agreed statement of facts. At the start of the hearing the Respondent sought to file her own affidavit. Staff opposed. The Panel, after hearing representations from both parties, ruled the agreed statement of facts could be supplemented only by additional facts agreed to by both parties. In the face of this ruling the Respondent withdrew her affidavit. During the hearing each party tendered further facts by agreement. Both parties made written and oral submissions.

3. The Agreed Statement of Facts is Schedule A to these Reasons.

Submissions of MFDA Staff

4. Selected portions of Staff's written submissions follow.

5. The Respondent admits she engaged in conduct contrary to MFDA rules and National Instrument 31-103. Particulars are set out in the Agreed Statement of Facts.

> *Agreed Statement of Facts*, at para 41.

6. As Staff and the Respondent did not have an agreement with respect to penalty, Staff seeks the following sanctions against the Respondent:

a) a prohibition of two years on the ability to conduct securities related business in any capacity while in the employ of, or in association with, any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) a fine of at least $75,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

c) costs attributable to conducting the investigation and hearing of this matter in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1.

Applicable Rules and Provisions

7. The following are the applicable sections of the MFDA By-law, Rules, and National Instrument 31-103:

Law	Details of Provision	Book of Authorities
Section 24.1.4 of MFDA By-law No. 1	Jurisdiction	Tab 1
Sections 20, 21, 24.1.1, and 24.2 of MFDA By-law No. 1	Power of Hearing Panels to discipline Approved Persons and order the payment of costs	Tab 2
MFDA Rule 1.1.1	Securities Related Business	Tab 3
National Instrument 31-103	Registration Requirements and Exemptions	Tab 4
MFDA Rule 2.1.1	Standard of Conduct	Tab 5
MFDA Rules 2.10, 2.5.1 and 1.1.2	Policies and Procedures	Tab 6

Securities Related Business and/or Entering into a Referral Arrangement in Breach of National Instrument 31-103

8. The Respondent admitted that she 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, and entered into referral arrangements in breach of ss. 13.7 and 13.8 of National Instrument 31-103 "Registration Requirements and Exemptions" ("NI 31-103").

9. MFDA Rule 1.1.1 states as follows:

> **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:
   (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
   (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

Rule 1.1.1 of the MFDA Rules of Procedure, Staff's Book of Authorities, Tab 3.

10. Previous decisions from Hearing Panels of the MFDA have stressed the importance of Rule 1.1.1 to ensure that Approved Persons do not go "off book" so that Members can properly supervise the Approved Person. In the decision of *Caicco (Re)*, the Hearing Panel, citing an earlier MFDA decision, commented on some of the principles underlying 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 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 (Re), MFDA File No. 201503, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 4, 2015, Staff's Book of Authorities*,* Tab 7, at paragraph 23

11. In the decision of *Andrews (Re)*, the Hearing Panel, in discussing Rule 1.1.1 and the seriousness of the misconduct at issue, confirmed that the sale or referral of unapproved exempt market products was very serious, due to the fact that clients were exposed to significant risk of loss given the nature of the investments and the absence of Member due diligence and regulatory oversight of the investments. As the investments were not processed through the Member in that

decision, the Member was unable to properly supervise the Approved Person and ensure the clients were properly qualified as accredited and eligible investors.

> *Andrews (Re),* MFDA File No. 201324, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 6, 2014, Staff's Book of Authorities, Tab 8. At paragraph 43 a)

12. Also the Respondent admitted, that the same conduct as described above constitutes a violation of National Instrument 31-103.

13. Sections 13.7 and 13.8 of NI 31-103 state:

> ***13.7 Definitions – referral arrangements***
>
> In this Division
>
> "client" includes a prospective client;
>
> "referral arrangement" means any arrangement in which a registrant agrees to pay or receive a referral fee;
>
> "referral fee" means any form of compensation, direct or indirect, paid for the referral of a client to or from a registrant.
>
> ***13.8 Permitted referral arrangements***
>
> A registered firm, or a registered individual whose registration is sponsored by the registered firm, must not participate in a referral arrangement with another person or company unless,
>
> (a) before a client is referred by or to the registrant, the terms of the referral arrangement are set out in a written agreement between the registered firm and the person or company;
>
> (b) the registered firm records all referral fees, and
>
> (c) the registrant ensures that the information prescribed by subsection 13.10(1) [disclosing referral arrangements to clients] is provided to the client in writing before the party receiving the referral either opens an account for the client or provides services to the client.

ss. 13.7 and 13.8 of NI 31-103, Staff's Book of Authorities, Tab 9

14. In the present matter, the Respondent admitted that:

a) the Member was not a party to the Referral Agreement, contrary to s. 13.8 of 31-103; and
b) the Respondent's referral fees were not recorded on the books and records of the Member, contrary to s. 13.8 of NI 31-103.

Agreed Statement of Facts, at paras 21 and 28

15. These provisions create a regime whereby an Approved Person is only permitted to refer clients to purchase investment products through referral arrangements that are subject to appropriate review and supervision by the Member, and require referral fees to be processed though the books and records of the Member.

16. Similar to MFDA Rule 1.1.1, NI 31-103 is structured to drive regulated activity through the Member so that the Member is able to exercise supervision and control over the activity in question. It allows the Member to consider the appropriateness of any given referral arrangement between a third party and the Approved Person.

17. By prohibiting Approved Persons from entering into their own referral arrangements, the Member has the opportunity to exercise a degree of control over the types of referral arrangements that its Approved Persons may offer to clients in a manner that protects clients' interests and reduces the likelihood of regulatory and commercial liability for the Member.

18. Numerous MFDA Hearing Panels have found that an Approved Person had engaged in misconduct contrary to NI 31-103 by entering into or participating in referral arrangements that did not meet the requirements for permitted arrangements, as articulated by s. 13.8 of NI 31-103.

Oosterveld (Re), MFDA File No 201514, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated October 11, 2016, Staff's Book of Authorities, Tab 9

Caicco (Re), supra, Staff's Book of Authorities, Tab 7.

Misleading the Member and Failure to Comply with Policies and Procedures

19. The Respondent admitted that she misled the Member by incorrectly denying that she was a party to any referral arrangements in audit forms, contrary to MFDA Rule 2.1.1. The Respondent also interfered with the Member's ability to supervise her conduct and ensure that its business is compliant with MFDA Rules and applicable securities legislation, contrary to MFDA Rules 2.10, 2.5.1, and 1.1.2.

20. Hearing panels have specifically held that a Respondent's failure to accurately complete a Member's annual attestation constitutes misleading a Member, and is a breach of an Approved Person's standard of conduct and of MFDA Rule 2.1.1.

Sarang (Re), File No. 201535, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated March 21, 2016 at para. 13, Staff's Book of Authorities, Tab 10

21. At all material times, the Member's policies and procedures required their Approved Persons to not engage in securities related business outside the Member or enter into a referral arrangement without approval from the Member.

