



**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: Lloyd A. Snyder**

Heard: December 9, 2014 in Charlottetown, Prince Edward Island  
Reasons for Decision: March 13, 2015

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Jason P. Downey	Industry Representative
Robert Malcolm	Industry Representative

Appearances:

Charles A. Toth	)	For the Mutual Fund Dealers Association of
	)	Canada
	)	
Barry B. Papazian	)	For the Respondent
	)	
	)	

A. THE ALLEGATIONS

1. By Notice of Hearing, dated the 30<sup>th</sup> day of September, 2013, the following Allegations were made against Lloyd A. Snyder (“Respondent”):

Allegation #1: Between 2005 and 2007, the Respondent misrepresented, or failed to fully and adequately explain the risks, benefits, material assumptions, features and costs of the leveraged investment recommendations that he implemented in the accounts of at least 15 clients, thereby failing to ensure that the leveraged investment recommendations were suitable and appropriate for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #2: Between 2005 and 2007, the Respondent failed to ensure that the leveraged investment recommendations that he implemented in the accounts of at least 15 clients were suitable and appropriate for the clients and in keeping with their investment objectives, having regard to the clients’ relevant “Know-Your-Client” factors including, but not limited to, the clients’ ability to afford the costs associated with the investment loans, their ability to withstand investment losses, and their risk tolerance, contrary to MFDA Rules 2.2.1 and 2.1.1.

B. HISTORY OF PROCEEDINGS

2. The Respondent served and filed a Reply to the Notice of Hearing, dated November 21, 2013.

3. The First Appearance took place before this Hearing Panel on November 25, 2013. At that time, on consent of the parties, the matter was put over until May 1, 2014, to permit Staff an opportunity to complete its investigation of certain additional complaints which it had been made aware of.

4. On May 1, 2014, following submissions, the Hearing Panel scheduled the Hearing on the Merits to take place on December 8-12, 2014, at a venue to be announced in Charlottetown, Prince Edward Island.
5. The Hearing Panel also scheduled August 6, 2014, as an interim appearance to consider a pre-Hearing Motion to be brought by the Respondent, as well as to deal with any procedural or scheduling matters.
6. The Hearing Panel was, subsequently, advised that the Respondent would not be proceeding with his pre-Hearing Motion.
7. On August 6, 2014, following submissions, the Hearing Panel directed that the next appearance would take place on September 3, 2014. The matter was adjourned to permit the Respondent an opportunity to review additional disclosure which had been made by Staff.
8. Shortly before September 3, 2014, the Hearing Panel was advised that the parties were in the process of attempting to finalize a settlement. Consequently, on consent, the matter was put over to September 30, 2014.
9. On September 26, 2014, the parties executed a Settlement Agreement.
10. On September 30, 2014, on consent of the parties, the Hearing Panel set December 9, 2014, at 1:00 p.m., at a specified place in Charlottetown, as the date, place and time for consideration of the Settlement Agreement.
11. Public Notice of the Settlement Hearing was provided on September 30, 2014, in accordance with Rule 15.2 of the MFDA's Rules of Procedure.

C. THE SETTLEMENT HEARING

12. At the commencement of the Settlement Hearing, on December 9, 2014, the Hearing Panel granted a joint Motion by Counsel for Staff and the Respondent to move the proceedings “in camera” while we considered the Settlement Agreement, as well as the written and oral submissions of Staff and the oral submissions of the Respondent.

13. After a detailed review of the Settlement Agreement, as well as a consideration of the submissions of the parties, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

14. On December 9, 2014, the Hearing Panel executed an Order giving effect to the terms of the Settlement Agreement. At that time, we advised that we would provide written Reasons for our Decision. These are those Reasons.

D. THE SETTLEMENT AGREEMENT

15. The salient portions of the Settlement Agreement are as follows:

**“AGREED FACTS**

**Registration History**

6. The Respondent has been registered in the securities industry since 1986.
7. From October 2003 to July 2010, the Respondent was registered in Prince Edward Island, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia as a mutual fund salesperson with Investia Financial Services Inc. (“Investia”), a Member of the MFDA.
8. The Respondent resigned from Investia effective August 1, 2010.

