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

IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: PDQ Financial Services Inc. and Cesidio ("Sid") Negri

Heard: November 7, 2013 in Toronto, Ontario
Reasons for Decision: December 5, 2013

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Patrick T. Galligan, Q.C.	Chair
Robert C. White	Industry Representative
Selwyn Kossuth	Industry Representative

Appearances:

Shelly Feld	)	Senior Enforcement Counsel, Mutual Fund Dealers Association of Canada
Cesidio (Sid) Negri	)	Appeared in person and on behalf of PDQ Financial Services Inc.

1. The Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and the Respondents entered into a settlement agreement which they had negotiated pursuant to s. 24.4.1 of MFDA By-law No. 1. They submitted the settlement agreement to this Hearing Panel, pursuant to Rule of Procedure 15.1, for approval or rejection. After considering the settlement agreement, the other material filed and upon hearing the submissions made by Enforcement Counsel and by the Respondents, we issued an order accepting the settlement agreement. These are our reasons for making that order.

2. MFDA Rules require that 10 days' notice be given of a Settlement Hearing. In this case, the Notice was given on October 30, 2013 for a hearing to be held on November 7, 2013. Pursuant to MFDA Rules 1.3(1), 1.5 and 2.2(1), and with the consent of the parties, the Hearing Panel exercised its authority to abridge the time for the Notice of Settlement Hearing which allowed the Settlement Hearing to proceed.

THE CONTRAVENTIONS

3. The Respondents admit the following contraventions:

Contravention #1: Between August 2007 and August 2012, while PDQ Financial Services Inc. ("PDQ") was designated in early warning, PDQ and Cesidio Negri ("Negri") frequently contravened the early warning requirements set out in MFDA Rule 3.4.2 by:

(a) making payments without the prior written consent of the MFDA:

(i) by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets from PDQ to directors, officers and shareholders of PDQ;
(ii) from PDQ that had the effect of increasing PDQ's non-allowable assets; and
(iii) from PDQ that had the effect of reducing PDQ's capital;

contrary to MFDA Rules 3.4.2(b)(iv) and 3.4.2(c) and MFDA Rule 2.1.1; and

b) failing to provide timely responses to requests by MFDA Staff for reports and information required by MFDA Staff to assess and monitor the financial conditions and operations of PDQ, contrary to MFDA Rules 3.4.2(b) (vii) and 2.1.1.

Contravention #2: Between March 2011 and July 2012, while PDQ was designated in early warning, Negri made withdrawals from PDQ to pay personal expenses in excess of the amounts approved by MFDA Staff, contrary to MFDA Rules 3.4.2(b)(iv)(C) and 3.4.2(c) and MFDA Rule 2.1.1.

Contravention #3: Between 2010 and 2012, while in the course of attempting to solicit new investors in PDQ, PDQ and Negri circulated a sales communication to prospective investors in PDQ that inaccurately stated or implied that the MFDA and other regulators had endorsed PDQ's business model or plan, products, suitability process or other features of its operations, products or services, contrary to MFDA Rules 2.7.2 and 2.1.1.

TERMS OF SETTLEMENT

4. The Respondents agree to the following terms of settlement:

(a) The authority of the Respondent Negri to conduct securities related business while in the employ of, or associated with, any Member of the MFDA shall be suspended for a period commencing on the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA and continuing until January 31, 2014;

(b) The Respondent Negri shall be permanently prohibited from being registered or acting in the capacity of Ultimate Designated Person, Chief Compliance Officer, Branch Manager or any compliance position for a Member of the MFDA commencing on the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(c) The Respondent Negri shall be prohibited from being an officer, director or acting

as a supervisor for a Member of the MFDA for a period for 5 years commencing on the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

(d) Within 12 months following the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA, the Respondent Negri shall write or rewrite and pass the Conduct and Practices Handbook course offered by the Canadian Securities Institute or another course approved by the MFDA that includes content concerning business ethics and procedure;

(e) The Respondent Negri shall pay a fine in the amount of $15,000;

(f) The Respondent Negri shall pay costs in the amount of $2,500;

(g) The membership in the MFDA of the Respondent PDQ shall be terminated effective on the date when this Settlement Agreement is accepted by a Hearing Panel of the MFDA and thereafter PDQ shall cease to have any of the rights and privileges of Membership in the MFDA;

(h) If the Respondent Negri wishes to continue to be an Approved Person of a Member of the MFDA in the future, the Respondent Negri shall exercise due diligence to uphold the standard of conduct and shall refrain from circulating sales communications that are misleading and shall comply with all applicable MFDA By-laws, Rules and Policies including MFDA Rules 2.1.1 and 2.7.2.