Agreed Statement of Facts, at Para 33.

22. MFDA Rule 1.1.2 requires each Approved Person who conducts or participates in any securities related business in respect of a Member to comply with the By-laws and Rules as they relate to the Member or the Approved Person. Accordingly, as an Approved Person, the Respondent was required to comply with the supervisory policies and procedures that were established, implemented and maintained by her Member, under MFDA Rules 2.5.1 and 2.10.

23. MFDA Rules 2.5.1 and 2.10 require, among other things, that each MFDA Member 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 applicable securities legislation.

24. In order to give effect to the purpose of MFDA Rules 2.10 and 2.5.1, an Approved Person has to follow the Member's policies and procedures.

25. In the matter of *Franco (Re),* the Hearing Panel stated that "[t]he obligation of 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. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. 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 (Re),* MFDA File No. 201016, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated May 6, 2011, at para 38, Staff's Book of Authorities, Tab 11.

26. Other MFDA Hearing Panels have similarly held that an Approved Person's failure to comply with a Member's compliance directive, or its policies and procedures, is conduct which is contrary to MFDA Rules 2.5.1, 1.1.2 and 2.1.1.

> *Irwin (Re)*, MFDA File No. 200915, Hearing Panel of the Central Regional Council Decision and Reasons dated April 28, 2010, Staff's Book of Authorities at Tab 12.
>
> *Johns (Re)*, MFDA File No. 200905, Hearing Panel of the Central Regional Council Decision and Reasons dated June 11, 2010, Staff's Book of Authorities at Tab 13.
>
> *Vilfort (Re)*, MFDA File No. 201021, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 15, 2010, Staff's Book of Authorities at Tab 14.

Factors Concerning the Appropriateness of the Proposed Penalty

27. The primary goal of securities regulation is the protection of the investor.

> *Pezim v British Columbia (Superintendent of Brokers),* [1994] 2 SCR 557 (*"Pezim*"), at paras. 59, 68, Staff's Book of Authorities, Tab 15
>
> *Breckenridge (Re),* MFDA File No. 200708, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 ("Breckenridge"), at para. 74, Staff's Book of Authorities, Tab 16.

28. When determining the appropriate sanctions to impose, a Hearing Panel should consider:

a) The protection of the investing public;
b) The integrity of the securities markets;
c) Specific and general deterrence;
d) The protection of the MFDA's membership; and
e) The protection of the integrity of the MFDA's enforcement processes.

> *Tonnies (Re),* MFDA File No. 200503, Hearing Panel of Prairie Regional Council, Decision and Reasons dated June 27, 2005 at para 46, Staff's Book of Authorities, Tab 17.

29. Hearing Panels also frequently consider the following factors when determining whether a penalty is appropriate:

a) The seriousness of the allegations proved against the Respondent;
b) The Respondent's past conduct, including prior sanctions;
c) The Respondent's experience and level of activity in the capital markets;
d) Whether the Respondent recognizes the seriousness of the improper activity;
e) The harm suffered by investors as a result of the Respondent's activities;
f) The benefits received by the Respondent as a result of the improper activity;

g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;

j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) Previous decisions made in similar circumstances.

Breckenridge, supra, at page 21 and the decisions cited therein, Staff's Book of Authorities, Tab 16.

MFDA Penalty Guidelines

30. The MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding; they are intended to provide a basis upon which a Hearing Panel's discretion can be exercised consistently in like circumstances.

Excerpts from the MFDA Penalty Guidelines, Staff's Book of Authorities, Tab 18

31. In cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

Breach	Penalty Type & Range	Specific Factors to Consider
Referral Arrangements (NI 31-103) (Guidelines, p. 18)	• Fine: Minimum of $10,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course). • Suspension.	1. Magnitude (in size and value) of referrals. 2. Number of clients affected. 3. Magnitude of client losses (if any). 4. Suitability of referrals if

	• Permanent prohibition in egregious cases.	involving securities. 5. Compensation received by the Respondent. 6. Any personal interest of the Respondent in referral. 7. Existence of client complaints. 8. Legality of referral.
Outside Business Activity (Rule 1.1.1 and 1.2.1) (Guidelines, pp. 14-15)	• Fine: Minimum of $10,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.	1. Magnitude (in size and value) of outside business activity. 2. Number of clients affected. 3. Magnitude of client losses. 4. Suitability of outside business activity if involving securities. 5. Compensation received by the Respondent. 6. Any personal interest of the Respondent in outside business activity. 7. Whether the Respondent had honest but mistaken belief that proper approval obtained. 8. Legality of outside activity. 9. Whether outside activity resulted directly or indirectly in injury to clients of the Member and, if so, the nature and extent of the injury. 10. Whether the marketing and sale of the product or service could have created the impression that the Member had approved the product or service. 11. Whether the Respondent misled the Member about the existence of the outside activity or otherwise concealed the activity from the Member.
Standard of Conduct (Rule 2.1.1) (Guidelines, p. 27)	• Fine: Minimum of $5,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.	1. Nature of the circumstances and conduct. 2. Number of individuals affected. 3. Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute.
Policies and Procedures (Guidelines, p. 16)	• Fine: Minimum of $5,000. • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course).	1. Extent and nature of internal control inadequacy (e.g. capital requirement control, insurance or client funds/securities segregation or safekeeping

	• Suspension. • Permanent prohibition in egregious cases.	problem). 2. Intentional or reckless disregard for requirements, or whether due to carelessness or inadvertence.

APPLICATION OF PRINCIPLES IN THE PRESENT CASE

Seriousness of the Misconduct

32. The admitted misconduct in the present case is among the most serious type of misconduct that an Approved Person can engage in. The Respondent circumvented a key pillar of securities regulation, and consequently exposed her clients to potential undue risk.

33. As previously noted, MFDA Rule 1.1.1 and NI 31-103 were designed to ensure that Members can implement effective oversight of any securities business, products, or outside business activities that their Approved Persons may be introducing or referring clients to, or involved in. By directing all securities related business and referral agreements through the Member, and approving outside business activities, clients are protected by constant oversight, due diligence and thorough risk appraisals by Members.

34. In the present matter, there is no evidence of client loss. However, the Member was unable to ensure that the Glendale Manor and Windy Ridge exempt market offerings were suitable for clients, thus exposing the Respondent's clients and other individuals to undue and unnecessary risk. This is compounded by the fact that the Respondent incorrectly completed annual audit forms and attestations regarding the existence of referral arrangements that could have brought the Respondent's conduct to the Member's attention.

35. Staff asks that, in light of the Respondent having contravened important MFDA Rules and the National Instrument, a significant penalty is warranted in the present case.

Respondent's Experience in the Securities Industry

36. The Respondent was registered as a mutual fund salesperson with Portfolio Strategies Corporation, a Member of the MFDA, since August 30, 2005. She was therefore an experienced Approved Person in the mutual fund industry.

