



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: Arman Pekel

Heard: November 16 and 17, 2020 (Misconduct) and December 21, 2020 (Penalty)
by electronic hearing in Toronto, Ontario
Reasons for Decision: January 7, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, QC
Brigitte Geisler
Matthew Prew

Chair
Industry Representative
Industry Representative

Appearances:

David Barbaree)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Michael Brzezinski)	Counsel for the Respondent
)	
)	
Arman Pekel)	Respondent
)	
)	

I. MISCONDUCT

1. By Notice of Hearing dated January 22, 2020 (“NoH”), staff of the MFDA (“Staff”) made the following allegations against Arman Pekel (the “Respondent”):

Allegation #1: Between August 17, 2014 and March 8, 2018 the Respondent opened a new account for his client AU. In doing so, he falsely recorded as her address on the records of his Member his own address. This was contrary to his Member’s policies and procedures and MFDA Rules 2.1.1, 2.10. 2.5.1 or 1.1.2.

Allegation #2: Between February 1, 2017 and March 8, 2017 the Respondent deposited into his own personal bank account 4 cheques payable to AU amounting to approximately \$14,000. These were the proceeds of redemptions from AU’s investment account. This conduct was engaging in personal financial dealings with a client which gave rise to a conflict of interest. He failed to disclose this to his Member or failed to exercise responsible business judgment influenced only by the best interests of the client contrary to MFDA Rules 2.1.4 or 2.1.1.

Allegation #3: Between March 6, 2017 and January 2, 2018 the Respondent engaged in an outside activity which was not disclosed to and approved by his Member contrary to the Member’s policies and procedures and MFDA Rules 1.3, 2.1.1, 2.5.1, or 1.1.2.

2. A copy of the NoH is attached to these reasons as Exhibit “1”.

II. HEARING ON THE MERITS ON NOVEMBER 16 AND 17, 2020

3. At the commencement of the electronic hearing on the merits in this matter on November 16, 2020, counsel for the Respondent requested an adjournment. He wanted more time to prepare his case with respect to evidence that he believed would be relevant regarding appropriate sanctions and wanted more time to negotiate a possible settlement.

4. Staff opposed the request for adjournment on several grounds:

(i) It was highly unlikely in light of the history of discussions between the parties over this matter that the parties would reach agreement on a settlement. It was time to move forward to dispose of the matter.

- (ii) The request was made at the last moment and not on a timely basis with a notice of motion as provided for in the rules.
- (iii) Staff had two witness lined up for the hearing (one of whom might not have been available later), had completed its preparation, and was ready to proceed. An adjournment would be inconvenient and would result in further costs.
- (iv) Respondent's counsel had had sufficient time to prepare his case.
 - The NOH was issued in January, 2020.
 - The Respondent's Reply was prepared on February 20, 2020 and subsequently filed.
 - First appearances were heard on March 31 and April 1, 2020 when it was agreed that the hearing on the merits would be held on October 4 and 5, 2020. It was also agreed that any procedural or preliminary matter of concern to Staff or the Respondent should be brought to the panel to be dealt with on June 2, 2020.
 - Respondent's counsel did not bring anything for determination by the panel on June 2, 2020.
 - On September 28, 2020 Respondent's counsel requested Staff to agree to an adjournment of the hearing scheduled for October 4 and 5.
 - On October 4, 2020 Respondent's counsel requested an adjournment on the basis that he wanted more time to prepare his case. Staff opposed the request for adjournment, observing that it had not been brought on a timely basis and with a notice of motion as required by the rules. Furthermore, in Staff's view, witnesses and others would be inconvenienced by a delay and additional costs to freshen Staff's case would be incurred.
- (v) With reluctance, the panel granted the October 4 request for adjournment and set November 16 and 17, 2020 as firm dates for the hearing on the merits. It also set firm timelines for the Respondent to complete required pre-hearing disclosures to Staff, Staff having already completed its required pre-hearing disclosures.

5. During discussions of the adjournment request on November 16, 2020, it became clear to us that the Respondent was not going to challenge the evidence of Staff that would establish that the allegations were true and that the alleged misconduct had occurred.

6. Respondent's counsel's concern was that he might in the future decide that he should provide additional evidence that might be relevant to the panel in deciding what appropriate sanctions might be. However, Respondent's counsel was not clear that he had any specific evidence in mind, or whether with further research he might find some.

