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: Ronald John Thomas Kowalsky

Heard: January 18, 2022 by electronic hearing in Toronto, Ontario
Reasons for Decision: March 2, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick H. Webber	Chair
Michael-Murray Coulter	Industry Representative
Edward Jackson	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Thomas David Marshall	)	Counsel for Respondent
Jason Martin	)	Counsel for Respondent
Ronald John Thomas Kowalsky	)	Respondent

I. AGREED STATEMENT OF FACTS

1. By Notice of Hearing issued September 20, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Ronald John Thomas Kowalsky (the "Respondent") pursuant to sections 20 and 24 of MFDA By-law No. 1.

2. The MFDA and the Respondent entered into an Agreed Statement of Facts ("ASF") on January 4, 2022, a copy of which is attached hereto as Schedule A, in which they jointly requested that the Hearing Panel determine, on the basis of the ASF, the appropriate penalty to impose on the Respondent. The MFDA and the Respondent agreed that submissions made by them with respect to the appropriate sanction were based solely on the agreed facts in the ASF and no other facts or documents. The Hearing Panel's decision is based solely on the ASF, the written submissions of the MFDA and the Respondent and verbal submissions and statements made by counsel at the hearing.

II. ADMITTED CONTRAVENTIONS

3. The Respondent admitted to the following contraventions of the MFDA Rules and securities law:

a) between 2013 and 2016, the Respondent engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities by recommending or facilitating the sale of syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2;

b) between 2013 and 2016, the Respondent made referrals in respect of syndicated mortgage investments and received compensation 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 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 2.5.1, and 1.1.2;

c) between August 28, 2015 and March 13, 2019, the Respondent obtained, possessed, and, in some instances, used 19 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1; and

d) between January 16, 2019 and April 22, 2019, the Respondent attached a copy of signature pages from account forms previously signed by clients to 3 new account

forms in respect of 3 clients, and submitted the account forms for processing, contrary to MFDA Rule 2.1.1.

III. HEARING PANEL AUTHORITY

4. Pursuant to s. 24.1.1 of MFDA By-law No. 1, if, in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any by-law, rule or policy of the MFDA, a Hearing Panel can impose any of the penalties set out in s. 24.1.l (a)-(f), including a permanent prohibition of the authority of the Approved Person to conduct securities related business and a fine, not exceeding the greater of $5,000,000 or three times the profit obtained or loss avoided by engaging in the misconduct.

5. Pursuant to s. 24.2 of MFDA By-law No. 1, the Hearing Panel has the discretion to require a Member or Approved Person to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to that proceeding.

6. Based on the admissions in the ASF, misconduct of the Respondent was not an issue before the Hearing Panel. Its sole function was to determine the appropriate sanctions for the admitted misconduct.

IV. PROPOSED SANCTIONS

7. The MFDA submitted that the appropriate sanctions to impose are:

a) the Respondent be permanently prohibited from conducting 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) the Respondent pay a fine in the amount of at least $40,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and
c) the Respondent pay costs in the amount of $7,500 which would constitute part of the costs to Staff of conducting the investigation and prosecution of the Respondent as set out in the Bill of Costs, to be provided by Staff at the hearing on the merits pursuant to s. 24.2 of MFDA By-law No. 1.

8. Respondent's counsel submitted that the appropriate sanction be:

a) A permanent ban;
b) A fine of $19,000; and

c) Costs of $2500

V. PRINCIPLES CONCERNING APPROPRIATENESS OF PENALTY

9. The primary goal of securities regulation is the protection of investors and fostering public confidence in the capital markets and the securities industry. Disciplinary sanctions imposed in a securities regulatory context are intended to restrain future misconduct in furtherance of these goals. As stated by the Hearing Panel in *Tonnies (Re)*, 2005 LNCMFA 5 at para 45:

> The Ontario Securities Commission has set out succinctly its role, not dissimilar to the role of this Panel, in determining penalty in Re Mithras Management Ltd. et al. (1990), 13 O.S.C.B. 1600. The Commission stated at 1610:
>
> ... [T]he role of this Commission is to protect the public interest by removing from the capital markets - wholly or partially, permanently or temporarily as the circumstances may warrant - those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.

10. The MFDA submissions also referred the Hearing Panel to *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at para. 59, and *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at para. 42.