Agreed Statement of Facts, at para 10.

Recognition by the Respondent of the Seriousness of the Misconduct

37. By entering into an Agreed Statement of Facts, the Respondent accepted responsibility for her misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing. The Respondent also co-operated fully with Staff's investigation of this matter.

Agreed Statement of Facts, at paras 38 and 39.

Harm Suffered by Investors and Benefits Received by the Respondent

38. The Respondent admitted to receiving $74,666.70 in referral fees from the referral of clients to the Glendale Manor and Windy Ridge exempt market offerings, all of which was received outside of the Member.

39. Out of the $74,666.70 in referral fees received by the Respondent, $19,300 was paid by either close family and friends or the Respondent herself from her own purchase of exempt market products. The source of the referral fees is not a relevant consideration when addressing penalty, as the Respondent nevertheless made a profit of $74,666.70 outside of the Member.

40. Staff has no evidence that investors have suffered a loss of their investment in either of the Glendale Manor and Windy Ridge exempt market offerings.

Deterrence

41. The Supreme Court of Canada in *Cartaway Resources Corp.* and MFDA hearing panels have held that it is appropriate for deterrence to be among the factors taken into account when determining penalty.

> *Cartaway Resources Corp. (Re)*, [2004] 1 SCR 672 at paras. 52 – 62 ("*Cartaway Resources*"), Staff's Book of Authorities, Tab 19.
>
> *Tonnies*, *supra* at para. 47, Staff's Book of Authorities, Tab 17.

42. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated in *Cartaway Resources:*

> 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 of the Act and the circumstances of the person charged…"
>
> *Cartaway Resources*, *supra*, at para. 61, Staff's Book of Authorities, Tab 19

43. Staff submits the proposed penalty of a minimum $75,000 fine and suspension of 2 years is necessary in order to communicate to other Approved Persons that engaging in Securities Related Business outside the Member and entering into unapproved referral arrangements in violation of NI 31-103 exposes clients to unnecessary risk, and is serious misconduct that has no place in the mutual fund industry.

44. Staff acknowledges that in this instance, as opposed to some of the other cases referenced in these submissions, there was no client loss. However, it is essential that any penalty be seen as more than just the "cost of doing business". As a result, in cases where an Approved Person

engages in securities related business outside of the Member or enters into an unapproved referral arrangement, disgorgement of profits, at a minimum, is the recommended penalty.

> *Oosterveld (Re), supra*, at para. 33 and the decisions cited therein, Staff's Book of Authorities, Tab 9

45. Staff submits the principle of disgorgement is applicable even when there is no evidence of client loss, as set out in several MFDA hearing panel decisions.

> *Duggal (Re),* MFDA File No. 201364, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 4, 2015, Staff's Book of Authorities, Tab 20.
>
> *Monforton (Re*), MFDA File No. 201673, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 19, 2017, Staff's Book of Authorities, Tab 21.

46. Staff further submits the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons. Furthermore, the proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants and foster public confidence in the mutual fund industry.

Penalty Guidelines

47. Staff submits on the basis of the foregoing factors, a penalty higher than those recommended by the MFDA Penalty Guidelines is warranted in the present case.

Costs

48. Staff seeks costs in the amount of $5,000 pursuant to Section 24.2 of MFDA By-Law No. 1. This is a de minimis amount in line with other MFDA and IIROC matters that have proceeded

by way of Agreed Statement of Facts or Settlement Agreement. The draft Bill of Costs, provides an estimate of reasonable costs incurred by the MFDA in this matter.

Previous Decisions Made in Similar Circumstances

49. The following penalties have been imposed in similar circumstances:

Case	Facts	Outcome
Thong (Re) MFDA File No. 201668, Reasons dated December 1, 2016	• The Respondent, prior to being registered, referred one client and two individuals to a company selling an exempt market product outside the Member, who invested $1,017,900 and suffered a total loss of their investment, and received at least $4,505 in referral fees for doing so, contrary to MFDA Rules 1.1.1, 2.4.2, and sections 13.7 to 13.10 of NI 31-103.	The Hearing Panel accepted the following settlement terms: • Fine of $10,000 • Costs of $5,000 • Permanent prohibition
Oosterveld (Re) MFDA File No. 201514, Decision and Reasons dated October 11, 2016	- The Respondent: • Referred 56 clients and three other individuals to a company selling an exempt market product, and received at least $33,158.67 in referral fees for doing so, thereby entering into a referral arrangement to which the Member was not a party and which otherwise did not comply with sections 13.7 to 13.10 of NI 31-103. - The clients suffered a significant loss of their investment in the product to which they were referred by the Respondent.	The Hearing Panel imposed the following penalties: • Permanent Prohibition • Fine of $50,000 • Costs of $10,000
Caicco (Re) MFDA File No. 201503, Decision and Reasons dated August 4,2015	• The Respondent engaged in securities related business that was not carried on through the facilities of the Member by recommending, selling, facilitating the sale or making referrals in respect of the sale of $3.35 million of investment products to at least 33 clients and other individuals outside the Member, which investments later failed, for which he received compensation of $73,704, contrary to MFDA Rules 1.1.1 and 2.1.1 and sections 13.7 and 13.7 of NI 31-103.	The Hearing Panel imposed the following penalties: • Fine of $50,000 • Costs of $5,000 • Permanent prohibition

Abate (Re) MFDA File No. 201412, Decision and Reasons dated September 4, 2015	• The Respondent engaged and continued in another gainful occupation between March 2012 and May 2012 that was not disclosed to and approved by the Member by selling, recommending, referring or facilitating the sale of $2 million of shares of a private company owned or controlled in part by the Respondent to a foreign pension fund, contrary to MFDA Rules 1.2.1(d) and 2.1.1.	The Hearing Panel imposed the following penalties: • Fine of $15,000 • Costs of $5,000 • A 6 month prohibition
Chin (Re) MFDA File No. 201361, Decision and Reasons dated October 10,2014	• The Respondent engaged in securities related business by referring or facilitating the sale of at least $3,105,000 of investments in a mortgage investment corporation to 2 clients and 11 other individuals outside the Member contrary to 1.1.1(a) and 2.1.1; and • The Respondent received at least $102,053.56 in referral fees contrary to the requirements of sections 13.7 and 13.8 of National Instrument 31-103, and MFDA Rules 2.4.2 and 2.1.1. • The Respondent had also paid back $30,000 to affected investors prior to entering into the Settlement Agreement.	The Hearing Panel accepted the following settlement terms: • Fine of $30,000 • Costs of $2,500 • Permanent prohibition
Duggal (Re) MFDA File No. 201364, Decision and Reasons dated May 4,2015	• Between December 2009 and June 2011, the Respondent referred one client to a company that sold mortgage investment products and received $60,500 in referral fees for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 and 13.8 of National Instrument 31-103. The Respondent previously paid $24,600 in fees back to the Member.	The Hearing Panel accepted the following settlement terms: • Fine of $40,900 • Costs of $2,500
Monforton (Re) MFDA File No. 201673, Decision and Reasons dated January 19, 2017	• The Respondent referred at least 8 clients and 12 individuals to a mortgage broker to invest in syndicated mortgage products and received at least $10,400 n referral fees, thereby participating in a referral arrangement that did not comply with MFDA Rules and National Instrument 31-103. • There was no evidence of client loss.	The Hearing Panel accepted the following settlement terms: • Fine of $12,000 by installment • Costs of $2,500

