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: Lorne Michael Piett

Heard: July 24, 2012 in Regina, Saskatchewan
Reasons for Decision: September 25, 2012

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.	Chair
Patricia Kloepfer	Industry Representative
Howard R. Mix	Industry Representative

Appearances:

Shari L. Boyd	)	For the Mutual Fund Dealers Association of Canada
Lorne Michael Piett	)	Self-Represented

A. THE ALLEGATIONS

1. The Mutual Fund Dealers Association alleged three violations of rules of the MFDA by Mr. Piett (the "Respondent"). The allegations were set out in a Notice of Hearing dated April 17, 2012 as follows:

> Allegation #1: Between November 2008 and April 2009, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending or facilitating the sale of 3 investment products to at least 10 clients outside of the Member, contrary to MFDA Rules 1.1.1.(a) and 2.1.1.
>
> Allegation #2: Between November 2008 and April 2009, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by selling, recommending or facilitating the sale of 3 investment products to at least 10 clients, contrary to MFDA Rules 1.2.1(d) and 2.1.1.
>
> Allegation #3: Between February 2009 and April 2009, the Respondent engaged in conduct unbecoming an Approved Person by failing to respond fully or accurately to inquiries from the Member and by omitting relevant information in his responses to the Member during the course of the Member's investigation, contrary to MFDA Rule 2.1.1.

B. THE EVIDENCE

2. A hearing was held before the Panel in Regina, Saskatchewan on July 24, 2012. Ms. Shari Boyd appeared on behalf of the MFDA and Mr. Piett was self-represented.

3. The primary evidence before the Hearing Panel consisted of a fifty-five paragraph affidavit of Alan Currie, the Manager of Investigations for the Prairie Region of the Mutual Fund Dealers Association of Canada (the "MFDA"). Attached to Mr. Currie's affidavit were no fewer than forty-four exhibits. Mr. Currie was called as a witness at the hearing and was questioned by both MFDA Counsel and the Respondent. The Respondent also testified at the hearing.

4. There is no substantial dispute between the parties with respect to the fundamental facts.

We will attempt to accurately summarize them.

5. The Respondent was registered as a mutual fund salesman with Investia Financial Services Inc. ("Investia") from November 24, 2004 to April 30, 2009. He resigned from Investia and from the industry in 2009.

6. While with Investia he recommended or facilitated the sale of three investment products that were not approved for sale by Investia. The sales were the following:

- Bonds issued by Focused Money Capital Ltd totaling $1,239,320.
- Shares in Edgeworth Mortgage Investment Corporation worth $1,244,400.
- Bonds issued by Foundation Mortgage "Two" Corporation worth $584,000.

7. The sale or the facilitation of the sale of the three investment products by the Respondent were conducted through an arrangement with a firm called CDS Consulting and involved at least ten clients of Investia. Prior to buying the investments, in order to free up funds to do so, the ten clients sold all or substantially all of the mutual funds held in their accounts at Investia, which incurred Deferred Sales Charges (DSC) of approximately $107,354. Their accounts were transferred to another firm, Olympia Trust Self-Directed Plans ("Olympia")

8. The Respondent as a result of the sales earned approximately $157,000 in commissions from CDS Consulting. He later reimbursed two clients $38,233 of the DSC fees incurred.

9. The Respondent did not disclose or get approval from Investia for his arrangement with CDS Consulting. When questioned by Investia regarding the activity occurring in the accounts of the ten clients, the Respondent failed to answer forthrightly or omitted important details in his response. More specifically, the Respondent said the clients were seeking other financial solutions but he did not disclose that he was involved in assisting the clients in the other investments. Also, he failed to clarify the relationship between himself, Olympia and CDS Consulting and did not disclose the fact that he was receiving compensation from CDS Consulting.