9. At all material times, the Respondent conducted business in Prince Edward Island.
10. The Respondent is not currently registered in the securities industry in any capacity.

**Allegation #1 –Failure to Explain the Risk and Benefits of Leveraging**

11. Between about 2003 and 2008, the Respondent recommended and facilitated the implementation of two leveraged investment strategies (collectively, the “Leverage Investment Strategies”) in the accounts of clients. He referred to the Leveraged Investment Strategies as:

- (a) the “Smith-Snyder Manoeuvre”; and
- (b) the “Forced Savings Program”.

12. The Leverage Investment Strategies involved clients borrowing monies to purchase return of capital (“ROC”) mutual funds.

**(a) The Smith-Snyder Manoeuvre**

13. The Respondent represented that the Smith-Snyder Manoeuvre was a variation, developed by the Respondent, of another leveraged investment strategy commonly known as the “Smith Manoeuvre”.

14. In the course of recommending and facilitating the implementation of the Smith-Snyder Manoeuvre, the Respondent directed and arranged for clients to:

- (a) obtain one or more investment loans, which were structured so that the clients were required to make principal-and-interest payments on the investment loans each month;
- (b) invest the monies obtained from the investment loans into ROC mutual funds, which the Respondent represented would generate proceeds each month;

- (c) use the proceeds generated by the ROC mutual funds each month to make additional mortgage payments on the clients' homes (i.e., the clients would continue to make regular mortgage payments from their existing income as they did prior to implementing the Smith-Snyder Manoeuvre);
- (d) obtain a home equity line of credit ("HELOC") on the clients' homes, which was structured so that each time clients made a mortgage payment and reduced the amount of the principal outstanding on their mortgage, the clients could re-borrow the amount of the principal they had repaid on the mortgage from their HELOC;
- (e) use the monies re-borrowed from the HELOC to make the principal-and-interest payments due each month on the investment loans as described in subparagraph (a) above;
- (f) claim a tax deduction each year equivalent to the amount of the interest payments paid in respect of the investment loans, which the Respondent represented would cause the clients to receive a tax refund;
- (g) use the monies obtained from the tax refund to make additional mortgage payments on the clients' homes;
- (h) continue with the process described in subparagraphs (a) to (g) above until the clients had fully repaid the mortgages on their homes;
- (i) once the clients' mortgages were fully repaid, use the proceeds generated by the ROC mutual funds (and the regular mortgage payment which the clients were no longer required to pay toward their mortgage) to accelerate the repayment of the investment loans; and
- (j) once the investment loans were repaid as described in subparagraph (i) above, use the proceeds generated by the ROC mutual funds (and the regular mortgage payment which the clients were no longer required to pay toward the mortgage) to repay the HELOC.

15. In the course of recommending the Smith-Snyder Manoeuvre, the Respondent represented to clients that, among other things:

- (a) the ROC mutual funds could be relied upon to generate proceeds each month which would be sufficient to allow the Smith-Snyder Manoeuvre to perform in the manner that the Respondent represented to clients that it would;
- (b) the clients would not incur any additional out-of-pocket expenses as a result of implementing the Smith-Snyder Manoeuvre;
- (c) the Smith-Snyder Manoeuvre would accelerate the repayment of the clients' mortgages such that the clients would be able to repay their mortgages in periods ranging from 5 to 10 years;
- (d) once the mortgages, investment loans and HELOCs were repaid, the clients would own the portfolio of ROC mutual funds purchased with the investment loans which would continue to generate proceeds for use by the clients;
- (e) the Smith-Snyder Manoeuvre would allow the clients to convert "non-tax deductible debt" (i.e., debt where the costs of borrowing were not tax deductible) into "tax deductible debt" (i.e., debt where the costs of borrowing were tax deductible).

16. As described in greater detail below, the Respondent's representations with respect to the Smith-Snyder Manoeuvre failed to fully and adequately explain the risks, benefits, material assumptions, features and costs inherent in the strategy.