Dubois(Re) 2014 LNIIROC 18	• The Respondent did not disclose to his IIROC Dealer Member that he engaged in outside business activities and exercised a form of authority over accounts of some clients that were off book when he engaged in offshore securities trading. • The Respondent accepted $10,724 in remuneration for securities related activities outside the Dealer Member. • The Respondent misled the Dealer Member when questioned about the activities described above. • There were no client complaints and the clients did not suffer any losses.	The IIROC Hearing Panel accepted the following settlement terms: • Fine of $10,000 for failing to disclose the outside business activity • Fine of $10,000 for accepting remuneration outside the Dealer Member for securities related activities • Disgorgement of $10,724 in commissions earned • 1 month suspension for misleading the dealer Member • Costs of $5,000

Submissions of Respondent

50. Selected portions, as amended, of the Respondent's written submissions follow. Amendments were made necessary because some of the Respondent's submissions relied on the Respondent's affidavit. That affidavit was withdrawn following the Panel's ruling at the commencement of this hearing.

51. The Respondent argues a suitable sanction that fulfills the purposes of the MFDA, including the primary one of protection the public in a way that is preventative, protective, and prospective in nature [Breckenridge-Staff's Authorities, Tab 16, page 21] would be

a) a fine of $15,000, payable in instalments, once she is permitted to return to work in the securities industry and begins to do so; and
b) costs of $2,500,
c) no prohibition or suspension

52. Ms. Kendrick thought the referrals she was making were legal and appropriate. She was wrong. She did not know that. She did not knowingly breach any rules. She had been advised by old colleagues, who she trusted, the referrals were legal. Ms. Kendrick had no fraudulent intent,

no desire to deceive: her clients benefited and none of them have lost anything. None of her clients have complained.

53. Staff here takes the correct legal position that Approved Persons are responsible to know the requirements and therefore that there really is no excuse available to Ms. Kendrick for not knowing what she claims not to have known or for completing the documentation that she did complete so incorrectly. Her mistaken naivety led to her guilt; it does not heighten her sanction. It is important to be clear on the absence of fraudulent or other wrongful intent. Staff cite the *Sarang* case [Staff's Authorities, Tab 10, paragraph 13] in support of a principle that these types of forms must be filled out correctly, but the paragraph Staff rely upon in *Sarang [paragraph 13]* is one in which the Panel there made a finding of fraudulent intent, saying that the false statements on the forms were made to avoid detection as part of an attempt to cover up the scheme. Here, the Agreed Statement of Facts distances itself from any admission of fraud, deceit, or intentional, reckless or willfully blind misconduct. Staff has accepted that Ms. Kendrick made a mistake, naively and incorrectly and with potentially serious regulatory consequences, but a mistake nonetheless.

54. The proposed Bill of Costs confirms that almost no time was spent on the investigation. Apparently, the MFDA investigator and Counsel spent 5.5 hours over 3 weeks in April of 2016 to review the file and prepare an investigation plan. The investigator then spent 11.75 hours writing an investigation report over 2 months, from early May to late June of 2016.

55. As of March 23, 2016, Ms. Kendrick was terminated as an employee of PSC. Having no prospect of returning to employment or of regaining her clients until the MFDA process was concluded, Ms. Kendrick turned her mind expressly to assisting the MFDA. As can be seen in the proposed Bill of Costs, no time has been allocated for either of the two managers who, to use the term used regularly by Mr. Dunphy, "finally" reviewed the matter.

56. The MFDA prioritized this matter, not based upon the public interest nor on the apparent interests of Ms. Kendrick's clients, actual investors who have been waiting for her to return as their adviser, but on the basis of deadlines applicable to others, benchmarks set without regard to

the simplicity of the case or the facts of it, without regard for the interests of actual investors. The MFDA utilized no form of triage to try to clear up this straight forward case. The MFDA followed its usual internal processes, and inordinate delay resulted. That delay kept and continues to keep Ms. Kendrick out of the securities industry

57. Negotiations occurred; no settlement was reached. However, an Agreed Statement of Facts was agreed and signed.

58. In the meantime, MFDA issued and published a Notice of Hearing. No time is recorded in the proposed Bill of Costs regarding the Notice of Hearing, so it may be reasonable to assume that the work done in August of 2016, based on Ms. Kendrick's earlier admissions was close to the final product.

59. The referrals made by Ms. Kendrick concerned investments undertaken by UrbanStar Capital Inc., UrbanStar Windy Ridge Commercial Capital Inc., UrbanStar Windy Ridge Phase I Capital Inc. and Dean Frank Gorenc. On February 19, 2015, the Alberta Securities Commission published a Settlement Agreement and Undertaking related to the improper trading in securities undertaken by those entities and Mr. Gorenc. Among other things, that document advised that:

a) At least $20,000,000 was raised from Alberta investors; and
b) They agreed jointly to pay $10,000 in settlement of all allegations, plus $2,500 for investigation costs.

Thus was resolved the Urban Star matter at the ASC.

> ASC Settlement Agreement and Undertaking, dated February 19, 2015, and ASC Press Release, dated February 23, 2015.

60. By selecting the cases they have, Staff have demonstrated that there are no cases that are comparable to this one.

61. In none of the cases cited was it, essentially, unnecessary for the MFDA to conduct any real investigation or to do any real enforcement work: the entire case, admissions and facts, was laid out, cooperatively, honestly, and with sincere apologies, by Ms. Kendrick 19 or 20 months ago.

62. In Staff's cited case authorities:

a) where referred clients lost money, i.e., where there was evidence of actual harm to actual investors, there were suspensions, usually long ones, sometimes permanent.
b) where no clients lost money, that is, where the "harm" was not actual harm but only the risk of harm that the rules are correctly designed to prevent, there were no suspensions, especially not suspensions of 2 years as is being sought here.
c) where no clients lost money, other factors play a more important role, and the panels, looked in more detail at the circumstances of the case. Those cases were of the type that resulted in small fines with no suspensions.