(i) The Respondent Negri shall attend in person, on the date set for the Settlement Hearing.

THE CIRCUMSTANCES

5. The circumstances are set out in detail in Part IV of the Settlement Agreement, which is attached as Appendix 'A' to these Reasons for Decision. The following is a brief summary of them:

> Improper payments without consent of MFDA and failure to provide information: During the years from August 2007 to August 2012, the Respondents were almost always subject to Early Warning requirements. They frequently failed to comply with those requirements and made payments in contravention of restrictions

imposed as a result of the designation of being in Early Warning. As well, during the years 2011 and 2012, the Respondents failed to provide timely responses to requests for information made by the MFDA.

Excessive withdrawals: In order to assist the Respondent Negri in paying his living expenses, the MFDA authorized him to draw certain amounts from PDQ. He took a number of payments which exceeded the authorized amounts.

Inaccurate sales communications: Starting in 2010 the Respondents circulated a sales communication which wrongly implied that the MFDA had endorsed certain of its financial products.

SERIOUSNESS OF THE CONTRAVENTIONS

6. We consider the contraventions to be very serious ones. Early warning designation is intended to help prevent a Member from getting into serious financial difficulty. When a Member becomes unable to meet its financial obligations there can be risk for its clients. Moreover, the public image of the investment industry can be compromised when individual Members are, or appear to be, financially insecure. A Member must, therefore, take its responsibilities, while under early warning, very seriously. The investment industry is a self-regulating one and the failure to provide requested information detracts from the MFDA's ability to supervise its Members' activities. The provision of sales information which is misleading can never be countenanced.

CIRCUMSTANCES OF MITIGATION

7. In determining an appropriate remedy it is always necessary to consider mitigating circumstances. The circumstances of mitigation which we take into account are:

(a) The Respondents have no previous disciplinary record;
(b) The Respondents fully co-operated with Staff's investigation of their conduct;
(c) The Respondents admitted to the misconduct and thereby:
    (i) accepted responsibility for the misconduct;
    (ii) demonstrated remorse; and
    (iii) avoided the need for a potentially lengthy investigation and hearing that would

have entailed additional effort, time and expense to the MFDA to bring about the resolution of this matter; in this case that savings is very substantial because the case had been set for a lengthy contested hearing.

(d) The conduct of the Respondents has not resulted in client complaints, known client losses or any claim against the MFDA Investor Protection Corporation;

(e) In light of the termination of the Member PDQ, the Respondents are limited in their ability to pay substantial financial penalties;

(f) The inaccurate or misleading sales communication was not widely distributed; and

(g) We are advised that Staff is sympathetic to the challenges entailed in operating a small mutual fund dealer.

THE DUTY OF A PANEL AT A SETTLEMENT HEARING

8. It is well settled that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties in their settlement agreement. Rather, our duty is to determine whether the penalty is a reasonable one and whether it meets the objectives of the disciplinary process which are to maintain the integrity of the Investment Services Industry and to protect the public. In *Re Professional Investments (Kingston) Inc.*, [2009] LNCMFDA 9 at paragraph 13 the following appears:

> In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. As has been said: 'The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.'

9. See also *Re Raymer*, [2009] LNCMFDA 15 at paragraph 4:

> 4. It is generally agreed that hearing panels should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable

> range of appropriateness given the conduct of the Respondent. (See, for instance, *Re Rodney Jacobson*, June 11, 2007, Prairie Regional Council, No. 200712; *Re Clark*, [1999] I.D.A.C.D. No. 40, and *Re Milewski*, [1999] I.D.A.C.D. No. 17.)