**(b) The Forced Savings Program**

17. In the course of recommending and facilitating the implementation of the Forced Savings Program, the Respondent directed and arranged for clients to:

- (a) obtain one or more investment loans, which were structured so that clients were required to make principal-and-interest payments on the investment loans each month;
- (b) invest the monies obtained from the investment loans into ROC mutual funds, which the Respondent represented would generate proceeds each month; and

(c) use the proceeds generated by the ROC mutual funds to repay the investment loans on an accelerated basis (i.e., to pay an amount which exceeded the principal-and-interest payments owing on the investment loans each month).

18. In the course of recommending the Forced Savings Program, the Respondent represented to clients that, among other things:

- (a) the ROC mutual funds could be relied upon to generate proceeds each month which would be sufficient to pay the monthly costs associated with the investment loans;
- (b) the clients would not incur any additional out-of-pocket expenses as a result of implementing the Forced Savings Program;
- (c) once the investment loans were repaid by the proceeds generated by the ROC mutual funds, the clients would own the portfolio of ROC mutual funds purchased with the investment loans which would continue to generate proceeds for use by the clients.

19. As described in greater detail below, the Respondent's representations with respect to the Forced Savings Program failed to fully and adequately explain the risks, benefits, material assumptions, features and costs inherent in the strategy.

**(c) Implementation of the Leverage Investment Strategies**

20. Relying upon the Respondent's representations, at least 15 clients applied for and obtained investment loans totaling \$1,354,449 in order to implement one of the Leverage Investment Strategies in their accounts, as described below:

<b>Clients</b>	<b>Date of Loan Application</b>	<b>Lender</b>	<b>Strategy</b>	<b>Loan Amounts</b>
MM and MM	September 6, 2005	AGF	Smith-Snyder	\$50,000
	September 6, 2005	AGF		<u>\$50,000</u>
				<b>\$100,000</b>
MG and PG	September 27, 2005	AGF	Smith-Snyder	\$50,000
	September 27, 2005	AGF		\$25,000
	September 27, 2005	AGF		<u>\$50,000</u>
			<b>\$125,000</b>	
BM and RM	June 15, 2005	AGF	Smith-Snyder	\$50,000

<b>Clients</b>	<b>Date of Loan Application</b>	<b>Lender</b>	<b>Strategy</b>	<b>Loan Amounts</b>
	June 15, 2005 August 8, 2005 August 17, 2005 September 8, 2005 November 3, 2005	AGF B2B AGF HELOC B2B		\$50,000 \$40,000 \$50,000 \$20,000 <u>\$19,148</u> <b>\$229,148</b>
LM	August 25, 2008	BMO	Forced Savings Program	<b>\$50,000</b>
MM	July 23, 2006	AGF	Forced Savings Program	<b>\$50,000</b>
KP and NP	December 6, 2005 December 6, 2005 December 6, 2005 December 2005 December 2005 July 2007	AGF AGF AGF B2B HELOC AGF	Smith-Snyder	\$50,000 \$50,000 \$50,000 \$87,000 \$43,700 <u>\$50,000</u> <b>\$330,700</b>
NP	July 17, 2007	AGF	Forced Savings Program	<b>\$50,000</b>
TT and HR	October 6, 2005 October 6, 2005 October 6, 2005 July 28, 2006 November 23, 2005 April 15, 2009	AGF AGF AGF B2B B2B B2B	Smith-Snyder	\$50,000 \$50,000 \$50,000 \$50,001 \$17,600 <u>\$45,000</u> <b>\$262,601</b>
DW and KW	October 19, 2005 November 3, 2005 November 3, 2005	B2B AGF AGF	Smith-Snyder	\$7,000 \$50,000 <u>\$50,000</u> <b>\$157,000</b>
<b>Total Loans</b>				<b>\$1,354,449</b>

21. Relying upon the Respondent's recommendations, the clients used the borrowed monies to purchase ROC mutual funds offered by Stone & Co. and IA Clarington Investments.

22. At all material times, the clients deferred substantially, or entirely, to the Respondent's recommendations concerning the Leverage Investment Strategies.