63. None of the cases cited by Staff include fines and costs in the $80,000 range, which amount is way out of line with anything that was imposed in these cases, even with huge client losses, or anything that MFDA agreed to by way of approved settlement.

a) The highest amount in fines and costs in Staff's list of cases is the $60,000 awarded against Mr. Oosterveld in October of 2016. In its recitation before this panel, Staff say that his clients "suffered a significant loss of their investments". However, the loss was not merely "significant", it was "total". In the decision of the MFDA panel, it is found, not that it was a significant loss, but a total loss. The panel says: "The total loss of investments by the clients of "$8,831,200 is substantial." Of Oosterveld's 56 mutual fund clients, 41 had redeemed $5,478,377.98 worth of mutual funds to make up a large portion of that completely lost investment. Oosterveld did not only not cooperate; he did not appear, and the panel had to try him in his absence, using hearsay evidence. Staff alleged as part of sanction that Oosterveld hampered the investigation. The panel

found no mitigating factors, and imposed a fine that is only 75% of the amount being sought by Staff against Ms. Kendrick. [Staff's Authorities; Tab 9]

b) The second highest amount found in Staff's cases is the $55,000 in fines and costs awarded against Mr. Caicco in August of 2015. Mr. Caicco engaged in outside business, referring 33 clients and raising **$3.35 million**, all of which was lost. Staff's summary says that those penalties were "imposed" but they were not; rather, the panel approved and accepted a joint submission on sanction. In that case, despite a total loss of over $3 million dollars, Staff agreed to a cash sanction that is 68% of that being sought against Ms. Kendrick. [Staff's Authorities, Tab 7]

c) In December of 2016, an MFDA panel confirmed a settlement against a Mr. Thong. Mr. Thong caused his clients by way of referral to invest **$1,017,900.** All of that money was lost. Staff agreed to a settlement including a fine of $10,000 and costs of $5,000 were agreed. Staff's summary says that Thong was permanently prohibited, but that is incorrect: his suspension was 3 years. [Staff's Authorities, Tab 22]

d) Against a Mr. Chin, who had involved his clients in an alleged Ponzi scheme and caused them to invest $3,105,000, of which an estimated **$2.2 million was lost**, Staff agreed to a settlement including a fine of $30,000 and costs of $2,500. [Staff's Authorities, Tab 24]

e) In the most recent case against Mr. Monforton, Staff agreed to a settlement that included a fine of $12,000, paid in monthly installments over a year, and costs of $2,500. [Staff's Authorities, Tab 21]

f) Mr. Abate was fined $15,000 with costs of $5,000. [Staff's Authorities; Tab 23]

g) Mr. Duggal was fined $40,900, with costs of $2,500 again as part of a settlement. [Staff's Authorities, Tab 20]

In approving those settlements or in setting those amounts, each MFDA panel clearly stated that the amounts were in the proper range and met the objectives of sanctioning under the MFDA regime. None came close to $80,000 in fines and costs, even though client losses reached multiple millions of dollars in several of the cases. It is hard to

understand how the sanction being sought against Ms. Kendrick can be seen to flow from or relate to the prior decisions of the MFDA or the prior settlements of its Staff.

64. It is worth focusing on a case or two to highlight the contrasts of what is being sought here by Staff with what has been done in the past by prior panels, with an eye to accomplishing the MFDA's sanctioning objectives.

65. The *Thong* case provides an obvious case of sheer disconnect. Total losses of over a million dollars, a 3-year suspension, and a cash sanction of $15,000. Staff agreed to a suspension that is only 50% longer than that being sought for Ms. Kendrick, while agreeing to a total cash sanction that is only 19% of the amount being sought for Ms. Kendrick. Said another way, Staff here are seeking a cash sanction that is 533% of the sanction that was *negotiated by Staff* with Thong. Thong's clients lost everything; Kendrick's, nothing.

66. The *Chin* case provides an opportunity to get to the bottom of principles underlying sanctioning in a way that Ms. Kendrick submits is very helpful. At bottom, Mr. Chin's misconduct was more serious than Ms. Kendrick's, his clients' losses were enormous, and yet his cash sanction was less severe than is being sought here by Staff against Ms. Kendrick. His suspension was permanent. The fine and costs being sought against Ms. Kendrick are 246% of the fine and costs MFDA settled on with Mr. Chin.

67. Both Mr. Chin and Ms. Kendrick earned their fees over 5 years. Mr. Chin earned fees on $3,105,000 from 2 clients and 11 friends and family, while Ms. Kendrick earned fees on only $375,000 from 18 clients, and 7 friends and family. Mr. Chin's clients, victims of an alleged Ponzi scheme, lost $2,293,000, while Ms. Kendrick's have not only not lost anything but continue to benefit from investments that are secured on title to the land.

68. Unlike Ms. Kendrick, Mr. Chin had no honest but mistaken belief in the propriety of his activity. She honestly believed that she did not have to report the business to PSC. (She now knows she was wrong about that, and has expressed her apology.) By listing her insurance

license on all compliance forms and questionnaires, Ms. Kendrick demonstrated her honest but mistaken belief that she had proper approval in doing business with an insurance company,

69. The sanction being sought here by Ms. Kendrick sits very well against the Chin sanctions, the cash amounts being less than half, something that is likely justified by the ease of the investigation and prosecution alone, let alone any of the other mitigating factors.

70. Also important is that, if the amounts proposed by Ms. Kendrick are imposed, there is a pretty good chance that, given time to pay after she is back at work in the securities industry, Ms. Kendrick will be able to pay them. The result of PSC's conduct and the loss of her book, Ms. Kendrick is suffering financially and is essentially impecunious. She does not have $80,000. If the amounts proposed by Staff are imposed and in the way proposed by Staff (payable as a condition precedent to re-registration), Ms. Kendrick will never return to the business and MFDA will have essentially imposed a permanent prohibition.

71. It might be argued that Mr. Chin's cash sanction was lower because his prohibition was permanent, as though there exists some principled basis to trade a long suspension for a small fine. Mr. Chin also, it seems, disgorged some of the profits he earned from his victims (not his "clients") who lost huge amounts. Mr. Chin's "disgorgement" is not a positive. Against the background of his misconduct, the permanent prohibition was an obvious requirement. In settling after that, Staff likely took what they could get by way of fine and costs (if those amounts were paid).

72. It cannot be said that there was any serious analysis done by Staff in that case along the lines of: since his suspension is permanent, we can take a smaller fine. As a precedent, what the *Chin* case actually demonstrates is that Staff and the MFDA are keenly interested in pursuing the public interest and in accomplishing public interest objectives. *Chin* does not stand for the proposition that one must trade a light fine for a heavy suspension. It means that those involved in extremely wrongful misconduct must be removed permanently and fined as much as possible. In that way, the public is protected, specific and general deterrence are fully achieved, and public confidence is maintained.

73. Disgorgement in Ms. Kendrick's case would be paying money to the regulator, for none of her clients lost anything. Her clients are not her victims; they have not been victimized in any way. There really is no repayment to be done to her clients. It is likely for those reasons that Staff is not seeking an order that Ms. Kendrick disgorge her referral fees.

