



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: Bemelekot W. Tewahade

Heard: October 19, 2015 in Toronto, Ontario
Decision and Reasons (Misconduct): January 13, 2016.

**DECISION AND REASONS
(Misconduct)**

Hearing Panel of the Central Regional Council:

W.A. Derry Millar

Chair

David W. Kerr

Industry Representative

Colleen Waring

Industry Representative

Appearances:

Maria Abate

)

Counsel for the Mutual Fund Dealers
Association of Canada

)

)

Bemelekot W. Tewahade

)

In Person

)

)

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I. INTRODUCTION

1. By notice of hearing dated December 22, 2014, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that Bemeleket W. Tewahade (the “Respondent”) violated the By-laws, Rules or Policies of the MFDA set out below:

Allegation #1: Between May 6, 2005 and June 18, 2012, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by carrying on business as a registered representative of two FINRA¹ Member firms in succession, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

Allegation #2: Between May 6, 2005 and June 18, 2012, the Respondent failed to comply with the policies and procedures of the Member by:

- (a) failing to provide his correct permanent residential address to the Member; and
- (b) engaging in outside business activities which were not disclosed to and approved by the Member,

thereby interfering with the ability of the Member to supervise the Respondent, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

2. The hearing was held on October 19, 2015. Staff called Lucy Alfenore, a staff investigator, as its witness. During the course of Ms. Alfenore’s evidence, Exhibits 4 to 31 were introduced into evidence. The Respondent attended the hearing. He was not represented by counsel. The Respondent gave evidence and called one witness, Mr. Kwame Yeboah, who worked with him during the relevant period. Mr. Yeboah was a registered representative with Investia who worked in the same office as the Respondent.

3. There was very little disagreement on the facts.

¹ The Financial Industry Regulatory Authority or “FINRA” is the American self-regulatory organization responsible for the regulation and oversight of securities firms and their registered representatives in the United States.

II. THE FACTS

4. The Respondent has been registered as a mutual fund salesperson in Ontario from at least 2003 to 2012 with Cartier Partners Financial Services Inc. (“Cartier Partners”), Dundee Private Investors Inc. (“Dundee”)² and Investia Financial Services Inc. (“Investia”).

5. The Respondent entered into an Agent Agreement³ with Cartier Partners dated February 19, 2002, in which he is described as “Bemelelot Tewahade of the City of Toronto in the Province of Ontario.” The Agent Agreement provided, among other things, the following:

a. **4.02 Approved Non-Cartier Business**

Except as provided in Schedule “C” or unless otherwise permitted pursuant to Cartier Partners’ Policy Manual or by any specific written approval of a senior officer of Cartier Partners (which approval shall not be unreasonably withheld), during the term of this Agreement, the Agent shall not”

(a) Engage in any gainful occupation, other than Cartier Partners Business; or

(b) Become a director, officer or employee of, and agent, consultant, contractor or advisor to, or provide any services in any capacity through or on behalf of, any person or entity carrying on an undertaking of business for profit, other than Cartier Partners or an affiliate of Cartier Partners.

The Agent agrees that in respect of such services and activities which are Approved Non-Cartier Business, the Agent will comply with the provisions of section 4.04 of this Agreement. The Agent shall not conduct any securities related business (as defined by Applicable Securities Laws) with, in respect of or on behalf of any person other than Cartier Partners. The parties agree that, in respect of deposit-taking activities only, the Agents complying shall be in accordance with Section 4.04 of this Agreement (if such deposit-taking activities of such Agent are conducted outside Cartier Partners) or in accordance with Section 4.03 of this Agreement (if such deposit-taking activities such agent are conducted through Cartier Partners), depending upon the election of the Agent to. The Agent shall ensure that the terms or basis on which the Agent is engaged in or carries on any Approved Non-Cartier Business complies

² Prior to 2005, Dundee acquired Cartier Partners.