10. In his testimony, on cross-examination, Mr. Currie acknowledged that Mr. Piett had

cooperated with the investigation of MFDA and had provided all requested documents. Reference was made to a letter which was an exhibit to Mr. Currie's affidavit dated October 14, 2010, as evidence of Mr. Piett's cooperative attitude. The letter in its entirety reads as follows:

> "October 14, 2010
>
> Mutual Fund Dealers Association
> 121 King St W.
> Suite 1000
> Toronto, Ontario
> M5H-3T9
>
> Attention: Elena Brunati/MFDA File #03175/10/08/SK
>
> I am writing this letter to answer and explain the questions asked of me by the MFDA in regards to my dealings with Olympia Trust.
>
> I will first explain the events leading up to my association with Olympia Trust, it all began at the start of 2008, meeting with clients during the RRSP review time, I noticed some clients were starting to get concerned with the economy and their rates of return through their portfolios, with the fall of Bear Sterns Bank and the Financial Markets, I was put under increased pressure to do something, and with my clients being my number one priority, I moved a significant amount of RRSP/RRIF money into Money Market funds prior to the Big Crash later that fall, the clients that moved were very concerned and did not want to return to the traditional mutual fund markets, they asked to see if there was anything out in the financial markets that they could participate in, at this point I started to investigate Exempt Market Products, after reviewing many companies, I was in a position that was confusing, and what I mean by that is, I was contemplating leaving the financial business totally, but the people that are my clients are my friends as well and I did not want to leave them in that position.
>
> Early in 2009, I had facilitated an arrangement with CDS Consulting, and my first priority was to take care of the clients that wanted to move to the exempt product line, at this time you were not required to be licensed to sell exempt products, I was also still contemplating staying in the financial industry. I finally made the decision on April 30th, 2009 to leave the Mutual Fund Industry. (See resignation letter) and to concentrate on the Exempt Market Investments, all DSC fees were disclosed to the clients prior to leaving Investia Financial, also to this day I do not believe there has been a client complaint.
>
> Also, what should be known, is that my remaining clientele was sold to Neil Johnson an Investia Representative. (see resignation letter).
>
> Lorne M. Piett"

Mr. Currie also acknowledged that the complaints to MFDA came from Investia and none of the ten clients filed complaints.

11. Mr. Piett testified that he facilitated the sales outlined above through CDS Consulting at a time when there was turmoil in the investment industry and clients wanted to divest themselves of mutual funds. He was adamant that he was acting in the best interests of his clients and that he provided them (the clients) with full disclosure. He testified that he did not know that his actions were in breach of MFDA rules and that if he had been told by Investia that he was in breach of the by-laws, he would have stopped.

C. THE ISSUES AND THE MFDA RULES

12. The MFDA relied on Allegation #2 as an alternative to Allegation #1. As will become clear later in this decision, it is not necessary for this Panel to consider Allegation #2. For ease of reference, we will set out the MFDA by-laws and rules being relied upon by the MFDA.

13. MFDA Rule 1.1.1 states that:

> 1.1.1. Members. No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:
>
> (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as previously provided in the Rules) and in accordance with the By-laws and Rules, other than:
>
> (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
> (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the *Bank Act (Canada)* and the regulations thereunder and applicable securities legislation.

By-law 1.1 (i.e. Section 1 of MFDA By-law No. 1), referred to in the above rule, provides the definition of "securities related business" as follows:

> "Securities Related Business" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation;

MFDA Rule 2.1.1. provides:

> 2.1.1. Standard of Conduct. 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.

D. THE SUBMISSIONS

14. The MFDA submitted that Rule 1.1.1(a) 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) and 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. It was submitted that by limiting the authority of an Approved Person to trade only securities approved for sales by the Member and through the facilities of the Member, Rule 1.1.1(a) protects primarily the interests of member clients, but also the interests of Members and Approved Persons. The MFDA made reference to two previous hearing panel decisions which outline the rationale behind the rule. (*Re Breckinridge*, MFDA File No. 200718 (November 14, 2007) and *Re Larson*, MFDA File No. 200826 (October 14, 2009).) It was submitted that MFDA hearing panels have consistently held that an Approved Person who sells, recommends or facilitates the sale of securities to clients, which have not been for approved sale by the Member, are engaged in securities related business outside the purview of the Member and is a breach of the rule. In addition to the *Breckinridge* and *Larson* decisions, reference was made to *Re Majdoub*, MFDA File No. 201010 (November 12, 2010) and *Re Westgard*, MFDA File No. 200937 (July 15, 2010). It was submitted that based on the plain meaning of the rule, and the interpretation given to it by other hearing panels, the conduct of the Respondent in the present case clearly constitutes security related business. The securities related business in this matter was conducted outside of the Member and was in contravention of MFDA Rule 1.1.1.