74. At the time they signed the referral documents, Ms. Kendrick's [clients] had full disclosure of the situation from Ms. Kendrick. Her clients continue, all of them, to be happy with the investment and would not change a thing. They would also be happy to have Ms. Kendrick back as their adviser. They were her friends and her long-time clients and acquaintances. The delay in the proceedings to date, and any further suspension or prohibition would only continue an artificial and unwanted separation between investors and the person who has served them for most of their adult lives and who successfully helped them build for their retirement. These specific investors would not be protected by a further prohibition, but harmed, and there is no reason to believe that a further suspension supports any public interest objective. It is also reasonable to assume that the already long delay has, at least among these investors, undermined public confidence in the regulatory process, not enhanced it. A further suspension will not improve that situation.

75. Months and months ago, in writing the letters of January and February of 2016, Ms. Kendrick expressed a recognition of how she has been specifically deterred. The MFDA's bureaucratic process of prioritizing cases and the delay and losses caused by that process, even with the most cooperative of respondents, along with publication of the Notice of Hearing and an ASC investigation, the loss of employment, and the stigma associated with the citations, fully accomplish any general deterrence purpose for a case such as this. This is not one of those cases where a person must be further sanctioned just to assure those who follow the rules that others will not be permitted to "get away" with it. Ms. Kendrick got away with nothing here, and she has been sufficiently punished.

76. The reality is that Ms. Kendrick, 64 years old, cannot now pay a big fine, or any fine, without being permitted back into the securities industry. She is willing to be penalized, but it

needs to be realistic. She needs a significant source of income with which to pay a fine. The logic then of a longer suspension makes even the payment of a lesser amount impossible. A modest fine with a long suspension will require personal bankruptcy, with all of the consequences that that has, both on her immediately and on her professionally. It is the equivalent of a permanent ban, something that is simply not justified in this case. As was said by the Panel in the *Abate* case:

> 14. While deterrence is important, every deterrent does not have to amount to a death sentence, in the financial sense. A permanent prohibition from participation in the industry would be the equivalent to an occupational death sentence for the Respondent. Putting someone out of the business forever should not be imposed lightly.
>
> [Staff's Authorities, Tab 23]

77. Ms. Kendrick's clients want her back (or did when they moved at her behest to the management of a different person). They are her "public", and that public wants her back. If they can have her, she will rebuild her book, and she can pay a fine, over time. Remembering that, as was said in *Breckenridge*, "sanctions should be preventative, protective and prospective in nature", Ms. Kendrick submits that the public interest is promoted by a sanction that permits her to be reunited with her clients, to operate in the securities industry as before, and to pay a penalty that does not render that hope nugatory but, instead, permits it to manifest.

DISPOSITION

78. The Panel wishes to thank counsel for manner in which they led their evidence and made their submissions.

79. After reflection and anxious consideration the Panel at the conclusion of the oral phase of the hearing sanctioned, in part, the Respondent. She was suspended for one week commencing October 17 and concluding on October 24. The Panel then adjourned to reflect and deliver its written Reasons.

80. The Panel finds the Penalties set out below are reasonable and proportionate having regard to the conduct of the Respondent and the circumstances of this case. The Respondent:

a) is prohibited/suspended for one week, commencing October 17, 2017 from conducting securities related business in any capacity while in the company of, or in association with any MFDA member pursuant to section 24.1.1(e) of the MFDA By-law No. 1.
b) is fined in the sum of $36,000 pursuant to section 24.1.1(b) of the MFDA By-law No. 1. The fine is payable in monthly installments, without interest, of $1000 commencing January 31, 2018. If any installment payment is missed the full remaining balance is due and payable immediately; and
c) is responsible to pay costs in the sum of $1,000 pursuant to section 24.2 of the MFDA By-law No. 1.

Reasons for disposition

a) Suspension

81. As to paragraph 80(a) herein, the Panel is attracted to, and agrees with, the Respondent's submissions set out in paragraphs 55 and 56 in this Decision. From mid- 2016 until this MFDA process concluded at the penalty hearing on October 17, 2017, the Respondent has been "suspended". Inordinate delay has occurred in this case. The Respondent has been in limbo for many months and this situation has been to her detriment. In effect because of this delay she has been prevented from working in the securities industry since mid- 2016, assuming an early resolution of this case by that time.

82. The public interest, in our view of the facts of this case, is satisfied with the imposition of a very short formal suspension. From the outset the Respondent cooperated with the MFDA investigation and entered into an Agreed Statement of Facts [Schedule A in these Reasons]. She accepted responsibility for her misconduct. The public, we think, would view the Respondent's

efforts to deal quickly with this case as a recognition of her respect for the MFDA enforcement process and her desire to bring quick closure to it. Her actions merit a short suspension.

b) Fine

83. Several factors guided the Panel in arriving at its decision.

84. The Panel notes Staff relies on several cases pertaining to settlement hearings, where the parties agree on misconduct and penalty. This case is not a settlement hearing. Consequently we have not given much weight to dispositions arising from the settlement hearing cases cited by Staff.

85. In this case there is no evidence of client loss to date. No clients have complained.

86. The Respondent did expose, inappropriately, some of her clients to the Glendale Manor and Windy Ridge exempt market offerings. And the Respondent incorrectly completed forms submitted to the Member (paragraph 34). The Respondent's explanation: she thought the referrals were legal and appropriate. She was wrong; yet she had no desire to deceive (paragraphs 52 and 53). Staff has accepted her explanation and recognized her mistake.

87. The Respondent was a mutual fund sales person since August 2005. She was an experienced Approved Person in the mutual fund industry (paragraph 36). Unfortunately she did not present as a good example to her contemporaries in the industry when she orchestrated these purchases of exempt market offerings. She found herself in this situation because she failed do a thorough investigation. Her judgment let her down.

88. The Respondent received referral fees in the sum of $74,666.70 from sales of these exempt market offerings. Of this sum, $19,300 was paid by close family and friends or the Respondent herself for the purchase of these exempt market offerings. So the amount of the Respondent's in pocket referral fees must be slightly reduced. Staff argues the penalty must be seen as more than the "cost of doing business". It submits disgorgement of profits is, at a

minimum, the recommended penalty. Staff cites the Oosterveld case (paragraph 44). This case may be distinguished (paragraph 63 a) from the case at bar. There are no mitigating factors in Oosterveld as there are in this case before us. And if this Panel were to accept Staff's "mandatory" disgorgement rule, the Panel would be deprived of any discretion when it weighed the various factors to be considered when determining sanction.

89. We note Staff at paragraph 49 sets out several cases arising in similar circumstances. The fines range from $10,000 to $50,000. Our disposition tends toward the upper range and recognizes the appropriate fine is dependent on several factors.

90. With the foregoing factors in mind, we think a fine of $36,000, on the repayment terms set out, strikes the right balance and meets the need to protect the public.