10. The courts have addressed the importance of settlements and have approved of their place in the disciplinary process. See *B.C. Securities Commission v. Seifert*, [2006] BCJ No. 225, where the following appears at p. 49:

> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. …

11. Finally we refer to the comments of an IIROC Hearing Panel in the recent case of *Re Vorstadt*, [2012] IIROC at p. 4:

> Before leaving this case we wish to stress the importance of respect for the settlement process. Settlement leads to fair, efficient and economical resolution of disciplinary matters. The settlement process should be encouraged and supported. In *Re Clarke*, [1999] I.D.A.C.D. No. 40, the Hearing Panel stated, at p. 3:
>
> > The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.

We subscribe to that view.

GUIDELINES AND OTHER DECISIONS

12. In determining whether a settlement is a reasonable one, a hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what might be an appropriate penalty in a given case. However guidelines are useful in that they show what penalties Members of the industry consider to be generally appropriate. The guidelines relevant to this case are:

> Financial Requirements: Minimum fine of $10,000 (Approved Person) or $25,000 (Member), suspension where the deficiency is result of deliberate or reckless disregard for requirements), completion of an appropriate industry course (Approved Person) interim order pursuant to s.24.3 of MFDA By-law No. 1, permanent prohibition (Approved Person) or termination (Member) in egregious case.
>
> Standard Of Conduct: Minimum fine of $5,000, interim order pursuant to s.24.3 of MFDA By-law No. 1, completion of an appropriate industry course (Approved Person), suspension or termination/prohibition in egregious cases.
>
> Sales Communications: Minimum Fine of $2,500, period of increased supervision, suspension (where material misrepresentations and/or other prohibited information contained in materials.)

We note that the cumulative fine agreed to in this case is slightly less than the total minimum fine suggested by those guidelines. The termination of the Membership of PDQ would render a fine against it to be meaningless.

13. Decisions in other cases can often be of some assistance in helping to indicate what might be a reasonable range of penalties. It is always necessary to be cautious about relying too heavily on decisions in other cases because no two cases are ever the same. Enforcement Counsel referred us to a number of previous decisions. We have decided to refer to three of them which bear some similarity to this case.

14. In *Re IOCT Financial Inc.* (2009) MFDA No. 200903, a fine totaling $20,000 was imposed for similar offences. In *Re ASL Direct Inc.* (2009) MFDA No. 200832, an Approved Person was fined $50,000. In addition to conduct similar to that which occurred in this case, that Approved Person had failed to deal honestly with clients in respect to a certain program, conducted securities business not for the account of the Member which employed him, and provided false and misleading information to the MFDA. In our view the conduct was more egregious than in this case. Finally in *Re Hill and Crawford Investment Management* (2009) MFDA No. 200834 an Approved Person was fined $25,000 for conduct similar to that in this case.

IMPACT OF THE PENALTY

15. Monetary penalties are imposed to act as a specific and general deterrence. The fine of $15,000 plus costs of $2,500, combined with the serious restrictions which are being placed upon his future ability to work in the investment industry, should amount to a significant deterrent to him and to others.

DECISION

16. At the conclusion of the hearing we withdrew from the hearing room. We considered the submissions made to us by counsel and the Respondents and all of the circumstances of the case. We were concerned about the amount of the fine. It is slightly below a range of fines which would be suggested by the guidelines and the decisions to which we have made reference. Indeed each of us, had we been making a decision at the end of a contested hearing, would have felt that a more significant fine was justified. However, we accepted that we must be guided by the caution expressed by the Hearing Panel in *Re Professional Investments (Kingston) Inc. (supra)* that our duty is not to determine the correct penalty but to decide whether it clearly falls outside of "a reasonable range of appropriateness". We also kept in mind the importance of respecting and supporting the settlement process. In the result, although not without some hesitation, we are unable to say that this fine clearly falls outside a reasonable range of appropriateness. We thus concluded that this settlement should be approved.

DATED this 5th day of December, 2013.