7. We rejected the request for adjournment for several reasons:

- (i) All parties and witnesses were present and ready to proceed with the misconduct aspect of this matter.
- (ii) We would have a subsequent penalty hearing to determine appropriate sanctions and would invite the parties to make written submissions in advance of the hearing.
- (iii) There had already been undue delay in bringing this matter to a hearing. Further inconvenience to participants and needless additional costs that would be incurred by reason of a further delay would not be in the public interest.
- (iv) Respondent's counsel had no reasons for not following the rules requiring a notice of motion for an adjournment to be brought on a timely basis.
- (v) The Respondent would not be unduly prejudiced if we refused an adjournment.

8. Respondent's counsel requested that the panel confirm that he would be entitled to produce additional evidence at a penalty hearing relevant to appropriate sanctions, if he decided to do so.

9. Staff submitted that a determination of appropriate sanctions at a subsequent penalty hearing should be made by the panel based on facts found by the panel to determine misconduct and that any additional evidence that Respondent's counsel might wish to put before the panel at a penalty hearing should have already been disclosed to Staff on a timely basis in accordance with the rules.

10. However, Staff argued, if any new evidence from Respondent's counsel was submitted in the future to the panel for a penalty hearing, whether the evidence was given in person by video

conference, or by affidavit, or otherwise, Staff should be afforded the opportunity to cross-examination as appropriate before such evidence was relied on by the panel.

11. We declined to rule at the hearing on how we would view possible future evidence.

12. However, we did encourage Respondent's counsel to flesh out his argument and possibly provide additional evidence relating to the Respondent's ability to pay. In this regard, we reminded him of the requirements for pre-hearing disclosure to Staff of any new documents or other new evidence he might want to rely on at the penalty hearing.

III. PRELIMINARY MATTERS

13. Staff requested an order that confidential financial information in the record not be made available to members of the public. We made the requested order.

14. We also determined under Rule 5 of our hearing rules that the hearings in this matter may be conducted electronically.

15. Finally, we ordered that witnesses, other than the Respondent, be excluded from the hearing prior to their testifying.

IV. ISSUES

16. The parties were in agreement on most of the evidence but the Respondent was in disagreement as to some of the conclusions that should be drawn from it. At the hearing it became clear that the three issues of concern for the Respondent were that we should find as facts:

- (i) that his addresses in Canada were properly shown as the addresses of his client AU on forms filed with his Member;
- (ii) that he had not benefited financially from his dealings with AU's funds but had acted on her instructions, directions, and with her consent; and
- (iii) that although he had not given written notice to or obtained the consent of his Member to his outside business activity, he had orally advised William Wherry, the Regional Director with the Member, of his involvement with the outside activity.

V. EVIDENCE, FACTS, LAW, AND CONCLUSIONS

17. In his Reply, Respondent admitted most of the facts alleged and conclusions drawn by Staff in the NOH.

18. At the hearing we heard from Sheila Daneshvaziri, an investigator with the MFDA, and we considered evidence in her affidavit that substantiated the particulars set out in the NOH.

19. We also reviewed an affidavit of the Respondent's client AU. (AU's testimony was relevant to allegations #1 and #2.) AU was in Turkey and was not available at the time of the hearing. Furthermore, she had not been made available to Staff at any time prior to the hearing. Consequently, Staff had not been given the opportunity to cross-examine AU on her affidavit.

20. Staff objected and raised several doubts and unanswered questions regarding facts stated in her affidavit. Staff suggested that we give little weight to AU's affidavit.

21. In addition to AU's affidavit, Respondent's counsel submitted in evidence three documents to corroborate the Respondent's assertions that he had acted on AU's instructions and with her consent and that he did not benefit from his personal financial dealings with AU: a text exchange in Turkish ostensibly between the Respondent and AU that the Respondent translated (the "Text Exchange"); a financial statement ostensibly from the Respondent's father's Turkish bank account (the "Bank Statement"); and a picture of a document containing the Respondent's handwritten notes that he said describes his financial circumstances (the "Handwritten Notes").