11. The cases referred to in paragraphs 9 and 10 above have been cited in numerous cases; the principles stated therein are well-established and have been followed by this Panel in determining the appropriate sanctions in this case. While the primary objective of sanctions is to prevent future misconduct by the Respondent and other industry participants, and not to punish the Respondent, some element of punishment of the Respondent is the inevitable result of any sanctions. But the fact that some punishment of the Respondent may occur, should not inhibit the Panel from imposing sanctions, so long as the primary goal of those sanctions is the prevention of future misconduct.

12. As stated in *Tonnies (Re)*, *supra* at paras. 44 and 46, and other cases, to determine the appropriate sanction, the Hearing Panel should, and did 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.

13. Agreeing with Hearing Panels in previous cases such as *Tonnies (Re), supra* at para. 48 and *Breckenridge (Re)*, 2007 LNCMFDA 38, this Hearing Panel also considered the following factors in determining the appropriate sanction:

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.

14. The Hearing Panel also referred to the MFDA's Sanction Guidelines (the "Guidelines"). They are not binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. The Guidelines describe many of the same factors that are listed in paragraph 13 above which have been considered in previous decisions of MFDA Hearing Panels.

VI. APPLICATION OF FACTORS TO THE PRESENT CASE

(i) **Seriousness of the Misconduct**

15. The misconduct engaged in by the Respondent is undoubtedly very serious. Engaging in securities related business outside the Member undermines the regulatory regime, exposes clients to potential harm, and can bring the mutual fund industry into disrepute. The seriousness of such misconduct was well expressed by the Hearing Panel in *Qi (Re)*, 2013 LNCMFDA 87 at para. 11:

> Conducting securities related business or outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even legitimate investments. The misconduct may bring the Member or the mutual fund industry into disrepute.

This conclusion is also supported by *Chang (Re)*, 2016 LNCMFDA 59.

16. Engaging in an unapproved referral arrangement raises similar concerns. As found by the Hearing Panel in *Wemple (Re), 2017 LNCMFDA 138,* by engaging in a referral arrangement outside the Member, an Approved Person undermines the Member's ability to ensure that clients are given sufficient information regarding conflicts of interest, that any recommendations made to clients are appropriate, and that Approved Person are not acting outside their registration.

17. Pre-signed forms and the photocopying of signature pages also constitutes serious misconduct. This misconduct in this case is further aggravated by the fact that some of the impugned forms post-date MFDA Bulletin #0661-E in which the MFDA advised Members and Approved Persons that it would be seeking enhanced sanction at MFDA disciplinary proceedings for conduct that occurred after the publication of the Bulletin on October 2, 2015.

18. Following *Franco (Re)* 2011 LNCMFDA 55, it is fundamental that Approved Persons comply with Members' policies and procedures. Members have an obligation to supervise Approved Persons and protect clients, which can only be accomplished when Approved Persons follow the rules that have been established, which they are obliged to do. As stated by the Hearing Panel in *Franco (Re)*, at para. 68 "clients rely upon Approved Persons to act in compliance with MFDA rules and regulations, including the requirement to conform to Members' policies and procedures."

19. In summary, each of the individual types of misconduct admitted by the Respondent has been found by previous Hearing Panels to be serious misconduct, a conclusion with which this

Hearing Panel agrees. The seriousness of the misconduct in this case is exacerbated because it involved 4 separate types of misconduct.

20. The Hearing Panel also took into account that the Respondent knew little or nothing about the syndicated mortgage investments in which he advised his clients to invest, thus demonstrating a disregard for the best interests of the clients. This fact was stated in the MFDA's written submissions, not refuted in the Respondent's written submissions and admitted by Respondent's counsel at the hearing.

(ii) **Respondent's Past Conduct**

21. The Respondent has not previously been the subject of a MFDA disciplinary proceeding. The Hearing Panel views this as a somewhat mitigating factor, but not one of substantial consequence.

(iii) **Recognition by the Respondent of the Seriousness of the Misconduct**

22. The MFDA advised the Hearing Panel that it was satisfied that the Respondent recognized the seriousness of his misconduct; he fully admitted his misconduct in the ASF, thereby accepting responsibility and avoiding the time and expense of a fully contested disciplinary hearing. This Panel has acknowledged this factor in its decision on costs.