"Patrick T. Galligan"
The Hon. Patrick T. Galligan, Q.C.,
Chair

"Robert C. White"
Robert C. White,
Industry Representative

"Selwyn Kossuth"

Selwyn Kossuth,
Industry Representative

Appendix "A"

AGREED FACTS

Registration History

1. Negri has been registered in Ontario as a mutual fund salesperson and in other capacities as described more particularly below since May 1997.

2. Commencing November 13, 2006, Negri was registered as mutual fund salesperson with Agora Financial Services Inc. ("Agora"), a Member of the MFDA. In March 2007, holding companies owned and controlled by Negri and his brother-in-law RT, acquired Agora and changed its name to PDQ.

3. Commencing April 11, 2007, Negri was registered in Ontario as an officer (President), director, designated compliance officer and shareholder of PDQ, in addition to his registration as a mutual fund salesperson. During the period when PDQ was operating as a mutual fund dealer, Negri was also the Chief Executive Officer ("CEO") of PDQ.

4. Commencing on February 18, 2010, Negri was registered as a dealing representative (formerly "mutual fund salesperson") and as the Ultimate Designated Person ("UDP") and Chief Compliance Officer ("CCO") of PDQ.

5. On November 23, 2010, PDQ was registered in Ontario as an exempt market dealer (in addition to its registration as a mutual fund dealer).

6. Negri ceased to be registered as the President of PDQ on April 19, 2012 when another Approved Person, PS, became registered as the President. Negri continued to be registered as a dealing representative, UDP and CCO of PDQ.

7. In August 2012, MFDA Staff informed the Respondents that MFDA Staff was

contemplating the commencement of an application for an interim order of a Hearing Panel pursuant to s. 24.3 of MFDA By-law No. 1 in light of serious concerns, described in greater detail below, about the financial and operating condition of PDQ.

8. On August 29, 2012, MFDA Staff and the Respondents signed an Agreement and Undertaking, pursuant to which, among other requirements, all expenses, payments and withdrawals made from the bank accounts of PDQ had to be pre-approved by PS and PS became responsible for all financial filings to the MFDA, including PDQ's monthly Form 1 filings. PDQ also agreed that within 14 days it would provide a plan to restore its minimum required capital or arrange for the orderly transfer of accounts to another MFDA Member.

9. Following the execution of the Agreement and Undertaking, PDQ submitted a letter of intention to resign from membership in the MFDA and requested approval to transfer its Approved Persons and client accounts to Portfolio Strategies Corporation, a Member of the MFDA. That process was completed in November 2012, at which time PDQ ceased to operate as a going concern.

10. Since November 2012, Negri has been registered in Ontario as a dealing representative (only) with Portfolio Strategies Corporation.

Minimum Capital Requirements and History of PDQ

11. Between March 2007 and August 2012[1], while Negri was, among other things, the President and designated compliance officer of PDQ, he was responsible for, among other things, ensuring PDQ's compliance with its regulatory obligations, including maintaining minimum capital and monthly and annual financial reporting to the MFDA.

12. Since PDQ was acquired by Negri in March 2007, PDQ has rarely operated at a profit.[2]

[1] As described in the Registration History section above, in August 2012, as a result of the same regulatory concerns that are being addressed in this proceeding, as an interim measure, the MFDA entered into an Agreement and Undertaking with the Respondents that among other things required Negri to transfer control and responsibility for the regulatory obligations of PDQ (including financial reporting) to PS.

[2] Profit meaning that PDQ's operating revenues and incomes for the period exceeded its operating expenses.

According to the financial reports that PDQ was required to file with the MFDA:

i. during the calendar year 2007, Agora/PDQ reported net losses in 9 of 12 months and a total loss for the year of $47,539;
ii. during the calendar year 2008, PDQ reported net losses in 8 of 12 months, however PDQ reported positive net income for the year of $16,208;
iii. during the calendar year 2009, PDQ reported net losses in 6 of 12 months and a total loss for the year of $53,011;
iv. during the calendar year 2010, PDQ reported net losses in 9 of 12 months and a total loss for the year of $44,453;
v. during the calendar year 2011, PDQ reported net losses in 10 of 12 months and a total loss for the year of $82,407; and;
vi. during the calendar year 2012, PDQ reported net losses in 9 of the first 11 months of the year and a total loss of $89,472 as of November 30, 2012.