³ Exhibit 4.

with the terms of this Agreement and Applicable Securities Laws and does not prevent or repair the ability of Cartier Partners or the SRO for monitoring and enforcing the compliance with the terms of this Agreement and the Applicable Securities Laws.

b. **4.04 Responsibilities of the Agent in respect of Approved Non-Cartier Business**

During the term of this Agreement, the Agent shall in respect of Approved Non-Cartier Business only:

a) *Prior Consent*

Prior to agreeing to sell any products and/or performing any activity or service which does not constitute Cartier Partners Business, the Agent will seek and obtain the prior written approval of Cartier Planners (which approval will not be unreasonably withheld), to the extent it is not already permitted or provided pursuant to the terms of this Agreement.

b) *Disclosure of Business Activities*

The Agent certifies that he/she has disclosed to Cartier Partners in Schedule "C" to this Agreement all of his/her business activities which do not constitute Cartier Partners Business. The Agent agrees to notify Cartier Partners immediately of any change in his/her business activities are, including the commencement of any new business activity, and to provide full disclosure of such activities.

c. The Respondent indicated on page 17 that his address was: ***** , Ajax, ON *****.

d. **Schedule "C" BUSINESS ACTIVITIES OF THE AGENT NOT CONSTITUTING CARTIER PARTNERS BUSINESS (subject to the provisions of Section 4.04)**

1. After March 31, 2002 NON-Securities Related Financial Planning Activities
 2. Insurance
 3. Deposit taking activities
- "- Independent Insurance Producer through Equinox Canada, saling (*sic*) policies for Manual life and RBC Insurance." (Hand written Entry).

6. The Cartier Partners Compliance Manual updated April 22, 2003⁴ provides, under the section of the Compliance Manual dealing with Conflicts of Interest, in section 3.2.2 “Outside Business Interests” as follows:

In accordance with MFDA regulations, you may engage in outside (non-Cartier Partners) business interests if you obtain the prior express, written permission of Cartier Partners compliance. Where permission has been given enough for you to engage in outside business interests, it is your responsibility to ensure that a “*Business Interest Disclosure*” document is signed by each client conducting Cartier Partners business and submitted to Cartier Partners compliance. A copy of this signed disclosure should also be maintained in the representative client file.

7. On March 5, 2005, the Respondent completed an Application for Transfer of Registration⁵ for Investia. He listed his current employer as Dundee, 75 The Donway West #1201, North York, Ont. He stated in the application in response to the “Address Where Applicant Will Be Working” – “855 Matheson Boulevard, Miss, Ont L4W 4L6.” In the Application for Transfer contain the following questions and answers provided by the Respondent:

- a. “#of hours devoted to this business or employment” 2
- b. “Is this business or employment with your sponsoring mutual fund dealer?” - He checked “yes”;
- c. “If you answered yes, please complete (A), if you answered no, please complete (B)”
 - i. “(A) If the business or employment described above is with the sponsoring firm and if you are working less than 30 hours per week for the firm, please explain” - “Answer: N/A Also sell insurance”;
 - ii. “(B) If the business or employment described above is not with the sponsoring firm, disclose any potential for confusion by clients and any potential for conflicts of interest arising from your proposed activities as a registrant in the business or employment described above (include whether the business is listed on an exchange): Answer: N/A”;
- d. The Respondent certified that the statements in the Application for Transfer were true and correct to the best of his knowledge, information and belief.

⁴ Exhibit 5.

⁵ Exhibit 6.

8. On the same date, March 5, 2005, the Respondent completed an Investia Personal History Form⁶. In it he listed his “Home Address” as ***** Ajax, ON *****.

9. The Respondent also completed an Investia “Information Disclosure Consent”⁷ #. In that document, he indicated as follows:

- a. “1. (iii) Are you licensed to sell other investment products? If yes, list all other products.” The Respondent circled “No”.
- b. “1. (iv) Other business activities:
 - List all other professional activities such as insurance...” The Respondent filled in “Insurance, Disability policy, Term life and RESP”.
 - “Do you have any corporate holdings?” The Respondent circled “No”;
 - Do you maintain personal holdings in a private corporation? The Respondent circled “No”.
 - ...
- c. “1. (v) Other activities:”
 - “Any other activities? Compensated or non-compensated?” The Respondent filled in “N/A.”

10. Exhibit 9 is the Respondent’s insurance licence which was received by the Investia Ontario Regional Office on April 15, 2005. The header at the top of the document indicates that the sheet of paper was faxed “Apr 15 2005 - 09:12 - FR IND ALLIANCE – INVESTIA6 487 3988 17057430075 - P. 02”. It also has a fax header “Jan 19 2005 7:28 PM INFINITY#WEALTH#MANAGEMENT 3036913455 p. 3”.