(iv) **Harm Suffered by Investors and Benefits Received by the Respondent**

23. In total, the clients and other individuals (the "Investors") affected by the Respondent's conduct suffered financial harm of approximately $260,000. The Respondent held a position of trust with the Investors as a mutual fund advisor. While the Respondent is not responsible for the failure of the syndicated mortgage investments, he abused his position of trust by recommending and facilitating the sale of an investment that he was not qualified to deal in and which had not been reviewed or approved by the Member. Among other activities, the Respondent introduced, recommended, and provided assurances to the Investors concerning the syndicated mortgage investments.

24. The Respondent received a benefit of $12,600 in connection with his misconduct. As stated in the Guidelines and confirmed in numerous cases such as *MFDA (Rojas Dias)Re*, 2021 ONSEC 24 and *Northern Securities (Re),* 2014 LNONOSC 58, wrong-doers should not benefit from their wrong-doing and the benefit received by a respondent from its misconduct sets a bare minimum

in determining the appropriate fine to be paid by the respondent. The Ontario Securities Commission in *Northern Securities* stated:

> "Imposing that fine, in addition to disgorgement, is necessary as a matter of general deterrence. There may be significant financial benefits that can be obtained as a result of a contravention of IIROC Rules. As a general principle, no registrant should be able to profit from the breach of IIROC Rules. It is not sufficient deterrence simply to pay to IIROC an amount equal to the profit obtained from the misconduct. IIROC Dealer Members and Approved Persons must recognize that there will be a substantial cost to misconduct. A substantial fine, in addition to disgorgement, is appropriate in these circumstances."

(v) **Deterrence**

25. Factors (g), (h), (i) and (j) listed in paragraph 13 above simply reiterate the deterrence principle inherent in the primary purpose of securities regulation stated in paragraphs 9 and 10 above. Deterrence is intended to capture both specific deterrence of the wrongdoer and general deterrence of other participants in the capital markets in order to protect investors. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*, 2004 SCC 26 at para. 61:

> The *Oxford English Dictionary* (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". 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 under s. 162. 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 with breaching the Act.

26. In many cases, specific deterrence of the respondent would be considered an important factor along with general deterrence of others in the industry, but while appropriate in this case, the importance of specific deterrence is diminished by the circumstances of this Respondent, discussed in paragraphs 27-33.

(vi) **Respondent's Circumstances**

27. As confirmed by his counsel's written and oral submissions, the Respondent is relatively elderly, is no longer in the industry, appears to have no desire to re-enter the industry, and, even if he did wish to re-enter the industry, his chances of doing so are minimal. Therefore, a permanent ban, to which he has agreed, will have little practical deterrent effect on him; similarly, the

Respondent's lack of ability to pay even a minimal fine due to his impecunious financial situation means that any fine will have little or no specific deterrent effect on him.

28. The Respondent's submissions emphasized that the fine "should have a meaningful impact on the Respondent without ruining him…financially", and further that the fine should not be "punishment for punishment's sake", citing *Jenkins (Re)* 2021 LNCMFDA 24, at para. 16, and *Gomes (Re)*, 2020 LNCMFDA 33 at para 19.

29. This Hearing Panel did not disagree with those principles, but as noted in paragraph 11 above, the principles mean that punishment of the Respondent should not be the objective of the sanction, even though it may be a result thereof. In this case, the primary factor in determining an appropriate sanction should be general deterrence; specific deterrence of the Respondent is a lesser factor since, as noted in paragraph 26 above, a substantial fine will have a minimal punitive effect on him due to his already dire financial situation and a ban has been agreed to.

30. Respondent's counsel also submitted that the Hearing Panel should consider the ability to pay, not only for its "unjust" effect on the Respondent, but also "because…in failing to do so it would untether its ability to sanction from reality, and thereby diminish its power to both denounce and deter."

31. This Hearing Panel disagrees with that proposition. Industry participants, other than the Respondent, to whom the principle of general deterrence is addressed, will (or should) recognize that they are at substantial risk if they engage in misconduct because they have the ability to pay, even though this Respondent may have little to lose because of his inability to pay. This applies as well to a permanent ban (or a suspension); even if such sanctions would have little or no effect on this particular Respondent, they would still be effective as a means of general deterrence on other industry participants who want to remain in the industry.

32. In oral reply to Respondent counsel's submission, MFDA counsel noted that the Guidelines state, "If a sanction is less than...the public would reasonably expect for the misconduct under consideration, it may undermine the goals of the disciplinary process....Any sanction ...should be proportionate to the conduct at issue. The sanction should reflect the relevant mitigating and aggravating factors." This Hearing Panel agrees with MFDA counsel that, in order to maintain public confidence in the regulatory process, the sanction should not be reduced simply because of the Respondent's inability to pay. Sanctions should be neither too harsh nor too lenient, and should

reflect all factors in order to maintain both public confidence in the regulatory process and the deterrent effect.

33. The MFDA submissions recognized that as a result of the Respondent's personal circumstances, the Respondent may have limited means to pay a fine and that such limited financial means may be properly considered by the Hearing Panel as provided in the Guidelines. However, the MFDA also submitted that the ability to pay should not be the predominant or overriding factor when determining a penalty, particularly where a respondent engages in egregious misconduct that results in client harm, citing *MFDA (Rojas Dias), supra.*

34. This Hearing Panel took into account "ability to pay" as a relevant factor, but it was not a predominant or determining factor directed to reducing the appropriate amount of the fine as suggested by Respondent's counsel.

(vii) **Previous Decisions Made in Similar Circumstances**

35. MFDA counsel set out comparator cases for the Hearing Panel's consideration. In particular, *MFDA (Rojas Diaz) (Re))* and *Northern Securities Inc. (Re)*, *supra* at paragraph 24 were cited to confirm that an amount in addition to disgorgement is necessary to ensure that the fine not be tantamount to a licensing fee to engage in misconduct, is necessary as a matter of general deterrence and that industry participants must recognize that there will be a substantial cost to misconduct. This Hearing Panel agrees with these principles and they are reflected in this decision. MFDA counsel also cited previous cases involving pre-signed and photocopied forms similar to this case which, on their own, resulted in sanctions ranging from $12,000 to $15,000.

36. Respondent's counsel referred the Hearing Panel to the cases of *Gomes (Re)*, *Jenkins (Re)*, *supra* at paragraph 28 and *Elwood (Re)*, 2020 LNCMFDA 183 in support of his submission that an appropriate fine would be in the range of bare disgorgement to approximately 1.5 times bare disgorgement, i.e. between $12,600 and $19,000.

37. MFDA's counsel took issue with Respondent's counsel's arithmetic approach based on the amount of gain to the Respondent. He emphasized that all factors must be considered, noting that a case of great harm to the clients but little gain to a respondent would result in an inappropriately small fine. This Hearing Panel agrees with MFDA counsel on this issue and took into account all relevant factors, in determining the appropriate sanctions in this case.

VII. DECISION ON APPROPRIATE SANCTION

38. The Hearing Panel took into account all the factors noted above, the seriousness of the misconduct, the harm suffered by investors, the benefit to the Respondent, the Respondent's particular circumstances including the absence of previous misconduct, his cooperation with the MFDA and specific deterrence, other comparison cases, and, in particular, general deterrence, all in furtherance of the primary goal of securities regulation as stated in paragraph 9 above.

39. The MFDA submitted a bill of its costs in this matter in the amount of $15,175, and asked that the Respondent pay costs of $7,500. In light of the Respondent's cooperation in this case, the Panel decided that $2,500 would be a more appropriate amount for the Respondent to pay.

40. Accordingly, the Panel ordered the following sanctions:

a) the Respondent be permanently prohibited from conducting 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) the Respondent pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1; and

c) the Respondent pay costs in the amount of $2,500 pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this 2nd day of March, 2022.

"Frederick H. Webber"
Frederick H. Webber
Chair

"Michael-Murray Coulter"
Michael-Murray Coulter
Industry Representative

"Edward Jackson"
Edward Jackson
Industry Representative

Mutual Fund Dealers Association of Canada
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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: Ronald John Thomas Kowalsky

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated September 20, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Ronald John Thomas Kowalsky (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: Between 2013 and 2016, the Respondent engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities by recommending, selling, or facilitating the sale of syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2: Between 2013 and 2016, the Respondent engaged in an unapproved outside business activity in relation to syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3)[1], 2.1.1, 2.5.1 and 1.1.2.

[1] MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3 effective March 17, 2016.

Allegation #3: Between 2013 and 2016, the Respondent made referrals in respect of syndicated mortgage investments and received compensation 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 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2[2], 2.1.1, 2.5.1, and 1.1.2.