13. As a consequence of its financial difficulties, PDQ was designated in early warning by MFDA Staff and made subject to the requirements set out in MFDA Rule 3.4.2(b)(iv) during the following periods:

i. August 2007 – August 2008;
ii. May 14, 2009;[3] and
iii. continuously since September 2, 2009.

14. PDQ is designated as a Level II Member of the MFDA for the purposes of determining its minimum capital. In accordance with MFDA Rule 3.1.1, a Level II Member of the MFDA must maintain minimum capital of $50,000 and risk adjusted capital ("RAC") greater than zero at all times.

[3]PDQ was designated in early warning for a single day on May 14, 2009 because audit adjustments reported in the Member's 2008 audited financial statements reflected the fact that PDQ had under-accrued its liabilities. As a result of the audit adjustments PDQ failed the Profitability Test for the month ending January 31, 2009 and should have been designated in early warning as a consequence. However, by the time that the audit adjustments were reported to the MFDA, this deficiency had been resolved.

15. Between March 2007, when Negri acquired PDQ, and November 2012, when PDQ ceased to operate as a going concern, PDQ was frequently capital deficient in that it failed to comply with the minimum capital requirements stipulated by MFDA Rule 3.1.1. Specifically, PDQ was capital deficient during the periods listed below:

i. March 2007 – September 2007;
ii. November 2007 – February 2008;
iii. July 2009;
iv. September 2009;
v. December 2009 – March 2010;
vi. May 2010 – October 2011; and
vii. June – November 2012.

16. Between May 2010 and July 2012, the Respondents solicited and obtained investments in PDQ from at least six investors, totaling more than $240,000, for the purposes of recapitalizing PDQ. Although these capital injections temporarily addressed PDQ's capital deficiencies, since PDQ continued to sustain operating losses it continued to erode its capital. As a consequence, PDQ would soon become capital deficient again after the receipt of each new capital injection.

Contravention of Early Warning Requirements

17. During periods when PDQ was designated in early warning, PDQ and Negri were subject to the early warning requirements set out in MFDA Rule 3.4.2(b) and (c) including, in particular, the requirements that PDQ:

1. refrain from:

   (a) reducing its capital in any manner including by redemption, repurchase or cancellation of any of its shares;
   (b) reducing or repaying any indebtedness which has been subordinated;
   (c) directly or indirectly making any payments by way of loan, advance, bonus,

dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate;

(d) increasing its non-allowable assets (as specified by the MFDA) unless a prior binding commitment to do so exists or entering into any new commitments which would have the effect of materially increasing the non-allowable assets of the Member; or

(e) entering into any transaction or taking any action which when completed, would have or would reasonably be expected to cause the Member to trigger early warning;

without the prior written consent of the MFDA; and

2. provide to the MFDA such reports or information, on a daily or a less frequent basis, as may be necessary or desirable in the opinion of the MFDA to assess and monitor the financial condition or operations of the Member.

a) Unauthorized Payments

18. Between November 2007 and January 2008, PDQ, while designated in early warning and without the prior written consent of the MFDA:

i. increased its non-allowable assets by $1,416 by purchasing computer equipment, recording expense recovery from Approved Persons and prepaying training seminar expenses without the prior written consent of MFDA Staff contrary to MFDA Rule 3.4.2(b)(iv)(D); and

ii. made a $3,900 repayment of a subordinated loan to Negri without the prior written consent of the MFDA contrary to MFDA Rule 3.4.2(b)(iv) (C).

19. As a consequence of these contraventions of the early warning requirements, on April 23, 2008 MFDA Staff sent a warning letter to the Respondents reminding them of the importance of complying with all early warning requirements and, in particular, the obligation to

refrain from making payments to related parties, including Negri, without the prior written consent of the MFDA.