**(d) Failure to Explain the Risks of the Leverage Investment Strategies**

23. The Respondent's representations with respect to the Leverage Investment Strategies failed to fully and adequately explain the risks, benefits, material assumptions, features and costs inherent in the Leverage Investment Strategies.
24. First, the Respondent failed to fully and adequately explain the risk that the ROC mutual funds might reduce, suspend or cancel the payment of proceeds to investors, such that the ROC mutual funds could not be relied upon to generate proceeds each month which would:
- (a) be sufficient to allow the Leverage Investment Strategies to perform in the manner that the Respondent represented to clients that they would; and
  - (b) continue to provide an income stream to clients after:
    - i. in the case of the Smith-Snyder Manoeuvre, the mortgages, investment loans and HELOCs were repaid; and
    - ii. in the case of the Forced Savings Program, the investment loans were repaid.
25. The ROC mutual funds were structured to pay monthly proceeds to investors which consisted of a return of the capital originally invested by the investors. In the event that the value of the underlying investments held by the ROC mutual funds declined due to deteriorating market conditions or poor performance such that the amount of the monthly proceeds paid to investors exceeded the increase in the value of underlying investments, there was a real and substantial risk that the ROC mutual funds would be required to reduce, suspend or cancel altogether, the monthly proceeds paid to investors.
26. Commencing in about late 2008 or early 2009, the ROC mutual funds purchased by the clients began to reduce the payment of proceeds to investors. As a result, in many instances, the proceeds from the ROC mutual funds were insufficient to allow the Leverage Investment Strategies to perform in the manner that the Respondent had represented to clients they would.

27. Second, the Respondent failed to fully and adequately explain the risk that the ROC mutual funds might decline in value over time, particularly if the clients did not reinvest the proceeds paid to them.
28. If the returns from the underlying investments held by the ROC mutual fund were not sufficient to cover the proceeds paid to investors, the shortfall would reduce the value of the clients' units and the clients could incur investment losses. This potential problem would be compounded where, as here, the clients were using the proceeds to pay the costs associated with the investment loans or other expenses, rather than reinvesting the proceeds in the ROC mutual funds.
29. In about late 2008 or early 2009, the unit values of the ROC mutual funds declined.
30. Third, the Respondent failed to fully and adequately explain the risk that clients could be forced to incur out-of-pocket expenses as a result of implementing the Leverage Investment Strategies.
31. At all material times, the clients believed, based upon the Respondent's representations to them, that the clients would not have to incur any out-of-pocket expenses in order to implement the Leverage Investment Strategies in their accounts.
32. When the proceeds generated by ROC mutual funds declined (as described above), the clients were forced to incur out-of-pocket expenses in order to pay the costs associated with the investment loans and prevent the Leverage Investment Strategies from collapsing.
33. Fourth, the Respondent failed to fully and adequately explain the overall risk level of the Leverage Investment Strategies. In the course of recommending the Leverage Investment Strategies to clients, the Respondent focused on the positive aspects of the strategies such that clients were lead to believe that there were few or no risks associated with the strategies.

34. As described above, the Respondent failed to fully and adequately explain the risks, benefits material assumptions, features and costs of the leveraged investment recommendations that he implemented in the accounts of at least 15 clients, thereby failing to ensure that the leveraged investment recommendations were suitable and appropriate for clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

### **Allegation #2 – Unsuitable Leveraging Recommendations**

35. As described in paragraph 20 above, between 2005 and 2007, the Respondent recommended to at least 15 clients that they apply for and obtain one or more investment loans in order to purchase ROC mutual funds for their accounts.

36. The Respondent's leveraged investment recommendations were not suitable for the clients having regard to the relevant "Know-Your-Client" factors including, but not limited to, the clients':

- (a) ability to afford the costs associated with Leverage Investment Strategies;
- (b) ability to withstand investment losses; and
- (c) risk tolerance.

#### ***Ability to Afford the Costs Associated with the Leverage Investment Strategies***

37. The Respondent failed to consider, adequately or at all, whether the clients could afford the costs associated with the Leverage Investment Strategies regardless of the performance of the strategy and without relying upon the anticipated income from the investments.