11. The Respondent entered into a Representative Contract with Investia signed by him on May 8, 2005 to take effect on August 9, 2005⁸. The Representative Contract provided, among other things:

- a. “5. COMPLIANCE

...

⁶ Exhibit 7.

⁷ Exhibit 9.

⁸ Exhibit 11.

5.2 The Representative's conduct related to the business must be compliant with the applicable laws, regulations, policies and industry standards relating to trading in all financial products through the Dealer, including, without limitation, the Rules and By-laws of the MFDA and with any and all compliance, supervisory and operational procedures as dictated by the Dealer."

b. "6. THE MUTUAL FUND DEALERS ASSOCIATION (HEREAFTER "MFDA" COMPLIANT:

6.1 The Representative and the Dealer, in order to fully comply with the MFDA rules, undertake to respect the following:

...

(d) the Representative must be in compliance with the legislation, By-laws and Rules applicable to the Representative;

...

(g) all such business conducted by the Representative is in the name of the Dealer subject to the provisions of MFDA Rule 1.1.7;

(h) the Representative shall not conduct securities related business with or in respect of any other person other than the Dealer."

c. "10. PROCEDURES AND POLICIES GUIDE AND CODE OF ETHICS

10.1 The Dealer provides written prudent Business procedures for the sell (*sic*) of its approved products, services and for dealing with clients in compliance with securities legislation and governing SRO: the *Policies and Procedures Guide* (hereafter the "Guide"). The Representative acknowledges receipt of a copy of the Guide, and undertakes to conform with the provisions of the Guide and any future amendment thereto made from time to time.

10.2 The Representative also acknowledges having read and understood the Dealer's Code of Ethics and undertakes to conform with its provisions. This acknowledgment should be made in signing the code included at Schedule C."

d. In Schedule B to the Representative Contract entitled "Agreement of Approved Person" which was signed by the Respondent on May 8, 2005, the Respondent agrees:

"1. to notify the Member Firm of which I am an Approved Person in writing of any change in information relating to me as an Approved Person is prescribed by any applicable law or any by-law, rule or policy of the MFDA (herein referred to as the "MFDA Rules");

2. to be bound by, observe and comply with the MFDA Rules as they are from time to time amended or supplemented;

3. that I am conversant with the MFDA Rules, and to keep myself fully informed about the MFDA Rules as they are amended or supplemented from time to time;...”

12. Investia advised the Respondent by letter dated August 9, 2005, that the Ontario Securities Commission had approved his request to work for Investia as a mutual fund representative.

13. In his “Annual Review of Professional Activities” dated May 18, 2006⁹ and received by the Investia Ontario Regional Office on May 29, 2006, the Respondent indicated as follows:

- a. With respect to “1. Outside Business Activities”:
 - i. In response to the question, “do you have other professional activities resulting in the compensation outside of your mutual fund registration”, the Respondent checked “Yes” and stated under the heading “Details” “Selling Life Insurance”;
 - ii. In response to the question, “do you have any corporate holdings”, the Respondent checked “Yes” and stated under “Details” “50% owner of Force Infinity Inc.”;
- b. With respect to “4. Other Product Offerings”, in response to the question “please indicate if you have ever sold any of the following instant investments. If yes, please provide details:”, for the question “other investments, please specify” the Respondent checked “Yes” and stated under “Details” “Seg fund for Life insurance companies”;
- c. With respect to “6. Update of Personal Details:”, in response to the question “have you had a change in residential address or phone number within the last 12 months”, the Respondent checked “No”.

⁹ Exhibit 12.

14. Extracts from the Investia “Compliance Policies and Procedures Manual dated January 2008” (“Manual”) were marked¹⁰. Chapter 9 of the Manual is entitled “Dual Occupation and Other Activities”. The Manual provides, among other things:

a. With respect to “**i. Business Activities Allowed Outside of Investia**”, the Manual provides:

“Pursuant to MFDA Rule 1.2.1(d) a Representative can only be gainfully employed in a dual occupation provided that:

- The Representative is permitted by legislation to devote less than his/her full-time to the business of Investia for which he/she acts on behalf of;
- The activity is not prohibited by a securities commission in the jurisdiction in which the Representatives (*sic*) carries on business;
- Investia is aware of and has pre-approved the outside activity;
- The activity does not bring the MFDA, Investia, or the mutual fund industry into disrepute;
- Clear written disclosure is provided to clients that any activities are related to such other gainful occupation are not the business of Investia and are not the responsibility of Investia.
- In addition, Investia and the Representative must comply with provincial securities legislation, which generally requires full disclosure of any outside business activity and prior approval from the applicable security commission(s).”