Costs

91. Staff sought costs of $5,000 (paragraph 48). He indicated the normal fees were this amount when dealing with an Agreed Statement of Facts or a Settlement Agreement. Yet Staff's proposed bill of costs, does not reveal nor give credit for the Respondent's early input. Her cooperation was especially helpful (paragraph 58). The Panel thinks her initiative to bring this process forward should be recognized with an award of costs less than the normal amount.

DATED this 16th day of January, 2018.

"Graham Price"

Graham Price, QC
Chair

"M. Elaine Bradley"

M. Elaine Bradley
Industry Representative

"Kathleen Jost"

Kathleen Jost
Industry Representative

DM 589782

Schedule "A"

Agreed Statement of Facts

File No. 201750

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: Paula Louise Kendrick

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated April 19, 2017, the Mutual Fund Dealers Association of Canada ("MFDA") commenced a disciplinary proceeding against Paula Louise Kendrick ("Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: between January 2010 and July 2014, the Respondent referred 25 clients and 4 other individuals to companies selling an exempt market product, and received at least $74,666.70 in referral fees for doing so, thereby engaging in securities related business that was not carried on for the account of or through the facilities of the Member, and participating in a referral arrangement to which the Member was not a

party, contrary to MFDA Rule 1.1.1, and sections 13.7 to 13.10 of National Instrument 31-103.

Allegation #2: between 2011 and 2014, the Respondent falsely denied that she was a party to any referral arrangements in audit forms and annual compliance questionnaires submitted to the Member, thereby misleading the Member and interfering with its ability to supervise her conduct and ensure that its business is compliant with MFDA Rules and applicable securities legislation, contrary to MFDA Rules 2.1.1, 2.5.1, 2.10 and 1.1.2.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent. The appropriate reprimand (if any), pursuant to s. 24.1.1 (a) of MFDA By-law No. 1, the amount of the appropriate fine (if any) to impose on the Respondent, pursuant to s. 24. 1.1(b) of MFDA By-law No. 1, the length of the appropriate suspension, revocation or prohibition (if any) to impose on the Respondent, pursuant to s. 24.1.1 (c) – (e) of MFDA By-law No. 1, the appropriate conditions to impose on the Respondent, pursuant to s. 24.1.1 (f) of MFDA By-law No. 1, and the appropriate amount of costs (if any) of the investigation and hearing to be awarded against the Respondent, pursuant to s. 24.2 of MFDA By-law No. 1.

6. Staff is seeking a penalty of at least $75,000, costs of $5,000, and a suspension of a period of 2 years.

7. The Respondent claims to be impecunious and is limited in her ability to pay a fine or costs.

IV. AGREED FACTS

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

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

Registration History

10. The Respondent was registered as a mutual fund salesperson (now known as a "dealing representative") with Portfolio Strategies Corporation ("PSC"), a Member of the MFDA, in Alberta from August 30, 2005 to March 23, 2016, in British Columbia since April 24, 2006, and in Ontario since January 23, 2007.

11. From June 2000 to August 2005, the Respondent was registered as a mutual fund salesperson with Generation Financial Corp., a former Member of the MFDA.

12. From September 1999 to June 2000, the Respondent was registered as a mutual fund salesperson with World Marketing Alliance of Canada.

13. During the material time, the Respondent was also licensed in Alberta as a life insurance agent with Canada Life Insurance Company.

14. The Respondent is not currently registered in the securities industry in any capacity. As a result of her termination by PSC and of the referral of the subject matter of this Agreed Statement of Facts to the MFDA, the Respondent has been unable to secure employment in the securities industry and has been unemployed as a dealing representative since March 23, 2016.

15. At all material times, the Respondent conducted business in the Calgary, Alberta area.

Allegation #1: Securities Related Business Outside the Member

16. Between 2010 and 2012, the Respondent engaged in securities related business that was not carried on for the account or processed through, the facilities of PSC when she entered into an approved referral arrangement with Birnco Financial Group Ltd. ("Birnco"), a financial planning, mortgage, life insurance, and group benefits firm registered as a life insurance agency with the Alberta Insurance Council. The referral arrangement contemplated that the Respondent would refer clients and other individuals to an exempt market security. The Respondent entered into the referral arrangement through her position as a licensed life insurance agent.

17. Through the referral arrangement with Birnco, the Respondent referred clients and other individuals to an exempt market real estate offering by UrbanStar Glendale Manor Inc. ("Glendale Manor"), operating under the UrbanStar Group of Companies ("UrbanStar"). UrbanStar raises capital through exempt market offerings for the acquisition and development of commercial real estate in Alberta.

18. The Respondent received an 8% referral fee from Birnco for each referral made.

19. Without the knowledge, authorization or approval of PSC, the Respondent referred the following clients and other individuals to the Glendale Manor exempt market offering:

Investor	Amount Invested	PSC Client?
BM	$20,000	Yes
DF	$20,000	No
DB	$20,000	Yes
SD	$10,000	Yes
LH	$10,000	Yes
CD	$10,000	Yes
DH	$10,000	Yes
DF	$20,000	Yes
AP	$30,000	Yes
DN	$20,000	Yes
DS	$10,000	Yes
LD	$15,000	Yes
AN	$70,000	Yes
DL	$20,000	Yes
RW	$10,000	Yes
JM	$20,000	Yes
HF	$10,000	Yes
LD2	$20,000	Yes
KN	$10,000	Yes
BW	$10,000	Yes
DW	$10,000	No
Total	**$375,000**	

20. Of the clients referred to in paragraph 19, above, the following clients were either friends or relatives of the Respondent, as follows:

a) DF, who invested $40,000, is the husband of the Respondent; and whose investment originated from joint funds shared with the Respondent;

b) BM, who invested $20,000, was the ex-boyfriend of the Respondent and a personal friend;

c) RW, who invested $20,000, is the brother-in-law of the Respondent; and

d) DW, who invested $10,000, is the ex-husband of the Respondent and a personal friend.

21. Between 2010 and 2012, the Respondent received a total of $45,936.70 in referral fees from Birnco in respect of the referrals for the Glen Manor exempt market offering. Of that amount, approximately $5,600 of the referral fees were generated by the family or friends referred to in paragraph 20 above. The Respondent did not report these referral fees to PSC and none of the referral fees were processed through the facilities of PSC or recorded on its books and records. PSC did not have a referral arrangement with Birnco or in respect of the Glendale Manor exempt market offering.

22. On or about July 25, 2012, the president of UrbanStar, DG, contacted the Respondent via e-mail to offer a referral fee arrangement on another UrbanStar exempt market offering, namely UrbanStar Windy Ridge Phase 1 Inc. ("Windy Ridge"). The Respondent was promised a 17% referral fee for each referral made to Windy Ridge.