20. Between March 2011 and June 2011, while PDQ was designated in early warning and without the prior written consent of the MFDA, PDQ:

i. paid approximately $60,000 in legal fees that were attributable to Negri;
ii. paid approximately $1,284 for either personal accounting fees or a tax liability of Negri; and
iii. increased the non-allowable assets of PDQ by approximately $6,000 by capitalizing the cost of an office renovation as a leasehold improvement;

contrary to the early requirements in MFDA Rule 3.4.2 applicable to the PDQ.

21. Between 2011 and July 2012, while PDQ was designated in early warning and without the prior written consent of the MFDA, PDQ also made payments on at least two occasions to a related holding company owned by Negri, which amounts were then paid by the holding company to SP, a shareholder of PDQ and long-time friend of Negri. These payments constituted contraventions of the early warning requirements in MFDA Rule 3.4.2 that were applicable to PDQ when the payments were made.

22. Between March 2011 and July 2012, while PDQ was designated in early warning and without the prior written consent of the MFDA, PDQ and Negri also arranged for amounts to be paid to Negri from time to time and also paid numerous personal expenses of Negri from PDQ's operating account. Some of the payments to Negri came to the attention of the MFDA, in part because the payments were transparently identified on monthly financial reports filed by PDQ with the MFDA as increasing amounts "Due From A Related Party." Such payments were questioned by MFDA Financial Compliance Staff and following those discussions, Negri was directed to repay these unauthorized amounts to PDQ. However, many of the payments (especially payments towards expenses incurred for the personal benefit of Negri) were made without any acknowledgement on PDQ's monthly financial filings to the MFDA or by means of

any other disclosure to the MFDA that these amounts had been paid for the benefit of Negri and were only identified by Staff during a subsequent review of the general ledger and the supporting documentation maintained by PDQ. All of the foregoing payments were made to Negri, an officer and shareholder of PDQ, without the prior written consent of the MFDA and, as such, were contrary to the early warning restrictions applicable to PDQ under MFDA Rule 3.4.2(b)(iv)(C).

23. Between March 2011 and July 2012, PDQ paid more than $100,000 from its operating account to or for the benefit of Negri, including payments towards the mortgage on Negri's house, a personal line of credit, outstanding credit card balances, municipal property tax liabilities and personal draws of Negri. In addition, numerous personal expenses for food, entertainment, vacations and recreation were paid from the operating account of PDQ for the benefit of Negri.

24. Between February and April 2012, MFDA Staff repeatedly questioned the Respondents about entries in their monthly financial filings and cautioned them that the practice of paying compensation to and expenses for Negri without the prior written authorization of the MFDA constituted a contravention of the MFDA's early warning requirements, to which PDQ was then subject. Following conversations and e-mails outlining the concerns of Staff, the Respondents disregarded Staff's warnings and directions and continued the practice of making payments to or for the benefit of Negri without the prior written consent of the MFDA.

25. The unauthorized payments from PDQ to Negri or for his benefit had the effect of accelerating the erosion of PDQ's capital, which capital consisted in part of the amounts contributed by the aforementioned investors in PDQ for the purposes of recapitalizing PDQ.

26. By engaging in the conduct described above, PDQ and Negri failed to comply with the early warning requirements to which PDQ was subject between August 2007 and July 2012, contrary to MFDA Rules 3.4.2(b)(iv) and 3.4.2(c) and MFDA Rule 2.1.1.

b) Failure To Comply With Information Requests From The MFDA

27. Between January 2011 and November 2012, PDQ and Negri repeatedly failed to provide timely responses to requests for information made by MFDA Financial Compliance Staff responsible for assessing and monitoring the financial condition and operations of PDQ.

28. Although PDQ and Negri eventually provided all or substantially all of the information requested by MFDA Staff, their inability or unwillingness to promptly deliver the information impeded the ability of MFDA Staff to review and assess PDQ's financial and operating condition in a timely manner during a period in which PDQ was in early warning and was capital deficient for all but the months of November 2011 to May 2012.

29. By engaging in the conduct described above, PDQ and Negri failed to comply with the early warning requirements to which PDQ was subject between August 2007 and July 2012, contrary to MFDA Rule 3.4.2(b)(vii) and MFDA Rule 2.1.1.