22. Staff argued that these three documents should be given little to no weight for the following reasons:

- (i) the Respondent produced these documents for the first time during the hearing, contrary to Rule 10.2 of the MFDA Rules of Procedure. The late disclosure deprived Staff of an opportunity to assess the authenticity of the evidence or to determine whether there were inconsistencies between these new documents or in comparison to the other evidence before the Hearing Panel. Rule 10.3 states that "If a party fails to provide a document, or make an item available for inspection, in accordance with Rules 10.1 and 10.2, then the party may not rely on the document

or item at the hearing without permission of the Hearing Panel and on such terms as the Hearing Panel considers appropriate.” The Respondent did not offer any explanation why these documents were not provided earlier. The hearing panel should not condone late disclosure of material documents in this way because it undermines the ability of the opposing party to prepare for the case and understand the case it has to meet.

- (ii) the evidence relied on by the Respondent does not tell a consistent story that corroborates his testimony at the hearing or his statements to Staff during the investigation. To the contrary, rather than add clarity, these documents serve to raise more questions about what really happened.
- (iii) the Respondent could have, but did not, call witnesses or produce additional documentation to demonstrate that these documents are authentic and therefore reliable. The Respondent’s father could have authenticated the bank statement and explained the purpose of the funds going in and out of his account. AU could have testified to the authenticity of the Text Exchange. The Respondent’s mother could have testified to having delivered funds to AU. The list goes on. Rather than call the best evidence, the Respondent relies on documents that contradict each other and asks the hearing panel to pick and choose elements of the evidence that supports his case.
- (iv) the Text Exchange and the Bank Statement are in Turkish. Both documents should have been translated by a certified translator or, at the very least, provided to Staff prior to the hearing to allow Staff to have these documents translated.

23. We gave these documents little weight, as suggested by Staff. However, we did not consider that they were fabrications or should be ignored completely.

24. AU stated in her affidavit that the Respondent acted regarding her funds with her knowledge and consent and that she had been paid all her funds in question.

25. Staff did question the validity of AU’s stamp-signature on some documents and suggested in argument that because of the evidence submitted by Staff showing the flow of funds into the

Respondent's bank account, the onus of proof had shifted to the Respondent to show that he had not benefited financially from the transactions with AU's funds.

26. We note that allegation # 2 and the relevant particulars in the NOH do not allege that the Respondent had profited financially from his activity with her funds, and never alleged that he acted without her consent. This was not something Staff had to prove for there to be misconduct as alleged in allegation #2.

27. We found nothing in AU's affidavit that suggested that the Respondent had not committed the misconduct alleged in allegations #1 and #2.

28. We did not agree with Staff's argument that the Respondent had the burden of proof to establish that he did not benefit financially from his dealings with AU's funds.

29. While it is true that where funds are taken into a person's control contrary to rules and regulations against it, an inference may arise that the person benefited financially. But from all the evidence, including the affidavit of AU, the letters referred to above, the fact that the Member and Respondent's counsel have been in direct communication with AU and she has not complained that she has been deprived of her funds, we determined that we could not make the inference that the Respondent benefited financially from his dealings with the funds of AU. Staff has not produced clear and cogent evidence that, on a balance of probabilities, the Respondent did benefit financially from his dealing with AU's funds.

Allegation #1

30. AU was not a resident of Canada. She lived and worked in Turkey during the time in question. She would occasionally stay with the Respondent and his family when she visited Canada.

31. The Respondent opened an account for client AU using his personal address as her address. MFDA Rule 2.1.1 requires that each Member and Approved Person deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. The Rule has been interpreted and applied in a purposive manner in a wide

range of circumstances, and is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

32. The Respondent's addresses in Canada were not and never were AU's addresses in Canada. The address required to be given on the Member's forms was not a postal address, or an address of convenience, but the address where the person resides.

33. Even if the Respondent's addresses had also been AU's addresses, which we concluded they were not, this would still be in contravention of the Member's policies and procedures prohibiting a client from having the address of a dealing representative of the Member.

34. The Respondent colluded with the AU to hide from the Member that AU was not a resident of Canada but was a resident of Turkey, and as such was not eligible to have an account with the Member.