15. The MFDA also submitted that Rule 2.1.1 was breached. Where an Approved Person conceals outside business activity from the Member, the Approved Person has failed to observe high standards of ethics and conduct in the transaction of business and also has failed to refrain from engaging in business conduct or practice which is unbecoming or detrimental to the public interest. It was further submitted that this is even more the case when an Approved Person undertakes securities related business not on the account of the Member and not through the facilities of the Member.

16. It was submitted that the Respondent by misleading and failing to respond fully to the

Member engaged in serious misconduct which fundamentally undermines the ability of the Member to fulfill its obligation to supervise the Approved Person's conduct in accordance with the by-laws, rules and policies of the MFDA and the internal rules of the Member. It was argued that such conduct is unbecoming and detrimental to the public interest and is a clear breach of the high standards of ethics and conduct that is required by Rule 2.1.1. By failing to fully respond to Investia's inquiries, the Respondent interfered with Investia's ability to conduct a reasonable supervisory investigation of his activities and the failure to respond amounts also to a failure to observe high standards of ethics and conduct as required by Rule 2.1.1.

17. The Respondent made oral submissions before the Panel. He acknowledged that he had violated the rules but that he had done so unwittingly. The remainder of his submissions related primarily to appropriate penalty, which we will review later in this decision.

E. ANALYSIS AND DECISION

Allegation #1

18. The Respondent acknowledged that he did breach MFDA Rules. Independent of his acknowledgment, we find that the evidence clearly established that the Respondent did carry on a securities related business not for the account of the Member (Investia) and not through its facilities. While working for Investia he developed an association with CDS Consulting. He then advised ten of his clients to purchase securities through CDS Consulting. To facilitate the purchases, the clients sold mutual funds that they held through Investia and incurred significant fees as a result. These actions are a clear breach of Rule 1.1.1(a).

19. The Respondent's only defense was that he was not aware he was breaching MFDA Rules and that if he had been told by Investia that he was, he would have stopped his actions. This is not an acceptable defense. The Respondent was in the investment industry for over 25 years and it is his professional responsibility to be aware of the rules and by-laws of the regulatory body that oversees his activities. Also, it is difficult for this Panel to accept that the Respondent would have seen nothing wrong facilitating trades through another firm, and receiving commissions from that firm, while working for Investia, even though he may not have been aware of the precise rule of the MFDA to proscribe such conduct. Further, when Investia

asked about the sale of mutual funds by several of his clients he was not forthright in his response which suggests that he was aware that not all was above board. Moreover, Investia only discovered the Respondent's conduct after the transactions were completed thus any warning about breaching MFDA rules would have been completely ineffective for the trades in question.

20. It is our conclusion that the Respondent did breach Rule 1.1.1(a) 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(a) because it is conduct that is detrimental to the public interest. We agree with the Panel in *Re Breckenridge, supra,* where it outlined the public interest rationale underlying Rule 2.1.1. At page 17 and 18 of the *Breckenridge* decision, the Panel stated:

> We agree with the submission of Enforcement Counsel that MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. This Rule creates a regime where an Approved Person is only permitted to sell investment products that have been first approved for sale by the member with which the Approved Person is registered and which are sold through the facilities of that Member.
>
> Rule 1.1.1(a) is designed to protect both the Member and its clients. When a transaction is done off the books, the Member loses its ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor.
>
> Previous MFDA Hearing Panels have held that an Approved Person who facilitates investments by clients of the Member in products or companies unknown to and unapproved by the Member, or who acts as an intermediary between clients and the perpetrators of an investment scheme, is engaged in securities related business outside of the Member and has, therefore, breached Rule 1.1.1.
>
> > In the Matter of Joseph Van Der Velden and Andrew Stokman, MFDA Hearing Panel, Reasons for Decision dated October 14, 2005, pp. 2-3.
> >
> > In the Matter of Ernest Ming Chung Lo, MFDA Hearing Panel, Reasons for Decision dated April 3, 2006, p. 12.

21. We find that the trades conducted by the Respondent through CDS Consulting and without the acknowledgment or approval of Investia were not in the public interest and thus amount to a breach of MFDA Rule 2.1.1(a).

Allegation #2

22. The MFDA made its second allegation as an alternative to Allegation #1. Because of our

finding with respect to Allegation #1, it is not necessary for us to address this allegation.

Allegation #3

23. The Respondent did not challenge MFDAs allegation with respect to a breach of Rule 2.1.1, which alleges he failed to respond fully or accurately to inquiries from Investia. It is our conclusion that it has been established that he failed to respond when Investia made inquiries to him. He did not indicate openly that he was instrumental in advising clients to purchase securities from CDS and sell their mutual funds. And, clearly, he did not disclose to Investia his relationship with CDS Consulting and, more particularly, that he was receiving fees from that firm.

24. It is our conclusion that failure of an Approved Person to be candid with the Member, particularly when responding to specific inquiries, is a serious breach. We agree with the MFDA that it fundamentally undermines the ability of the Member to fulfill its obligations to supervise the Approved Person's conduct. This clearly is detrimental to the public interest because it impairs the checks and balances that the Member, and the MFDA, have in place to protect not only individual clients but the integrity of the industry. The Respondent's actions are a breach of Rule 2.1.1.

Conclusion on Allegations

25. In summary, we find that the Respondent engaged in the following misconduct:

1) He conducted securities related business that was not carried on for the account and through the facilities of the Member contrary to MFDA Rules 1.1.1(a) and 2.1.1; and
2) He displayed conduct unbecoming of an Approved Person by failing to fully respond and accurately respond to inquiries from the Member and he omitted relevant information in his responses to the Member contrary to MFDA Rules 2.1.1.

F. PENALTY

26. The Panel having found breaches of the MFDA Rules by the Respondent must now turn

to the issue of an appropriate penalty to be imposed upon him. The by-laws of the MFDA, in Section 24.1.1, outline a broad range of sanctions available to a hearing panel ranging from a reprimand to a permanent prohibition. A panel may also impose fines not to exceed $5,000,000 per offence. Further, section 24.2 of the by-laws allows a panel to require the Approved Person to pay the whole or part of the cost of the proceedings.

27. The MFDA staff and the Respondent both made submissions with respect to penalty. The former asked the Panel to impose a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member. In addition MFDA counsel suggested a fine in the range of $150,000 - $200,000, and a contribution toward costs in a fixed amount of $7,500.

28. The MFDA reviewed in its written submissions, and orally, numerous case authorities that outline the factors a panel should take into account in determining appropriate penalty. It was submitted that the primary goal of securities regulation is the protection of the investing public. Reference was made to the Supreme Court of Canada decision in *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 where, in addition to the protection of the public, the Court found that securities regulation is concerned with ensuring market efficiency and maintaining public confidence in the system as a whole.

29. The MFDA also made reference to *Re Arnold Tonnies*, MFDA File No. 200503 (June 27, 2005) where the Hearing Panel said, at page 21, "the Court also has indicated that sanctions imposed in a securities regulatory context should be protective and preventative, intended to be exercised to prevent likely future harm to the capital markets (See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132)". In addition, the Supreme Court in *Re Cartaway Resources Corp.* [2004] 1 S.C.R. 672 has found that general deterrence should also be considered in determining an appropriate sanction. At paragraph 4 of the *Cartaway* decision Justice LeBel, speaking for the Court, said:

> …In my opinion, general deterrence is an appropriate factor in formulating a penalty in the public interest. General deterrence is both prospective and preventative in orientation. As such, it falls squarely within the public interest jurisdiction of securities commissions to maintain investor confidence in the capital markets.

And further at paragraph 64 the court said:

> The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission. Protecting the public interest will require a different remedial emphasis according to the circumstances. Courts should review the order globally to determine whether it is reasonable. No one factor should be considered in isolation because to do so would skew the textured and nuanced evaluation conducted by the Commission in crafting an order in the public interest. Nevertheless, unreasonable weight given to a particular factor, including general deterrence, will render the order itself unreasonable. Iacobucci, J. in *Pezim*, *supra* at p. 607, suggested that an example of such unreasonableness would be the exercise of the Commission's discretion in a manner that was capricious or vexatious.

30. The MFDA outlined numerous factors that former MFDA panels have taken into account in determining penalty. The MFDA weighed the conduct of the Respondent against the factors in support of its suggested penalty.

31. The Respondent made oral submissions at the hearing with respect to penalty. He indicated that his primary concern was with the amount of the fine. The Respondent said that he fully understood that deterrence of others is an important factor to be taken into account in a penalty and should be a concern of this Hearing Panel. However, he urged us to consider that he did not have a malevolent motive when he recommended to his clients the purchase of securities outside of the Member. He said he firmly believed that it was in the best interests of his clients at the time given the volatility of the markets.

32. He contrasted his situation to that in numerous other MFDA cases and other cases dealt with by regulatory authorities. In the present case, not one of Mr. Piett's clients made a complaint to the MFDA, which he intimated demonstrated that they were not dissatisfied with his conduct. The Respondent also submitted that throughout the MFDA investigation he was cooperative, contrasted with other reported MFDA cases. Also, he appeared for the disciplinary hearing unlike many other MFDA hearings where the respondents failed to make an appearance before the hearing panel.

Analysis and Decision on Penalty Issue

33. There are a number of factors that MFDA hearing panels have taken into account in determining the appropriateness of a penalty. These factors, based on court decisions, decisions of securities commissions and other MFDA Panels include the following:

- The seriousness of the allegations proved against the respondent;
- The respondent's past conduct, including prior sanctions;
- 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 the capital markets; and
- Previous decisions made in similar circumstances.

(See *Re Tonnies*, *supra*, at p. 23, and also see *Belteco Holdings Inc.* (1988), 21 O.S.C.B. 7743; *M.C.J.C. Holdings and Michael Cowpland* (2002), 25 O.S.C.B. 1133; and *Lamoureux (Re)*, [2002] A.S.C.D. No. 125.

We will now turn to an assessment of the most pertinent factors that we feel should be taken into account in determining penalty in this matter.

Seriousness of the Misconduct

34. It is our view that the conduct of the Respondent in this matter is a serious regulatory violation. The MFDA Rules and Regulations are put in place for the protection of the clients, and the integrity of the industry generally. Specific clients as well as the public generally rely upon them when dealing with Member firms. There is a confidence that follows the rules and regulations of a regulatory body which, in this case, would include confidence that recommended trades by an Approved Person would receive the scrutiny of the Member firm. The conduct of the Respondent in this case precluded that from occurring and thus precluded an assessment of

the appropriateness of the trade. This undermines the rationale for MFDA Rule 1.1.1(a) which requires that all securities related business is carried on for the account of the Member and through the facilities of the Member. Moreover, the Respondent's conduct was not an isolated instance; it occurred over a period of time and involved no fewer than ten clients.

Client Harm

35. As a result of the trades recommended by the Respondent, clients incurred DSC fees totaling approximately $107,354 in selling their mutual fund holdings with Investia to purchase the three investment products through CDS Holdings. The evidence is that the Respondent personally reimbursed $38,233 of the DSC fees to the clients. This still left $69,121 in DSC fees incurred by the ten clients. Further, the three investments have come under scrutiny of regulatory agencies. Thus, the full impact of the trades may not yet be known. In short, the conduct of the Respondent has caused harm to the clients even though none of the clients were the source of the complaints to the MFDA.

The Benefits Received by the Respondent

36. The evidence disclosed that the Respondent earned approximately $157,000 in commissions from CDS Consulting for the sale of the three investment products to clients. Taking into account the reimbursed DSC fees, it appears that he benefited as a result of the commissions to an amount in excess of $118,000.

Deterrence

37. As previously outlined in this decision, the general deterrent goal of any penalty is significant and has been recognized as such by the Supreme Court of Canada. Thus, a penalty imposed by this Panel must be mindful that it should serve to deter others in the capital markets from engaging in similar activity. Also, we must be mindful that the financial gain made by the Respondent as a result of his conduct should not exceed the penalties imposed upon him.

Other Factors

38. Other factors considered by this Panel include the fact that the Respondent was an experienced registrant in the securities industry. Indeed, by his own evidence, he had in excess of 25 years' experience. During those years he has not been the subject of any MFDA disciplinary proceedings, which must be considered to his credit. However, he cannot claim lenience because of inexperience or being a newcomer to the industry. Also, while the Respondent has cooperated with the investigation, much to his credit, it is not clear to us that he fully appreciates the seriousness of his conduct. While he may have been motivated by the best of concerns, his actions did place his clients at a significant risk.

Previous MFDA Decisions Re Penalty

39. We have reviewed previous MFDA decisions as a guide to determine an appropriate penalty range. We will briefly summarize them here. In *Re Bytnar*, MFDA File No. 201015 (February 10, 2011), the Respondent breached Rule 1.1.1 by engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member. The amounts of the investments involved were relatively small compared to those in the present case; they were in the range of approximately $200,000 in total. In addition to breaching Rule 1.1.1 the Respondent in the *Bytnar* case, an Approved Person, interfered with a Member's ability to conduct a reasonable supervisory investigation and failed to cooperate with the MFDA investigation. The penalty imposed by the Panel included a permanent prohibition, a fine of $150,000 and $7,500 in costs. The $150,000 fine was broken down as follows: $90,000 for engaging in securities related business, $10,000 for interfering with a Member's ability to conduct a reasonable supervisory investigation and $50,000 for failing to cooperate with the MFDA.

40. In *Re Hoard*, MFDA File No. 201009 (February 23, 2011), the Respondent had engaged in securities related business outside the Member, had continued in another gainful occupation and had personal financial dealings with a client. The securities related business amounted to approximately $843,000 of an investment product sold to 39 clients. The Panel found the appropriate penalty to be a permanent prohibition, a global fine of $100,000 and costs of $7,500.

41. In *Re Breckenridge*, *supra*, the Respondent had breached Rule 1.1.1 by engaging in securities related business outside the Member and selling securities not approved worth $1.9

million. In addition he was found to have breached Rule 2.1.1 by failing to observe high standards of ethics and conduct when he deliberately concealed from the Member the sales in question. The Panel imposed a permanent prohibition, a fine of $350,000 and costs of $7,500.

42. In *Re Larson*, *supra*, the Respondent facilitated investments in the amount of approximately $1.76 million for seven clients. The investments were not carried on for the account of the Member or through the facilities of the Member, contrary to both Rule 1.1.1 and 2.1.1. The Respondent also directed proceeds from clients' accounts to his personal bank account, thereby engaging in personal financial dealings with clients, contrary to MFDA Rules 2.1.4 and 2.1.1. The Respondent also failed to attend an interview at the offices of MFDA. The Panel imposed as a penalty a permanent prohibition and fines totaling $205,000, as well as costs of $7,500.

43. In *Re Majdoub*, *supra*, again a Respondent breached MFDA Rules 1.1.1 and 2.1.1 by engaging in securities related business that was not carried on for the account of the Member or through the facilities of the Member, and selling securities worth $840,000 that were not approved by the Member. The Respondent also engaged in a dual occupation which was not disclosed to or approved by the Member, in breach of MFDA Rules 1.2.1 and 2.1.1. The Panel found the appropriate penalty to be a permanent prohibition, a fine of $120,000 and costs of $10,000.

Conclusion Re Penalty

44. The Panel has carefully considered the evidence, the submissions of Counsel for the MFDA, the submissions of the Respondent, and the previous authorities with respect to penalty (which include the factors that should be taken into account). It can be seen from the summary of the previous decisions that the penalties for conduct similar to that engaged in by Mr. Piett universally include a permanent prohibition. Also, fines in the cases reviewed range from $100,000 to $350,000.

45. A review of the facts of the previous decisions compared with those in the present case cause us to conclude that Mr. Piett's misconduct was not the most egregious but was still very serious, leading us to conclude that a fine in the mid-range is appropriate. As a result, we order

that Mr. Piett be permanently prohibited from conducting any securities related business in any capacity. Also, we find that a fine in the amount of $175,000 is appropriate. Our reasoning with respect to the fine takes into account that the Respondent benefitted in commissions by approximately $118,000. If deterrence is a factor, any fine must exceed the gain and we have determined that a fine which is 50% greater than the commissions earned is an appropriate deterrent in this case. Finally, we order costs to be paid in the amount of $7,500 which, we are assured by MFDA Counsel, is significantly less than the actual costs incurred in the investigation and the hearing.

G. SUMMARY AND CONCLUSION

46. In summary, we find that Allegation #1 and Allegation #3 as set out in the Notice of Hearing have been proved and we order:

1) A permanent prohibition of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member;
2) A global fine in the amount of $175,000; and
3) Costs in the amount of $7,500.

DATED this 25th day of September, 2012.

"Daniel Ish"
Daniel Ish, Q.C.,
Chair

"Patricia Kloepfer"
Patricia Kloepfer,
Industry Representative

"Howard R. Mix"
Howard R. Mix,
Industry Representative

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