Failure To Comply With MFDA Approvals On Withdrawals

30. After PDQ was designated in early warning in September 2009, Negri requested relief from the restrictions to which PDQ was subject under MFDA Rule 3.4.2 prohibiting PDQ from, among other things, making any payments to him without the prior written consent of the MFDA.

31. Staff approved a request by Negri authorizing him to withdraw up to a maximum of $1,500 per month from PDQ to pay personal expenses, pursuant to MFDA Staff's authority under MFDA Rule 3.4.2(c).

32. As set out in paragraphs 27 and 28 above, commencing at least March 2011, Negri began making substantial withdrawals from PDQ to pay personal expenses.

33. Generally, Negri incorrectly recorded these withdrawals as "Operating Expenses" of PDQ on the "Form 1, Part I –Statement D" that PDQ was required to file monthly with the

MFDA. These withdrawals ought properly to have been recorded as "variable compensation" to Negri on the Statement D, which would have allowed MFDA Staff to immediately and easily determine whether Negri was withdrawing more from PDQ than he was entitled to under the limits approved by MFDA Staff.

34. When Staff reviewed the general ledger and bank statements of PDQ (which PDQ was not required to file with the MFDA but which were requested by MFDA Staff), it became apparent that Negri was regularly making withdrawals from PDQ's operating account to pay personal expenses that often exceeded $6,000 per month.

35. In response to inquiries by MFDA Staff concerning the withdrawals from PDQ's operating account, Negri claimed that he made payments back to PDQ on a regular basis to reconcile any amounts he had withdrawn in excess of the amounts approved by MFDA Staff.

36. Although there is evidence that Negri made some deposits to PDQ's operating account to restore amounts he had previously withdrawn, he did not do so on a monthly or regular basis and the amounts that he deposited fell substantially short of the amounts that he would have needed to deposit to confine his prior withdrawals to the limits approved by MFDA Staff.

37. In March 2012, Negri requested permission from MFDA Staff to withdraw $5,000 per month from PDQ's operating account to pay personal expenses. MFDA Staff requested further information and disclosure from Negri to evaluate the impact that approving his request would have on PDQ's capital.

38. In April 2012, after assessing PDQ's financial and operating condition, Staff granted Negri approval going forward to withdraw any amounts from PDQ's operating account up to the amount that would still result in PDQ generating at least $1,000 in net income for the month.

39. Thereafter, between April 2012 and July 2012, Negri continued to withdraw substantial amounts each month from PDQ to pay personal expenses in spite of the fact that PDQ was incurring losses in excess of $8,000 in each of those months and, as such, was failing to generate

at least $1,000 of net income in each of the months.

40. By engaging in the conduct described above between March 2011 and July 2012, Negri made withdrawals from PDQ to pay personal expenses in excess of the amounts approved by MFDA Staff, contrary to MFDA Rules 3.4.2(b)(iv)(C) and 3.4.2(c) and MFDA rule 2.1.1.

Inaccurate Sales Communications

41. Commencing in 2010, PDQ and Negri circulated a sales communication to prospective investors in PDQ entitled "Confidential Offering 2009-2010". PDQ intended to use the proceeds from the offering to address its capital concerns. The sales communication inaccurately stated or implied that regulators such as the MFDA had endorsed PDQ and the "fully integrated product" that PDQ was promoting to investors. In particular, the document stated, among other things, that:

i. "To truly appreciate PDQ's potential, an investor must take into consideration that PDQ's plan has passed MFDA dealer audits and has overcome regulatory resistance expected with such a "unique fully integrated product"; and
ii. "Our strict, detailed, and comprehensive suitability process has been reviewed by the regulators. They haven't seen anything like this before and they are VERY impressed with it." (emphasis is original)

42. The statements in the preceding paragraph were inaccurate. The Respondents knew or ought to have known that neither the MFDA nor any other regulator had endorsed either expressly or by implication, or reviewed or commented on in any way that might be construed as an endorsement, PDQ's business model or plan, products, suitability process or any other feature of its operations, products or services.

43. By engaging in the conduct described above, PDQ and Negri contravened MFDA Rules 2.7.2 and 2.1.1.