35. Changing a client's address on the records of a member is a method Approved Persons have used in the past to conceal misconduct. Hearing panels have found such conduct to be a breach of Rule 2.1.1. For example, in *Huang (Re)*, the Approved Person changed client addresses on the records of the member to his own personal address, which the hearing panel determined breached MFDA Rule 2.1.1. Similarly, in *Patel (Re)*, the Hearing Panel determined that by changing the client's address on the records of the member to the branch address to prevent the client from receiving account statements, the Approved Person had breached MFDA Rule 2.1.1. [Huang (Re), MFDA File No. 201570, Central Region, September 8, 2016 at para. 18, SBA, Tab 6. Patel (Re), MFDA File. No. 201921, Central Region, September 17, 2019].

36. The Respondent's conduct also breached the Member's policies and procedures and, consequently, MFDA Rules 2.5.1, 2.10 and 1.1.2. MFDA Rules 2.5.1 and 2.10 require members to supervise Approved Persons and establish policies and procedures to ensure the handling of the Member's business is in compliance with the MFDA By-law, Rules, and Policies and applicable securities legislation. MFDA Rule 1.1.2 places a corresponding obligation on Approved Persons to do their part to facilitate compliance by the member with MFDA Rules.

37. By recording AU's address as his own on two occasions (the Respondent changed his own residence address), the Respondent undermined the Member's ability to supervise the

Respondent's conduct and protect the interests of AU and the public. It is serious misconduct, which can, and in this case, did facilitate additional misconduct.

38. In conclusion, we determined that based on clear and cogent evidence, on a balance of probabilities, allegation #1 had been proved.

Allegation #2

39. We reviewed bank statements, cheques and other documents relevant to allegation #2.

40. We were satisfied that the Respondent was likely acting on the instructions and directions, and with the consent of AU, and that the Respondent did not benefit financially from the activity. But that did not obviate the requirement that the Respondent should not deal with client's funds as he did.

41. MFDA Rule 2.1.4 requires that Approved Persons be aware of actual or potential conflicts of interest, disclose such conflicts to the member, and, together with the member, address all such conflicts by the exercise of responsible business judgment influenced only by the best interests of the client. A conflict of interest arises when an Approved Person advances or pursues their own interest in dealing with a client to whom they have an obligation of dealing fairly, sometimes to the detriment of the client.

42. Hearing panels have found that various acts by Approved Persons violate Rule 2.1.4, including entering into loans with clients, and accepting cash from clients and depositing those funds into their personal bank accounts. *Gaunt (Re), supra, SBA, Tab 12. Wang (Re), MFDA File No. 201762, Pacific Region, October 2, 2017, SBA, Tab 13. Huang (Re), Ibid, at para. 18, SBA, Tab 6. Pilkey (Re) 2017 CanLII 89032, SBA, Tab 14. Levine 2013 CanLII 27365, SBA, Tab 15. Sarang (Re), MFDA File No. 201535, Pacific Region, March 21, 2016, at para. 11, SBA, Tab 16. 46.*

43. The Respondent's conduct was deceptive and meant to undermine the Member's supervisory processes. His notes in the system and direction to the Member to mail cheques in AU's name to the address on record were done to give the appearance to the Member that the redemption proceeds were being sent directly to the client at a residential address in Canada. Moreover, the Respondent took steps to deceive his own financial institution by endorsing the

cheques to make it appear as though AU had signed her name, thereby enabling him to deposit the proceeds from redemptions from AU's investment account into his own bank account.

44. The Respondent's conduct gave rise to an actual or potential conflict of interest which the Respondent failed to disclose to the Member, or to address by the exercise of responsible business judgment influenced only by the best interests of the client.

45. The Respondent asserted that he was facilitating transactions at the request and for the benefit of AU, but the instructions from AU were not documented. If AU had subsequently complained that her money was unaccounted for, the Member would have had no records to demonstrate whether or how her money was delivered to her.

46. In conclusion, we determined that based on clear and cogent evidence, on a balance of probabilities, allegation #2 had been proved.

Allegation #3

47. The Respondent earned \$7,438 from his outside activities.

48. We heard testimony from William Wherry and considered evidence in his affidavit that satisfied us that the Respondent had not advised him orally of his outside business activity and that the Member did not have notice in writing of and had not approved of the Respondent engaging in the outside business activity.