38. In particular, the Respondent failed to consider, adequately or at all, whether the clients could afford to pay the costs associated with the investment loans if the clients were required to pay those costs out-of-pocket.
39. All of the clients who implemented Leverage Investment Strategies recommended by the Respondent were relying upon the proceeds generated by the ROC mutual funds to pay all of the costs associated with the strategies. The clients would not have chosen to implement the strategies if they were aware that they would be required to pay the costs of the strategies out-of-pocket.
40. In some cases, the clients converted the monthly payment terms on the investment loans from principal-and-interest payments to interest only payments, in order to reduce the payments required to sustain Leverage Investment Strategies.

***Ability to Withstand Investment Losses***

41. The Respondent failed to consider, adequately or at all, whether the clients could withstand investment losses without jeopardizing their financial security if the Leverage Investment Strategies did not perform as the Respondent represented they would.
42. At all material times, the Respondent knew, or ought to have known, that the investment loans were excessive having regard to the clients' net worth.
43. In the present case, 13 of the 15 clients had loan-to-net-worth ratios of between 80% and 140%. The remaining two clients (client LM and client NP) did not have any material net worth at the time the Respondent recommended the investment loans.
44. As a result of implementing the Leverage Investment Strategies, all of the clients incurred significant investment losses.

***Risk Tolerance***

45. During the period that the Respondent recommended and implemented the Leverage Investment Strategies in the clients' accounts, Investia's policies and procedures provided that only clients with "high" risk tolerance could utilize leveraging.
46. The Respondent failed to perform the necessary due diligence to learn the essential facts relative to the clients or, if he did, he chose to ignore or failed to properly assess the information he learned. As a result, in the course of recommending the Leverage Investment Strategies to the clients, the Respondent recorded on the clients' Know-Your-Client forms that each of the clients had a "high" risk tolerance.
47. In fact, none of the clients had a "high" risk tolerance at the time that the Respondent recommended the use of leverage.
48. By engaging in the conduct described above, the Respondent recommended and facilitated the implementation of leveraged investment strategies in the accounts of the clients without performing the necessary due diligence to learn the essential facts relative to the clients and without ensuring that the leveraged investment recommendations were suitable for the clients and in keeping with their investment objectives having regard to the clients' relevant "Know Your Client" factors including, but not limited to, the clients' ability to afford the costs associated with the investment loans, their ability to withstand investment losses, and their risk tolerance, contrary to MFDA Rules 2.2.1 and 2.1.1.

### **Additional Factors**

49. Since the Notice of Hearing was issued on September 30, 2014 (sic), nine additional individuals submitted complaints to the MFDA with respect to the Respondent's conduct. These individuals state that, based upon representations made to them by the Respondent which are substantially similar to those described above, they borrowed approximately \$800,000 in total to invest in mutual funds. The complaints made by these additional

individuals are currently being reviewed by Investia in accordance with its complaint handling obligations under MFDA requirements.

50. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

51. The Respondent cooperated with Staff during its investigation into his conduct.

52. By entering into this Settlement Agreement, the Respondent has saved the MFDA the significant time, resources and expense associated with conducting a full hearing of the allegations.

53. The Respondent has expressed remorse for his actions.

#### **CONTRAVENTIONS**

54. The Respondent admits the following contraventions of the By-laws, Rules and Policies of the MFDA:

(a) between 2005 and 2007, the Respondent failed to fully and adequately explain the risks, benefits, material assumptions, features and costs of the leveraged investment recommendations that he implemented in the accounts of at least 15 clients, thereby failing to ensure that the leveraged investment recommendations were suitable and appropriate for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and

(b) between 2005 and 2007, the Respondent failed to ensure that the leveraged investment recommendations that he implemented in the accounts of at least 15 clients were suitable and appropriate for the clients and in keeping with their investment objectives, having regard to the clients' relevant "Know Your Client" factors including, but not limited to, the clients' ability to afford the costs associated with the investment loans, their ability to withstand investment losses, and their risk tolerance, contrary to MFDA Rules 2.2.1 and 2.1.1.