23. The Respondent did not disclose to PSC or obtain authorization or approval from PSC to engage in securities related business by participating into a referral arrangement in connection with the Windy Ridge exempt market offering.

24. Between February 2013 and July 2014, without the knowledge, authorization or approval of the PSC, the Respondent referred the following clients and individuals to the Windy Ridge exempt market offering:

Investor	Securities Purchased	Amount Invested	Distribution Date	Referral Fees Received	PSC Client?
BH	10 Units[1]	$10,000	February 24, 2013	$11,900	Yes
DF	10 Units	$10,000	February 24, 2013		Yes
LS	10 Units	$10,000	February 24, 2013		Yes

[1] Units consisted of subordinated debentures with a term of 10 years and providing for deferred simple interest, with all such deferred interest to be paid at the end of year 5 and deferred simple interest of 4% accruable in years 6-10, with the total paid upon maturity. Units also consisted of Class B common shares at an issuance price of $5.00 per share.

Investor	Securities Purchased	Amount Invested	Distribution Date	Referral Fees Received	PSC Client?
MS	10 Units	$10,000	February 24, 2013		Yes
JT	10 Units	$10,000	February 24, 2013		Yes
RH	10 Units	$10,000	February 24, 2013		Yes
AE	10 Units	$10,000	January 29, 2014	$6,800	Yes
BH	10 Units	$10,000	January 29, 2014		Yes
AP	10 Units	$10,000	January 29, 2014		Yes
PK	10 Units	$10,000	January 29, 2014		No
MW	30 Units	$30,000	April 11, 2014	$5,100	No
DF	29 Units	$29,000	July 14th, 2014	$4,930	No
TOTAL		**$159,000**	**TOTAL**	**$28,730**	

25. Of the clients referred to in paragraph 24, above, the following clients were either the Respondent herself, or her close family:

a) DF, who invested $39,000, is the husband of the Respondent;

b) PK, who invested $10,000, is the Respondent; and

c) MW, who invested $30,000, is the son of the Respondent.

26. Between February 2013 and July 2014, the Respondent received a total of $28,730.00 in referral fees from UrbanStar in respect of the Windy Ridge exempt market offering. Of that total amount, $13,430.00 in referral fees was generated in sales from the Respondent herself or by her husband or son.

27. As set out above, the Respondent referred a total of 25 clients and 4 other individuals to the Glendale Manor and Windy Ridge offerings, and received referral fees totaling $74,666.70. Of that total amount, $19,300.00 was paid either by the Respondent herself or by people close to her.

28. The Respondent did not report these referral fees to PSC and none of the referral fees were processed through the facilities of PSC or recorded on its books and records. PSC did not

have a referral arrangement with UrbanStar or in respect of the Glendale Manor exempt market offering.

29. In the course of her communications and meetings with clients and other individuals with respect to the Glendale Manor and Windy Ridge exempt market offerings, the Respondent, among other things:

a) informed clients and other individuals about the Glendale Manor and Windy Ridge offerings;
b) advised clients and other individuals to attend the sales presentations regarding these offerings;
c) assisted clients and other individuals to sign the subscription agreements and other required documentation to participate in the offerings; and
d) received compensation totaling $74,666.70 as referenced above, in connection with the referrals.

30. The Respondent also failed to comply with section 13.8 of National Instrument 31-103 with respect to the Glendale Manor and Windy Ridge exempt market offerings by, among other things, failing to ensure the following occurred prior to referring clients and other individuals to the exempt market offerings:

a) that PSC entered into a written agreement with Glendale Manor or Windy Ridge;
b) that PSC recorded all referral fees obtained by the Respondent; and
c) that written disclosure of the information as required by Section 13.10 of National Instrument 31-103 was provided.

31. The Glendale Manor and Windy Ridge exempt market offerings were not investments that were approved by PSC for sale by its Approved Persons, including the Respondent. The transactions involving the exempt market offerings were not processed for the account or through the facilities of PSC.

32. The Respondent did not disclose to PSC that she was referring clients and other individuals to the Glendale Manor and Windy Ridge exempt market offerings or that she was receiving compensation for doing so. PSC did not have a referral arrangement with Birnco or UrbanStar.

Allegation #2: **Misleading the Member**

33. At all material times, PSC had written policies and procedures that required its Approved Persons to comply with all MFDA Rules and requirements and prohibited its Approved Persons from engaging in securities related business outside of PSC and entering into a referral arrangement unless PSC approved of the arrangement and was a party to it.

34. The Respondent completed an annual questionnaire provided by PSC each year which required the Respondent to disclose whether she was a party to any referral arrangements.

35. The Respondent submitted a 2011 Approved Person Audit Interview Form to PSC in which the Respondent acknowledged that she was familiar with the procedures regarding referral arrangements as described in PSC's policies and procedures manual and MFDA Rules on permitted referral arrangements. The Respondent incorrectly attested in the form that she did not have any referral arrangements.

36. In addition, from 2012 to 2014, the Respondent submitted annual compliance certification forms to PSC in which the Respondent was required to disclose whether she was a party to any referral arrangements. For each year, the Respondent incorrectly attested that she was not a party to any referral arrangements.

37. The Respondent states that she honestly but mistakenly believed that she was not required to disclose any referral agreements at the time she signed the 2011 Approved Person Audit Interview Form and 2012-2014 annual compliance certification forms as she had believed that she was able to conduct this activity through her insurance license. The Respondent

acknowledges that she ought to have known that she had entered into a referral arrangement at the time she signed the above mentioned interview form and compliance certification forms.

Additional Factors

38. There have been no complaints against the Respondent and, to date, there is no evidence of investor harm arising out of the Respondent's conduct described herein.

39. The Respondent has cooperated fully with Staff during the course of the investigation.

40. The Respondent states that as a result of her dismissal and as a dealing representative on March 26, 2016, the Respondent has suffered economic detriment in the amount of approximately $120,000 to date.

Misconduct Admitted

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

a) between January 2010 and July 2014, referred 25 clients and 4 other individuals to companies selling an exempt market product, and received at least $74,666.70 in referral fees for doing so, thereby engaging in securities related business that was not carried on for the account of or through the facilities of the Member, and participating in a referral arrangement to which the Member was not a party, contrary to MFDA Rule 1.1.1, and sections 13.7 to 13.10 of National Instrument 31-103.

b) between 2011 and 2014, incorrectly denied that she was a party to any referral arrangements in audit forms and annual compliance questionnaires submitted to the Member, thereby misleading the Member and interfering with its ability to supervise her conduct and ensure that its business is compliant with MFDA Rules and applicable securities legislation, contrary to MFDA Rules 2.1.1, 2.5.1, 2.10 and 1.1.2.

V. EXECUTION OF THE AGREED STATEMENT OF FACTS

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

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

DATED this 23rd day of September, 2017.

"Paula Louise Kendrick"
Paula Louise Kendrick

"Shaun Devlin"
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement