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: Jeffrey D. Mushaluk

Heard: July 26, 2016, in Vancouver, British Columbia
Reasons for Decision: November 10, 2016

REASONS FOR DECISION

Hearing Panel of the Pacific Regional Council:

Stephen D. Gill	Chair
Cecilia Macharia	Industry Representative

Appearances:

Christopher Corsetti	)	Counsel for the Mutual Fund Dealers Association of Canada
David Mitchell	)	Counsel for the Respondent

THE ALLEGATIONS

1. By a Notice of Hearing dated January 11, 2016 (the "Notice of Hearing"), this Hearing Panel was convened to hear the merits of this matter. The hearing proceeded by way of an Agreed Statement of Facts (the "ASF"). Jeffrey D. Mushaluk (the "Respondent") admitted that he engaged in misconduct as set out in the ASF, as follows:

> **Allegation #1**: Between August 2012 and May 2013, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, and acted outside his registration as a mutual fund salesperson, by selling, recommending, facilitating the sale, or making referrals in respect of the sale of shares of a junior mining company listed on the Toronto Venture Exchange to at least 29 clients, contrary to MFDA Rules 1.1.1 and 2.1.1.

2. Having considered the ASF, the admissions of the Respondent, the submissions of counsel for the MFDA and counsel for the Respondent, the provisions of the By-laws of the MFDA, and the applicable legal principles, led the Panel to conclude that the MFDA has proven, on a balance of probabilities, Allegation #1 set out above.

3. As can be seen, in the ASF the Respondent has admitted Allegation No. 1. Further, the Respondent admits that the conduct described in the ASF constitutes misconduct for which the Respondent may be penalized on the exercise of the discretion of the Hearing Panel pursuant to Section 24.1 of MFDA By-law No. 1.

4. It is appropriate to set out the ASF.

> **"AGREED STATEMENT OF FACTS**
>
> **I. INTRODUCTION**

1. By Notice of Hearing dated January 11, 2016, the Mutual Fund Dealers Association of Canada (the "MFDA") commenced a disciplinary proceeding against Jeffrey D. Mushaluk (the "Respondent") pursuant to ss. 20 and 24 of MFDA By-law No. 1.

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

Allegation #1: Between August 2012 and May 2013, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, and acted outside his registration as a mutual fund salesperson, by selling, recommending, facilitating the sale, or making referrals in respect of the sale of shares of a junior mining company listed on the Toronto Venture Exchange to at least 29 clients, contract to MFDA Rules 1.1.1 and 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 to impose on the Respondent.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. 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 described below, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. 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

8. From April 2008 to August 1, 2014, the Respondent was registered in Alberta, Saskatchewan, Manitoba and British Columbia as a mutual fund salesperson (now known as a Dealing Representative) with IPC Investment Corporation ("IPC"), a Member of the MFDA. From March 23, 2010 to August 1, 2014, the Respondent was registered in British Columbia as a Branch Manager with IPC.

9. At all material times the Respondent carried on business in Salmon Arm, British Columbia.

10. The Respondent is not currently registered in the securities industry in any capacity.

Facts

11. IPC Securities Corporation Inc. ("IPCSC") is an affiliate of IPC and a securities dealer regulated by the Investment Industry Regulatory Organization of Canada.

12. On or about October 31, 2011, IPC entered into a referral arrangement with IPCSC (the "Referral Arrangement") which allows Approved Persons with IPC to refer clients to IPCSC in order for the clients to purchase, sell or otherwise transact in securities (i.e., non-mutual fund securities) which Approved Persons are not registered to trade or advise in.

13. Under the terms of the Referral Arrangement, Approved Persons with IPC are required to limit their referral-related activities to providing clients with a basic description of the services available through IPCSC and contact information for a representative of IPCSC.

14. In addition, IPC's policies and procedures prohibit its Approved Persons from providing advice, recommendations or opinions about non-mutual fund investments available through other registrants, including through the Referral Arrangement.

15. In November 2012, IPC issued Compliance Bulletin 12-21 which reminded Approved Persons who referred clients to IPCSC through the Referral Arrangement that they were not permitted to, among other things:

a. discuss with clients the features, terms and advantages of purchasing specific equities available through the Referral Arrangement; and
b. discuss the risks of specific issuers with clients.

Pacific Booker Minerals Inc.

16. Pacific Booker Minerals Inc. ("PBM") is a mineral exploration company listed on the TSX Venture Exchange (stock ticker symbol: BKM-V) with its head office located in Vancouver, British Columbia. PBM owns a property in central British Columbia which it is attempting to develop.

17. In or about July 2010, the Respondent became aware of PBM and conducted his own due diligence on the company. Between July 2010 and August 2012, the Respondent purchased 45,000 shares of PBM.

18. On August 24, 2012, the Respondent sent an e-mail to 22 clients recommending that the clients purchase shares of PBM (the "Recommendation Email"). In particular, the Recommendation Email stated:

> I have an opportunity that I think you can benefit from in the short term. I have been a shareholder in a junior mine for approximately 15 months which is now at the stage of some exciting developments. It is a copper, gold, silver, molybdenum mine located in Granisle B.C. called Pacific Booker Minerals. The mine is days (up to 40) away from potentially receiving a permit. Currently the stock is trading at $13 and I believe within months it could sell for a lot more. In fact, the permit alone could double the value of the company.
>
> I recommend selling some of your existing investments with me to explore this opportunity. This is extremely time sensitive in that you will have to make a decision of whether you want to entertain this or not by Tuesday of next week [in 5 days]. I will be calling you either Sunday evening or Monday to explain more details. If you are not interested however, please email reply now.

19. Between about August 24 and 27, 2012, the Respondent communicated with at least 15 of the 22 clients who received the Recommendation Email, as well as

additional clients that he serviced, with regards to purchasing shares of PBM. The Respondent discussed one or more of the following with clients:

a. PBM is a junior mining company;
b. the Environmental Assessment Certificate ("EAC") application for the property which PBM owned in central British Columbia was awaiting approval from the provincial government;
c. some of the risks of investing in PBM; and
d. in the case of clients HM and CM, the Respondent advised the clients that "this could be a situation where $100k turns into $400k or greater".

20. Where clients advised the Respondent that they intended to invest in PBM, the Respondent discussed with many of the clients the amount to be invested in PBM and, where necessary, the mutual funds that the clients would redeem in order to generate monies to invest in PBM.

21. In order to process the sale of PBM shares, the Respondent provided a representative at IPCSC identified through the Referral Arrangement with, among other things, the names of clients who were investing in PBM, the details of the amounts to be invested in PBM, and details of any mutual fund redemptions required to facilitate the investments in PBM. He did this at the request of the IPCSC IIROC registrant. The clients subsequently opened accounts at IPCSC in order to purchase shares of PBM. The actual transactions were processed by a representative at IPCSC.

Clients Purchase Shares in PBM

22. Based upon the Respondent's recommendations, 29 clients serviced by the Respondent purchased $519,502.80 of shares in PBM, as summarized below:

Date of Purchase	Client Name	Amount Invested
08/31/2012	RW	$12,600.00
08/31/2012	HW	$17,150.00
08/31/2012	RT	$24,872.00
08/31/2012	EBJ	$15,000.00
08/31/2012	PW	$11,687.50
08/31/2012	JH	$18,562.50
08/31/2012	CM and HM	$64,748.00
08/31/2012	DD	$14,751.00
09/04/2012	SM	$19,878.20
09/04/2012	JF	$17,640.00

Date of Purchase	Client Name	Amount Invested
09/04/2012	MT	$14,700.00
09/04/2012	DT	$16,100.00
09/04/2012	DC	$14,835.00
09/04/2012	MC	$19,590.00
09/04/2012	RC	$19,588.00
09/04/2012	LS and MS	$14,330.00
09/04/2012	MO	$19,800.00
09/04/2012	CH	$14,781.25
09/04/2012	DG and MW	$19,810.00
09/05/2012	JAH	$14,837.00
09/06/2012	KB	$25,000.00
09/07/2012	CP	$12,621.00
09/07/2012	AK	$9,851.00
09/07/2012	MT	$14,800.00
09/25/2012	RR	$14,800.00
09/27/2012	DW	$29,785.35
10/10/2012	DW	$10,896.00
10/10/2012	DC	$9,975.00
11/06/2012	CM and HM	$5,925.00
11/23/2012	DD	$1,250.00
11/23/2012	CM and HM	$19,510.00
11/30/2012	JW	$2,680.00
12/04/2012	BW	$11,557.50
12/04/2012	JW	$4,690.00
12/13/2012	KB	$10,000
01/02/2013	DC	$9,639.00
10/02/2013	LS and MS	$14,330.00
TOTAL		$519,502.80

23. Based in part upon the Respondent's recommendations and their discussions with IPCSC's IIROC registrant, 17 of the 29 clients listed above redeemed mutual funds totaling $257,730.86 held with IPC in order to generate the monies to invest in PBM.

24. The clients held the PBM shares in accounts at IPCSC.

25. At the time that the Respondent initially solicited clients to invest, PBM's share price was approximately $13 per share.

26. In about October 2012, PBM's EAC application was denied by the provincial government. Following the release of this news, PBM's share price declined to approximately $3 to $4 per share.

27. As of May 18, 2016 the PBM share price was trading at approximately $0.82 per share.

28. PBM successfully appealed the decision denying its EAC application to the British Columbia Supreme Court and was permitted to re-submit its EAC application. The EAC application is currently under consideration by the provincial government.

29. At the time the clients purchased shares of PBM, the Respondent proposed to IPSC that he would pay the clients' transaction fees on their initial purchases of PBM shares and forego any commissions or referral fees payable to him, in exchange for a commission of 5% of the value of the clients' shareholdings which commission would only be payable if the clients sold their PBM shares and at least doubled their investment. IPSC did not agree to this proposal. The Respondent states that he, nonetheless, repaid the clients for the transaction fees incurred in respect of the clients' initial purchase of the PBM shares. IPC has stated it paid approximately $1,848 in referral fees to the Respondent relating to the sale of the PBM shares (the Respondent does not know how much he was paid but does not have any evidence to the contrary). The Respondent states that this amount was less than the transaction fees he repaid to the clients.

30. The Respondent advised some, but failed to advise all, of his clients that he was not registered, or permitted by IPC, to trade or provide advice with respect to shares of PBM.

Allegation #1 - Securities Related Business Outside the Member and Acting Outside the Scope of Registration

31. As described above, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member and acted outside his registration as a mutual fund salesperson, contrary to MFDA Rules 1.1.1. and 2.1.1, when he:

    a. recommended that clients purchase shares of PBM;
    b. provided advice to clients regarding PBM including, among other things, the benefits and rates of return the clients could expect to receive from the

investment, the status and expected receipt of a mining permit by PBM, and some of the risks of investing in PBM;

c. sought and obtained instructions from clients regarding the amount to be invested in PBM and, where necessary, the mutual funds that the clients would redeem in order to generate monies to invest in PBM;
d. facilitated the purchase of PBM shares by providing client information, including the amount to be invested by clients and the mutual funds to be redeemed to generate the monies to invest in PBM, to a representative at IPCSC identified though the Referral Arrangement;
e. failed to limit his activities conducted under the Referral Arrangement to providing clients with a basis description of the services available through IPCSC and contact information for a representative of IPCSC; and
f. failed to adhere to IPC's policies and procedures which prohibited the Respondent from providing advice, recommendations or opinions about non-mutual fund investments available through other registrants (i.e. IPCSC through the Referral Arrangement).

Misconduct Admitted

32. By engaging in the conduct described above, the Respondent admits that, between August 2012 and May 2013, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member, and acted outside his registration as a mutual fund salesperson, by selling, recommending, facilitating the sale, or making referrals in respect of the sale of shares of a junior mining company listed on the Toronto Venture Exchange to at least 29 clients, contrary to MFDA Rules 1.1.1 and 2.1.1.

Execution of Agreed Statement of Facts

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

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

DATED this 14th day of July , 2016."

26. It should be noted that in paragraph 22 of the ASF, the addition of the amount invested by the 29 clients appears to be error; the actual total of the "Amount Invested" by the 29 clients is $592,570.30.

27. MFDA Staff proposed a penalty of a fine of $100,000.00; 5 year suspension; and costs of at least $7,500.00. Counsel for the Respondents submitted that the appropriate penalty be a fine of $25,000.00, with no suspension, and costs of $2,500.00. Further, he submitted that the appropriate penalty would include the Respondent re-do the training program required of all newly registered salespersons as set out in MFDA Policy No. 1-New Registrant Training and Supervision.

28. Counsel for Staff submitted that with the decline in value in shares of PBM, which by May 18, 2016 the share price was approximately $0.82 per share, the losses suffered by the Respondents clients who purchased shares in PBM was approximately $467,000.00. In Staff's submission they stated "The total value of the purchases was $519,502.80. A 90% decline in value would have resulted in a loss to clients of approximately $467,500.00."

29. It is significant to note that from April 2008 to August 1, 2014 the Respondent was registered in Alberta, Saskatchewan, Manitoba and British Columbia, as a mutual fund salesperson with IPC, and from March 23, 2010 to August 1, 2014 the Respondent was a branch manager with IPC. At all material times he carried on business in Salmon Arm, British Columbia. The Respondent is not currently registered in the securities industry in any capacity.

30. It should be noted that 17 of the Respondent's 29 clients redeemed mutual funds held with IPC totalling approximately $258,000.00 in order to generate the monies to invest in PBM.

31. MFDA Rule 2.1.1 entitled "Standard of Conduct" states:

> Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
> (b) observe high standards of ethics and conduct in the transaction of business;
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and

(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation."

32. MFDA Rule 1.1.1 entitled "Business Structures" states:

> 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 …"

33. In the well-known case of *Pezim v. British Columbia (Superintendent of Brokers)* (1994) 2 S.C.R. 557 Justice Iacobucci, delivering the judgment of the Court, stated:

> "59. It is important to note from the outset that the Act is regulatory in nature. In fact, it is part of much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system: David L. Johnston, Canadian Securities Regulation (1997), at p.1."
>
> "68. As already mentioned, the primary goal of securities legislation is the protection of the investing public. The importance of that goal in assessing the decisions of securities commissions has been recognized by this Court in *Brosseau v. Alberta Securities Commission*, [1989] 1 S.C.R. 301 (Brosseau), where L'Heureux-Dubé J., writing for the Court, stated the following at p. 314:
>
> > Securities acts in general can be said to be aimed at regulating the market and protecting the general public. This role was recognized by this Court in *Gregory & Co. v. Quebec Securities Commission*, [1961] S.C.R. 584, where Fauteux J. observed at p. 588:
> >
> > > The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in

this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business.

This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts."

34. In the matter of *Robert Roy Parkinson* [2005], MFDA File No. 200501, April 29, 2005, the Panel stated:

"We agree with the Submissions of Enforcement Counsel that in determining the appropriate sanctions, we should, *inter alia*, take into account the following considerations:

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

See *Derivative Services Inc. (Re)*, [2001] I.D.A.C.D. No. 26
Mills (Re), [2001] I.D.A.C.D. No. 7 ("*Mills*")

We, further, agree with the comments made by the Ontario District Council of the I.D.A., at paragraph 6 of the *Mills* Decision to the effect that:

"Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Associations' disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment."

35. There are a series of Decisions setting out the specific factors that a Hearing Panel should consider. These were summarized by the Alberta Securities Commission in the case of Lamoureux (Re) [2002] A.S.C.D. No. 125, as follows at paragraph 11:

> "The Commission and other securities regulatory authorities in Canada have also expressed their view that, when making orders under s. 198 or 199 of the Act or comparable provisions in other jurisdictions, to protect the public, we consider a broad range of factors such as:
>
> - "the seriousness of the allegations proved against the respondent
> - the respondent's past conduct, including prior sanctions, mitigating factors
> - the respondent's experience in the capital markets, the level of the respondent's activity in the capital markets
> - whether the respondent recognizes the seriousness of the improper activity
> - the harm suffered by investors as a result of the respondent's activities
> - the benefits received by the respondent as a result of the improper activity
> - the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction
> - the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities
> - 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
> - the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets and
> - previous decisions made in similar circumstances."

36. Staff, in their submissions, also directed the Panel to the MFDA Penalty Guidelines. The Penalty Guidelines are intended to assist hearing panels, MFDA staff and respondents in considering the appropriate penalties in MFDA disciplinary proceedings. It is accepted that the penalty types and ranges stated in the Guidelines are not mandatory, and the Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are for assistance to various hearing panels and provide a basis on which discretion can be exercised consistently and fairly in like circumstances.

37. The Penalty Guidelines recommend in respect of Standard of Conduct, MFDA Rule 2.1.1., a minimum fine of $5,000.00; the re-writing of an appropriate industry course; and a suspension or, in egregious cases, a permanent prohibition.

38. In respect of MFDA Rule 1.1.1, the Penalty Guidelines recommend a minimum fine of $10,000.00; the re-writing of an appropriate industry course; and a suspension or, in egregious cases, a permanent prohibition.

39. Given the total amount invested was $592,570.30, a 90% decline in value would have resulted in a loss to the clients of approximately $534,000.00. On the evidence, there were no client complaints but there is no doubt there was significant harm caused to the clients.

40. In *Re Hill and Crawford Investment Management Group Ltd. and Albert Rodney Hill*, [2009] MFDA File No. 200834, June 23, 2009, the panel stated:

> "…Mutual fund dealers carry on a business which is based upon the trust of their clients. Their clients rely upon the dealer for care and maintenance of the funds that they invest with them and rely upon them to act in compliance with MFDA rules and regulations. The punishments that are imposed must reflect the gravity of the breaches and the importance of the maintenance of the trust of clients and members of the public generally in the work of MFDA Dealers.
> 4. A business which is of necessity based upon trust must always do its utmost to preserve that trust and when that trust is breached to ensure that penalties which are imposed will help to re-establish the trust of the public in the dealers."

41. It is clear from the facts of this case that the Respondent was in a clear conflict of interest as he had already invested in PBM. Further, the Respondent was recommending PBM, which was in breach of his registration. Further, he made serious representations about the short term opportunity including the ability to possibly double their money which no doubt persuaded many of his clients to purchase PBM. The end result was almost a total loss of his clients' investments in this non-mutual fund entity.

42. Staff submitted that:

> "It is important that MFDA Approved Persons conduct their securities transactions through the Member and with the Member's consent. The policy rationale underlying the prohibition on off-book business is that when transactions are carried out off a Member's books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. The rule protects both investors and Members."

43. In *Re Piett* [2012] MFDA File No. 201206, September 25, 2012, the panel held that Rule 1.1.1 is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian Mutual Fund Industry. The Rule creates a regime whereby an Approved Person is only permitted to sell investment products that have first been approved for sale by the Member (following appropriate product due diligence) which are sold through the facilities of the Member. This ensures that the trading activity is subject to appropriate review and supervision, both at the time of the sale and in the future. Limiting the authority of an Approved Person to trade only securities approved for sale by the Member through the facilities of the Member, Rule 1.1.1. protects primarily the interest of Member clients, but also the interests of Members and Approved Persons.

44. It is our conclusion that the Respondent did breach Rule 1.1.1. when he engaged in securities related business that was not carried on for the account and through the facilities of the Member. Further, we find that this conduct is also a breach of Rule 2.1.1. because it is conduct that is detrimental to the public interest.

45. Staff submitted, and we agree, the policy rationale underlying the prohibition on off-book business is that when transactions are carried out off a Member's books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. The rule protects both investors and Members.

46. It is significant in our view that the Respondent has admitted to the misconduct in the Agreed Statement of Facts. We note that the Respondent has been registered since April, 2008, with no disciplinary history.

47. In the submissions of Counsel for Staff and the Respondent, we were referred to a number of previous decisions made in somewhat similar circumstances. Those cases are *Re Ladha* [2012] MFDA File No. 201205, August 15, 2012; *Re Hsueh* [2012] MFDA File No. 201137, May 1, 2012; *Re Piett* [2012] MFDA File No. 201206, September 25, 2012; *Re Potter* [2010] MFDA File No. 2011038, January 24, 2012; *Re Irwin* [2010] MFDA File No. 200915, April 28, 2010; *Re Breckenridge* [2007], MFDA File No. 200718, October 31, 2007; *Re Majdoub* [2010], MFDA File No. 201010, November 12, 2010; *Re Bitner* [2010], MFDA File No. 201015, April 6, 2011. All of these cases resulted in either a lengthy suspension or a permanent prohibition, fine and costs. Each depended upon its own particular facts and circumstances, and we have reviewed them in coming to our decision on penalty.

Conclusion re Penalty

48. The Panel carefully considered all the evidence, the submissions of Counsel for MFDA and the submissions of Counsel for the Respondent, and the authority cited with respect to Penalty. In our view the Respondent admitted conduct in breach of the Rules that was serious but not so egregious as to warrant a permanent prohibition.

49. Further, the Respondent's serious conduct causes us to conclude that a fine is appropriate, plus an award of costs.

50. In summary, we find that Allegation No. 1 as set out in the Notice of Hearing has been proven, and we order:

a) that the Respondent be prohibited from conducting securities related business while in the employ of, or associated with any MFDA Member until July 31, 2017;
b) a fine in the amount of $25,000.00, payable on or before July 31, 2017;
c) costs in the amount $5,000.00, payable by August 31, 2016.

51. The Panel ordered this penalty at the Hearing on the Merits on July 26, 2016.

52. These Reasons may be signed in counterpart.

DATED this 10th day of November, 2016.

"Stephen D. Gill"

Stephen D. Gill
Chair

"Cecilia Macharia"

Cecilia Macharia
Industry Representative

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