## TERMS OF SETTLEMENT

55. The Respondent agrees to the following terms of settlement:

- (a) the Respondent shall, for a period of ten (10) years, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) the Respondent shall pay a fine in the amount of \$50,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:
  - i. the Respondent shall pay \$10,000 upon acceptance of this Settlement Agreement;
  - ii. the Respondent shall pay five (5) installments of \$8,000<sup>1</sup> every two (2) months following the acceptance of this Settlement Agreement;
- (c) the Respondent shall pay costs in the amount of \$50,000 pursuant to s. 24.2 of MFDA By-law No. 1 upon acceptance of this Settlement Agreement;
- (d) if the Respondent fails to comply with subparagraphs (b) or (c), then without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting 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;
- (e) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and
- (f) the Respondent will attend in person, on the date set for the Settlement Hearing.”

16. It is to be noted that the “misrepresentation” Allegation contained in the Notice of Hearing has been withdrawn.

### E. THE LAW RELATING TO SETTLEMENT AGREEMENTS

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<sup>1</sup> The total amount paid by installments is \$40,000 (i.e., 5 installments multiplied by \$8,000).

17. Section 24.4.3 of MFDA By-law No. 1 provides the Hearing Panel with only two options when considering a Settlement Agreement. The Panel must either accept or reject the Settlement Agreement. It does not have the power to modify or vary any part of it.

18. In a contested hearing, the Hearing Panel strives to impose the correct penalty in light of evidence adduced before it. In a Settlement Hearing, the Hearing Panel should not reject the settlement unless it views the penalty sought to be imposed as clearly falling outside a “reasonable range of appropriateness”.

Re: *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 11, Ontario District Council Decision, dated July 28, 1999.

19. Settlements do assist the MFDA in fulfilling its regulatory objective of protecting the public. They advance this objective by proscribing activities which are harmful to the public, while enabling the parties to reach a flexible remedy to address the interests of both the regulator and the Respondent.

Re: *British Columbia Securities Commission v. Seifert*, 2007 B.C.C.A. 484 at para. 31.

20. Past MFDA Hearing Panels have set out a number of considerations which should be taken into account when determining whether a proposed settlement should be accepted. These include:

- (a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;

- (f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- (g) whether the settlement agreement will foster confidence in the regulatory process itself.

Re: *Investors Group Financial Services* (2005) MFDA Ontario Regional Council, File No. 200401 at pp. 2-4.

21. Past MFDA Hearing Panels have also delineated a number of factors which should be considered when determining whether a proposed penalty is appropriate. These include:

- (a) the seriousness of the allegations proved against the Respondent;
- (b) the Respondent's past conduct, including prior sanctions;
- (c) the Respondent's experience and level of activity in the capital markets;
- (d) whether the Respondent recognizes the seriousness of the improper activity;
- (e) the harm suffered by investors as a result of the Respondent's activities;
- (f) the benefits received by the Respondent as a result of the improper activity;
- (g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- (h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- (i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) previous decisions made in similar circumstances.

Re: *Headley (Re)*, 2006 LNCMFDA 3, at para. 85.

22. The MFDA Penalty Guidelines, while not mandatory, are an additional source which Hearing Panels can refer to in determining the appropriateness of the proposed penalties.

F. CONSIDERATIONS IN THE PRESENT CASE

(i) Nature of Misconduct

23. MFDA Rule 2.2.1 states, in part, as follows:

2.21 “Know-Your-Client. Each Member and Approved Person shall use due diligence:

- (a) to learn the essential facts relative to each client and to each order or account accepted;
- (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and
- (c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client’s investment objectives; and
- (d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client’s investment objectives, the Member has so advised the client before execution thereof.

24. This Rule codified the “Know-Your-Client” and “suitability” obligations recognized by securities regulators. In E.A. Manning Ltd. et al (Re), the Ontario Securities Commission held that “these requirements are an essential component of the consumer protection scheme of the Act and a basic obligation of a registrant, and a course of conduct by a registrant involving the failure to comply with them is an extremely serious matter.”

Re: *E.A. Manning Ltd. et al (Re)*, 1995 LNONOSC 377 (OSC) at p. 34.