Allegation #4: Between August 28, 2015 and March 13, 2019, the Respondent obtained, possessed, and, in some instances, used 19 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1.

Allegation #5: Between January 16, 2019 and April 22, 2019, the Respondent attached a copy of signature pages from account forms previously signed by clients to 3 new account forms in respect of 3 clients, and submitted the account forms for processing, 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 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 and costs to be imposed 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 information, facts or documents, subject to the content of this paragraph and paragraph 7 below.

[2] MFDA Rule 2.4.2 was amended effective April 8, 2015.

7. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

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. Between January 27, 1999 to August 22, 2019, the Respondent was registered as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.[3]

10. On August 22, 2019, the Respondent resigned from the Member, and he is not currently registered in the securities industry in any capacity.

11. At all material times, the Respondent conducted business in the Simcoe, Ontario area.

Securities Related Business

12. At all material times, the Member's policies and procedures prohibited its Approved Persons from selling, representing, or promoting any investments or business opportunities, unless approved in writing by the Member to be sold for the account of and through the facilities of the Member.

[3] Sun Life Financial Investment Services (Canada) Inc. became a Member of the MFDA effective February 14, 2002.

13. In 2013, a client of the Member whose accounts were serviced by the Respondent, client RB, asked the Respondent about syndicated mortgage investments after hearing about them on the radio and in the newspaper. FDS Broker Services ("FDS") was a mortgage broker that offered syndicated mortgage investments in real estate projects being developed by Fortress Real Developments Inc. In response to the client's inquiry, the Respondent contacted FDS, and attended their information sessions concerning syndicated mortgage investments.

14. Thereafter, between 2013 and 2016, the Respondent recommended and facilitated the sale of syndicated mortgage investments totalling approximately $551,700 to 6 clients and 1 individual, in the amounts set out in the table below:

Client/Individual	Amount Invested
MM	$50,000
SM	$139,700[4]
LU	$100,000
JM	$100,000
RB	$98,000
GB	$33,000
RK	$31,000

15. The Respondent engaged in the following activities in relation to the purchase by the clients and individuals of syndicated mortgage investments:

a) introduced the clients and individuals to the opportunity to invest in syndicated mortgage investments;
b) discussed with the clients and individuals the terms and features of investing in syndicated mortgage investments;
c) organized and attended meetings between the clients and individuals and other representatives of FDS to facilitate the communication of further information about syndicated mortgage investments to the potential investors;
d) provided the clients and individuals with promotional material from FDS about syndicated mortgage investments;
e) recommended syndicated mortgage investments to the clients and individuals;
f) provided assurances about syndicated mortgage investments to the clients and individuals; and

[4] SM made two different investments in syndicated mortgage investments. The first investment she made was for a total of $89,700, while the second was for a total of $50,000.

g) attended meetings between the clients and individuals and representatives of FDS to complete the paperwork to facilitate investment in the syndicated mortgage investments.

16. The Member did not approve the sale of syndicated mortgage investments described above to its clients by any of its Approved Persons, including the Respondent.

17. None of the purchases of the syndicated mortgage investments described above were carried on for the account of the Member or processed through its facilities.

18. As further described below at paragraphs 22 and 26, the Respondent received compensation and some of the clients and individuals suffered losses in connection with the securities related business outside the Member described above.

Unapproved Referral Arrangement

19. At all material times, the Member's policies and procedures prohibited its Approved Persons from engaging in referral arrangements, unless there was a formal agreement with the Member, disclosure was provided to clients, and the Member recorded the referral fees on its books and records.

20. The Respondent entered into a referral arrangement with FDS in respect of recommending and facilitating the sale of syndicated mortgage investments. The Respondent received referral fees in respect of his activities relating to syndicated mortgage investments described above at paragraphs 14 to 15.

21. In addition, the Respondent also received referral fees in respect of syndicated mortgage investments purchased by client DM, the son of clients MM and SM, and individual JK, the wife of RK. The Respondent did not speak with DM or JK directly concerning the syndicated mortgage investments that DM and JK purchased, but part of the compensation that he received was based upon the investments that they purchased. DM invested $32,000 and JK invested $31,000 in syndicated mortgage investments.

22. In total, the Respondent received compensation totalling approximately $12,600 from FDS in respect of the purchase of syndicated mortgage investments by the 7 clients and 2 individuals described above.