49. We heard from the Respondent.

50. He asserted that he had advised Mr. Wherry orally of the Respondent's outside business activity. His description of the advisement was that it occurred casually in a parking lot. Even if it occurred, which Mr. Wherry denied, it would not have amounted to written approval of the Member.

51. We believed Mr. Wherry who had no motive to misrepresent the facts and who suggested that, if the oral advisement had been made, he would likely have required the Respondent to make it in writing and have it properly considered and approved or disallowed by the Member.

52. Under MFDA Rule 1.3, Approved Persons may have, and continue in, an outside activity provided that: (a) the activity is not prohibited by the MFDA or the applicable securities regulatory authority; (b) the Approved Person discloses the outside activity to the Member; (c) the Approved Person obtains written Member approval of the outside activity prior to engaging in such outside activity; (d) the outside activity of the Approved Person must not be such as to bring the MFDA, its Members or the mutual fund industry into disrepute; and (e) to the extent that the outside activity could be confused with Member business, clear written disclosure is provided to clients that any activities related to the outside activity are not the business of the Member and are not the responsibility of the Member.

53. The definition under Rule 1.3 includes any outside activity conducted by an Approved person “for which direct or indirect payment, compensation, consideration or other benefit is received or expected”.

54. Failure to disclose an outside gainful occupation constitutes a breach of MFDA Rule 2.1.1. As the Hearing Panel in *Vitch (Re)* stated:

“The need for a Member to know what other occupations and businesses its employee might be engaged in is obvious. There are many reasons why a Member must know what its employees are doing. We will mention only two of what seem to us to be the most important reasons. The first is that a failure to know about an employee’s other commercial activities impinges upon the Member’s ability to properly supervise its employee. The second reason is that the Member could be exposed to litigation alleging that the Approved Person’s activity was within the scope of his/her employment with the Member. [Vitch (Re), 2011 CanLII 72465 (CA MFDAC), at para. 53]

55. By engaging in an unauthorized outside activity, the Respondent deprived the Member of an opportunity to properly scrutinize and supervise the activities that the Respondent intended to engage in, which undermines the regulatory objectives of the Rule.

56. In conclusion, we determined that based on clear and cogent evidence, on a balance of probabilities, allegation #3 had been proved.

VI. DECISION ON MISCONDUCT

57. We announced our decision as to misconduct set out in paragraphs 38, 46, and 56 at the conclusion of the hearing on November 17, and set December 21, 2020 as the date for a hearing as to sanctions.

58. We invited the parties to file prior to the hearing written submissions as to sanctions.

VII. PENALTY HEARING ON DECEMBER 21, 2020

59. Staff filed a written submission as to penalty prior to the hearing on December 21, 2020. Respondent's counsel did not file a written submission.

60. The Respondent's counsel and Staff were in attendance at the penalty hearing on December 21, 2020.

61. Just before the commencement of the hearing Respondent's counsel advised by email as follows:

"I will be attending the hearing this morning on behalf of the respondent. However, for reasons I will explain to the panel, responding submissions have not yet been filed and an adjournment will be requested to permit the respondent an opportunity to have his case considered with the benefit of fulsome written submissions. I apologize in advance to the panel for the late notice."

62. Staff objected to the request for an adjournment.

63. We observed that Respondent's counsel had had more than a month since the misconduct hearing to prepare and file a written submission as to sanctions as we had invited him to do, and to obtain additional evidence relevant to sanctions if he so wished, and to disclose it to Staff prior to the hearing in accordance with pre-hearing disclosure rules. He had not done so and waited to this last moment to request an adjournment.

64. Respondent's counsel was asked why he could not make oral submissions at the hearing in response to Staff's submissions. We advised him that we had the whole day ahead available to him.

65. He was unable to articulate any valid reason for an adjournment.

66. We rejected the request for an adjournment and proceeded to hear oral argument from Staff and then from Respondent's counsel.

VIII. STAFF'S RECOMMENDATION FOR SANCTIONS

67. Staff proposed the following penalties against the Respondent:

- (i) A 2 year prohibition on the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-Law No. 1;
- (ii) A fine of at least \$20,000 pursuant to s. 24.1.1(b) of MFDA By-Law No. 1; and
- (iii) A costs award pursuant to s. 24.2 of MFDA By-Law No. 1.

68. Staff suggested that the fine imposed by the panel should be large enough to result in disgorgement of the financial benefit that the Respondent received from engaging in the misconduct.

69. Staff provided a bill of costs for \$11,650 which did not include costs attributable to time for internal meetings, correspondence, telephone calls, and additional research and disbursements, or for photo copying, postage, office supplies, courier services and the like.

70. We found the bill of costs to be reasonable.

IX. RESPONDENT'S COUNSEL'S RECOMMENDATION FOR SANCTIONS

71. Respondent's counsel suggested as mitigating factors relevant in determining appropriate sanctions that:

- the misconduct in allegations #1 and #2 involved only one client;
- the Respondent had no prior disciplinary history with the MFDA;
- there was no evidence of client loss or other harm from the misconduct;
- the Respondent did not gain any financial benefit from dealing with AU's funds or regarding her address of record;

- the Respondent acted only in regard to her best interests, on her direction, and with her consent; and
- his conduct did not involve fraud or deception regarding clients or members of the public.

72. Respondent's counsel submitted that the Respondent was impecunious and was unable to pay any significant amounts in fine or costs.

73. He suggested that only a nominal fine, if any, should be imposed.

X. CONSIDERATIONS

74. Evidence from the Respondent indicated that the Respondent had previous employment experience in the securities industry. He had been a compliance manager at different firms. He had been responsible for establishing oversight procedures for a dealer under IIROC jurisdiction. He was not new to the securities regulatory scene in 2013 with over 6 years' experience in compliance. He had read and should have been familiar with his Member's policies and procedures. He had signed an agreement with his Member to abide by its policies and procedures.

75. We concluded that the Respondent's misconduct, at best, showed a careless disregard for compliance by him with the rules, or, at worst, showed a deliberate intention to mislead his Member or keep his Member in the dark to enable the Respondent to operate outside the supervision and control of the Member. His actions were deceptive and meant to undermine the Member's supervisory processes.

76. We took into consideration the mitigating factors outlined by Respondent's counsel. However, notwithstanding these factors, the Respondent's misconduct in this case was serious and warrant significant sanctions to protect the public, to reflect the seriousness of the misconduct, and to deter others from engaging in similar misconduct.

XI. DETERRENCE, ABILITY TO PAY

77. We reviewed financial information about the Respondent, including yearly income, assets, debt and expenses, and other information, employment history and prospects of the Respondent and his wife, his education and work experience, his current employment situation and his likely

income generating prospects going forward with restrictions in effect from measures to deal with the Covid-19 pandemic.

78. We were not comfortable with the quality of some of the financial and employment information we were provided with or the way it was presented (often orally in answer to our questions without further backup confirmatory evidence). We considered objections and concerns about it raised by Staff.

79. In our final analysis of the evidence, however, we concluded that the Respondent has limited assets available to him and that he and his family are struggling economically to make ends meet. Accordingly, we determined that an instalment payment provision was appropriate.

80. We were satisfied that any fine and costs award larger than what we ultimately determined to be appropriate as set out below would be greater than required in his circumstances to provide a sufficient and meaningful deterrent for him and would likely impose an excessive, yet unnecessary, burden on him.

81. With respect to specific deterrence, the fine we decided upon exceeds the benefit that the Respondent derived from his misconduct. With respect to general deterrence, the prohibition, fine, and costs award will send a message to others in the mutual fund industry that this type of misconduct will not be tolerated.

XII. PENALTY DECISION

Prohibition

82. A prohibition of 5 years is appropriate. This will be preventative and prophylactic against possible future harm by the Respondent while acting as an employee of or associated in any capacity with a Member of the MFDA.

83. However, an appropriate fine is also necessary: since the Respondent is and has been out of the securities business since January 2, 2018 and has no current book of business, and his prospects for returning soon to the industry without a prohibition order would still be unfavourable, we concluded that a 5 year prohibition, while meaningful, alone would not have enough impact on

the Respondent as a sufficient deterrent to him and others in the industry who might be inclined to commit the same or similar misconduct.

Fine

84. A global fine for the all the misconduct is appropriate in this case.

85. We believe that a fine of \$15,000 and a costs award of \$10,000 for a total payment of \$25,000 are appropriate and will have sufficient impact on the Respondent in his current circumstances, and therefore, together with the prohibition, will constitute an adequate deterrent.

86. However, in view of the Respondent's current financial position and his employment and income earning prospects, we determined that the amount of \$25,000 may be paid in 50 monthly instalments of \$500 each, without interest, on the first day of each month, with the first instalment commencing July 1, 2021. If any instalment is not paid when due, the unpaid balance of the fine and costs award shall thereupon become due and payable unless a panel of the MFDA agrees otherwise.

XIII. OTHER MATTERS CONSIDERED

87. In coming to our decision on sanctions we reviewed the precedent cases referred to by Staff and by Respondent's counsel. There was a wide range for penalties in the cases, and the facts and circumstances of the various respondents were different.

88. We also considered the MFDA Sanction Guidelines, and particularly section 11 that provides as follows:

“The Respondent's ability to pay may be a consideration in determining the appropriate monetary sanction to be imposed. However, it is only one of the factors to be weighed in relation to all other applicable factors including general and specific deterrence and the need to ensure public confidence in the MFDA's disciplinary processes. The burden is on the Respondent to raise the issue and to provide evidence of inability to pay, such as tax returns or audited financial statements. Evidence of a bona fide inability to pay may result in the reduction or waiver of a fine, or in the imposition of an installment payment plan. In cases in which Hearing Panels impose a lesser monetary sanction based on a bona fide inability to pay, the Reasons for Decision should so

indicate. Financial resources – When a Respondent has significant financial resources, a higher fine may be warranted in order for the sanction to be a specific deterrent.”

XIV. FORMAL ORDER

89. We order the following sanctions:

- (i) The Respondent is prohibited for a period of 5 years commencing January 1, 2021 from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to section 24.1.1 (e) of MFDA By-law No. 1;
- (ii) The Respondent shall pay a fine of \$15,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- (iii) The Respondent shall pay costs in the amount of \$10,000, pursuant to section 24.2 of MFDA By-law No. 1.
- (iv) These amounts may be paid in 50 monthly instalments of \$500 each, without interest, on the first day of each month, with the first instalment commencing July 1, 2021.
- (v) If any instalment is not paid when due, the unpaid balance of the fine and costs award shall thereupon become due and payable unless the MFDA provides otherwise by order of a hearing panel.

DATED this 7th day of January, 2021.

“Paul M. Moore”

Paul M. Moore, QC
Chair

“Brigitte Geisler”

Brigitte Geisler
Industry Representative

“Matthew Prew”

Matthew Prew
Industry Representative

Exhibit “1”

Notice of Hearing

File No. 202007



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Association canadienne des courtiers de fonds mutuels

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PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Arman Pekel

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) in the hearing room at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on March 31, 2020 at 10:30 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Arman Pekel (“Respondent”).

DATED this 22nd day of January, 2020.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
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Toronto, ON M5H 3T9
Telephone: 416-945-5134
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between August 17, 2014 and March 8, 2018, the Respondent opened a new account for a client and falsely recorded the client's address on the records of the Member as the Respondent's personal address, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.10, 2.5.1, or 1.1.2.

Allegation #2: Between February 1, 2017 and March 8, 2017, the Respondent deposited four cheques payable to a client, which constituted the proceeds of redemptions from the client's investment account totaling approximately \$14,038.25, into his personal bank account, thereby engaging in personal financial dealings with a client which gave rise to a conflict of interest that he failed to disclose to the Member or address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 or 2.1.1.

Allegation #3: Between March 6, 2017 and January 2, 2018, the Respondent engaged in an outside activity which was not disclosed and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3, 2.1.1, 2.5.1, or 1.1.2.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From May 31, 2013 to January 2, 2018, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with Investors Group Financial Services Inc. (the "Member"), a Member of the MFDA.
2. On January 2, 2018, the Member terminated the Respondent.
3. The Respondent is not currently registered in the securities industry in any capacity.
4. At all material times the Respondent carried on business in Toronto, Ontario.

Allegation #1 – Opening an Account for a Client Using the Respondent’s Address

5. At all material times, the Member’s policies and procedures provided that the address of any client on the records of the Member must be that of the client and cannot be the Respondent’s personal or business address.
6. On or about April 2, 2008, client AU became a client of the Member. Initially, she opened a joint account with her spouse that was serviced by a different Approved Person of the Member.
7. Commencing in August 2014, the Respondent became the Approved Person responsible for servicing client AU’s accounts at the Member.
8. On August 17, 2014, the Respondent prepared a New Account Application Form (“NAAF”) for client AU and open a registered retirement savings plan (“RRSP”) with the Member in client AU’s name. The Respondent falsely recorded client AU’s address on the NAAF as the Respondent’s personal residential address in Toronto, Ontario.
9. At the time the Respondent prepared the NAAF, client AU was teaching at a university in Turkey.
10. In or about January 2016, the Respondent moved to a different residence in Toronto, Ontario.
11. On or about February 1, 2017, the Respondent falsely updated client AU’s address on the records of the Member to the Respondent’s new personal residential address.
12. As described in greater detail below, on or about February 1, 2017, client AU instructed the Respondent to redeem her investments in her RRSP account and close the account with the Member.
13. By opening a new account with the Member for a client and falsely recording the client’s address on the records of the Member as the Respondent’s personal residential address, the Respondent engaged in conduct contrary to the Member’s policies and procedures, and MFDA Rules 2.1.1, 2.10, 2.5.1, or 1.1.2.

Allegation #2 – Personal Financial Dealings with a Client

14. On or about February 1, 2017, client AU instructed the Respondent to redeem her investments in her RRSP account with the Member and close the account.

15. Commencing February 1, 2017, the Respondent facilitated four separate redemptions from client AU's account. On each occasion, he submitted the redemption to the Member for processing, and arranged for the redemption proceeds to be paid by cheque payable to client AU and delivered to client AU's address on record with the Member. As described above, the Respondent had recorded client AU's address on record with the Member as the Respondent's personal residential address in Toronto.

16. The Respondent received the four cheques comprising the proceeds of redemptions from client AU's accounts at his personal residential address.

17. The Respondent endorsed the four cheques himself or applied a stamp of the client's signature on the cheques.

18. The Respondent deposited the four cheques into his own personal bank account on the dates and in the amounts listed below:

- a) February 1, 2017 - \$4,000;
- b) February 2, 2017 - \$4,000;
- c) February 27, 2017 - \$4,200; and
- d) March 8, 2017 - \$1,838.25

19. The Respondent's conduct gave rise to an actual or potential conflict of interest which the Respondent failed to disclose to the Member, or address by the exercise of responsible business judgment influenced only by the best interests of the client.

20. By virtue of the forgoing, the Respondent engaged in personal financial dealings with client AU, contrary to MFDA Rules 2.1.4 or 2.1.1.

Allegation #3 – Undisclosed and Unapproved Outside Activities

21. At all material times, the Member's policies and procedures required its Approved Persons to disclose to, and obtain approval from, the Member prior to engaging in any outside activities.
22. On April 6, 2017, the Respondent entered into an agreement with a medical supply company that specializes in low intensity light therapy. Under the terms of the agreement, the Respondent agreed to, among other things, act as an independent agent of the medical supply company to identify international distributors or a purchaser for the company. Pursuant to the agreement, the Respondent was eligible to receive a "success fee" from the company, including 10% commission for any sales of systems of the company that the Respondent initiated and closed.
23. The Respondent did not inform the Member or obtain approval from the Member to engage in outside business activities with the medical supply company.
24. Pursuant to his agreement with the medical supply company, the Respondent engaged in the following activities:
 - a) in or about May 2017, he travelled to Turkey to solicit international purchasers or distributors for the medical supply company;
 - b) in September 2017, he organized meetings between a delegation from a Turkish company and the principal of the medical supply company; and
 - c) between April 2017 and December 2017, the Respondent also pursued opportunities for the medical supply company in the insurance industry.
25. In December 2017, a Turkish company that had been introduced to the medical supply company by the Respondent signed a distribution agreement. As a result, the Respondent received a total of approximately \$7,438 in fees from the medical supply company.
26. On January 2, 2018, the Member terminated the Respondent's registration.
27. By virtue of the foregoing, the Respondent engaged in an outside activity which was not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3, 2.1.1, 2.5.1, or 1.1.2.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: David Barbaree
Email: dbarbaree@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve** and **file** a **Reply**; or
- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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