25. In the Settlement Agreement, the Respondent admitted that he acted contrary to MFDA Rule 2.2.1.

26. The Respondent's conduct involved a large number of clients and a significant quantum of investments. The Settlement Agreement shows that at least 15 clients applied for, and obtained, investment loans, totaling in excess of \$1.3 million, in order to implement one of the leveraged investment strategies recommended by the Respondent.

27. The Respondent's conduct occurred over a lengthy period of time. The leveraging recommendations which we considered were made between 2003 and 2008.

(ii) Client Harm

28. All of the Respondent's clients who implemented the leveraged investment strategies recommended by him incurred significant investment losses.

(iii) Benefits Received by the Respondent

29. By borrowing to invest, the clients increased the amount of monies invested in mutual funds, which had the effect of generating additional sales commissions or other payments for the benefit of the Respondent.

(iv) Deterrence

30. It is the position of Staff that the proposed penalties and costs will achieve both specific and general deterrence.

(v) The Respondent's Past Conduct

31. The Respondent has not been the subject of any previous MFDA disciplinary proceedings. In our view, this is a strong mitigating factor with respect to penalty.

(vi) The Respondent's Recognition of the Seriousness of His Misconduct

32. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct. He has also avoided the necessity of the MFDA incurring the time and expense of conducting a full Disciplinary Hearing. These are further mitigating factors on the issue of penalty.

(vii) Penalty Guidelines

33. Staff submitted, and we agree, that the proposed penalties are consistent with the Penalty Guidelines.

(viii) Previous Decisions Made in Similar Circumstances

34. The Hearing Panel was advised that this is the first MFDA proceeding involving a settlement where an Approved Person made unsuitable leverage recommendations to clients or failed to adequately explain the risks and benefits of a leverage investment strategy to clients.

35. Staff did provide the Hearing Panel with what it felt were comparable cases. It also provided copies of a number of leverage cases which were not resolved by way of a settlement agreement. In those cases, the penalties imposed by the Hearing Panel were harsher than the ones proposed in this case. These cases included:

(a) Arseneau (Re), 2012 LNCMFDA 93.

(b) DeVuono (Re), 2013 LNCMFDA 34.

(c) Pretty (Re), 2014 LNCMFDA 56.

36. The admitted circumstances of this case show the disastrous results which can ensue to clients by the failure of an Approved Person to follow the dictates of MFDA Rule 2.2.1.

37. By either failing to perform the necessary due diligence to learn the essential facts relative to the clients or by choosing to ignore the information obtained, the Respondent engaged in serious misconduct.

38. Were it not for the enumerated mitigating factors, including that this proceeded by way of a Settlement Agreement, we would have been inclined to impose harsher penalties.

39. It is critical that an Approved Person takes steps to truly know his clients and ensure that any investment recommendations made are suitable and appropriate.

G. DECISION

40. After a detailed consideration of the Settlement Agreement and the applicable law, as well as the factors specific to the Respondent, we unanimously concluded that it was in the public interest that this Settlement Agreement be accepted.

H. PENALTIES IMPOSED

41. As a result of the acceptance of the Settlement Agreement, the following penalties were imposed upon the Respondent:

(a) The Respondent shall, for a period of ten (10) years, be prohibited from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

(b) The Respondent shall pay a fine in the amount of \$50,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1, payable as follows:

(i) the Respondent shall pay \$10,000 immediately; and

(ii) the Respondent shall pay five (5) installments of \$8,000 every two (2) months commencing December 9, 2014.

(c) The Respondent shall pay costs in the amount of \$50,000 pursuant to s. 24.2 of MFDA By-law No. 1 immediately.

- (d) If the Respondent fails to comply with paragraphs b or c, then, without further notice to the Respondent, the Respondent shall summarily be permanently prohibited from conducting 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.
- (e) The Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1.

**DATED** this 13<sup>th</sup> day of March, 2015.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.  
Chair

“Jason P. Downey”

Jason P. Downey  
Industry Representative

“Robert Malcolm”

Robert Malcolm  
Industry Representative

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