23. The Respondent failed to disclose to or obtain approval from the Member to engage in any referral arrangement with FDS.

24. The Member was not a party to any referral arrangements with FDS for the sale of syndicated mortgage investments.

25. None of the compensation received by the Respondent in relation to the syndicated mortgage as described above was recorded in the Member's books and records.

26. The 7 clients and 2 individuals who purchased the syndicated mortgage investments described above incurred financial losses on those investments totalling approximately $260,000.

Pre-Signed Account Forms

27. At all material times, the Member's policies and procedures prohibited its Approved Persons from obtaining and using pre-signed account forms.

28. Between August 28, 2015 and March 13, 2019, the Respondent obtained, possessed, and, in some instances, used to process transactions 19 pre-signed account forms in respect of 11 clients.

29. The pre-signed account forms consisted of banking information forms, transfer authorization for registered investments forms, Know-Your-Client update forms, client information forms, order tickets, and mutual fund application forms.

Photocopying Signature Pages

30. Between January 16, 2019 and April 22, 2019, the Respondent attached a copy of signature pages from account forms previously signed by clients to 3 new account forms in respect of 3 clients and submitted the account forms to the Member for processing.

31. The photocopied signature pages were in respect of automatic withdrawal forms and a Know-Your-Client update form.

Member's Investigation into use of Pre-Signed Forms and Photocopying of Signature Pages

32. Following the Respondent's resignation from the Member, the Member conducted a file review of the Respondent's client files, which resulted in the discovery of the pre-signed forms and photocopied signature pages described above.

33. The Member conducted an investigation to address the deficient forms by contacting affected clients to determine whether the transactions in the clients' accounts were known to and authorized by the clients. No clients complained to the Member or raised any concerns in response to the Member' communications.

Additional Factors

34. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

35. The misconduct described above came to light when Clients MM and SM made a formal complaint to the Member concerning their purchase of syndicated mortgage investments, which was recommended and facilitated by the Respondent.

36. As described above at paragraph 22, the Respondent earned $12,600 from engaging in securities related business outside the Member and in an unapproved referral arrangement. As described above at paragraph 26, the 7 clients and 2 individuals described above suffered losses of approximately $260,000 from the syndicated mortgage investments.

37. To the extent the syndicated mortgage investments failed as a result of any wrongdoing, there is no evidence that the Respondent had any knowledge or involvement in such wrongdoing or any involvement in the operations of the real estate developments or the issuers of the investments.

38. The Respondent is 72 years old and receives pension income. Following his resignation from the Member, the Respondent commenced driving a taxi for additional income. In September 2019, the Respondent entered into a consumer proposal with his creditors, pursuant to which the Respondent was required to sell his home and to pay $500 per month for 60 months. The Respondent continues to make these payments. The Respondent resides with his wife in a rental unit owned by his son, where he pays below market rates and is responsible for the utilities. The Respondent does not own a home, a vehicle, have any investments, or any other significant assets.

39. There is no evidence that the Respondent received any financial benefit from the pre-signed forms and photocopied signature pages beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

40. There is no evidence of client complaints, client loss, or lack of authorization with respect to the pre-signed forms and photocopied signature pages.

41. By entering into this Agreed Statement of Facts, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

Misconduct Admitted

42. The Respondent admits that between 2013 and 2016, he engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities by recommending and facilitating the sale of syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2.

43. The Respondent admits that between 2013 and 2016, he made referrals in respect of syndicated mortgage investments and received compensation 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 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 2.5.1, and 1.1.2.

44. The Respondent admits that between August 28, 2015 and March 13, 2019, he obtained, possessed, and, in some instances, used 19 pre-signed account forms in respect of 11 clients, contrary to MFDA Rule 2.1.1.

45. The Respondent admits that between January 16, 2019 and April 22, 2019, he attached a copy of signature pages from account forms previously signed by clients to 3 new account forms in respect of 3 clients, and submitted the account forms for processing, contrary to MFDA Rule 2.1.1.

V. EXECUTION OF AGREED STATEMENT OF FACTS

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

47. An electronic copy of any signature shall be effective as an original signature.

DATED this 4th day of January, 2022.

"Ronald John Thomas Kowalsky"
Ronald John Thomas Kowalsky

"JK"
Witness – Signature

JK
Witness – Print Name

"Charles Toth"

Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

DM 871720