b. With respect to “**ii. Investia Approval of Outside Activities**”, the Manual provides, among other things:

“Investia must be aware and approve of Representatives engaging in another occupation. The Representative must notify his/her PCO in writing via the use of

¹⁰ Exhibit 13.

the “Outside Business Activity Approval” Form of any employment or occupation proposed other than as a Representative dealing in mutual funds and related products for Investia. The approval form provides details such as:

- Name and nature of the business;
- The title or position of the Representative;
- The number of hours to be devoted to the business;
- A description of any potential for confusion or conflicts of interest; and
- Place of work

A Representative must notify Investia in the event of any material changes to significant aspects of the activity.”

15. The Investia “December 2008 Compliance Policy & Procedure Manual”¹¹ contains the same provisions with respect to “Business Activities Allowed Outside of Investia” and “Investia Approval of Outside Activities”.

16. In April, 2010, an issue arose as to the number of hours the Respondent was spending on the mutual fund business and whether he was involved in any other activity “insurance or else?” The email exchange between the Respondent and Odile Zénidé of Investia¹² disclosed:

- a. The Respondent was not spending two hours a week in the mutual fund business as indicated on one of the forms filed with Investia but 20 to 25 hours;
- b. He had been selling insurance since 1987 under the name of Infinity Retirement Solutions of which he was the founder and sole owner;
- c. The Respondent’s email signature was: “Mel Tewahade, Infinity Retirement Solutions Inc (*sic*), 855 Matheson Blvd., E, Suite 1A, Mississauga, Ontario L4W 4L6.

¹¹ Exhibit 14.

¹² Exhibit 15.

17. On April 20, 2010, the Respondent completed an Investia “Outside Business Activity Approval Form”¹³ which indicated, among other things:

- a. He was operating his business under the “business trade name Infinity Retirement Solutions Inc.”;
- b. In response to the question “number of hours per week devoted to this business”, he indicated “48 weeks”;
- c. The “nature/type of the business was mutual fund sales and Insurance” and he was the “Insurance/owner Agency” since July 1987;
- d. He would receive no “annual compensation...for engaging in this outside business”; and
- e. “I have no other business activity other than Insurance Sales.”

18. By email dated May 13, 2010,¹⁴ the Respondent was advised by Investia:

We are in receipt of your OBA (outside business activity form) and note the following:

1. We have removed Mutual Funds as this activity can only be done through the member Investia.
2. You have indicated in # of hours - 48 Weeks, please confirm your intent was 48 hours.
3. Please provide an estimated dollar amount earned for these activities. The above is required in order to provide the information to the regulators and process the form.

19. The Respondent’s Outside Business Activity Approval Form with the changes noted was attached to the May 13, 2010 email from Investia.

¹³ Exhibit 16.

¹⁴ Exhibit 17 a.

20. On May 20, 2010, the Respondent signed an Investia “Acknowledgment” that he had read and understood the information contained in the Investia Compliance Policies & Procedures Manual, December 2008 Version.¹⁵

21. In August, 2011, an exchange of emails took place between the vice president/COO of Sunset Financial Services, Inc. in Kansas City, MO, and the Assistant Chief Compliance Officer of Investia¹⁶ which disclosed the following:

- a. The Respondent was a registered representative of Sunset in the United States for the sale of mutual funds;
- b. Sunset had been investigating the Respondent’s outside business activities related to Infinity Retirement Solutions, Inc., in Mississauga;
- c. The Respondent had indicated to Sunset that he was in the process of acquiring Infinity Retirement Solutions and had been provided with a fax from Kwame Yeboah indicating that the Respondent was in the process of acquiring Infinity Retirement Solutions. The fax indicated that Mr. Yeboah was from Investia;
- d. Sunset accessed the Ontario Securities Commission’s website which indicated that the Respondent was registered with Investia as a Mutual Fund Dealing Representative;
- e. During an office visit on July 28, 2011, the Sunset vice president asked the Respondent whether he was licensed with Investia and was told by the Respondent that “he may have been in the past, but did not know if he was currently licensed;”
- f. Investia advised Sunset that the Respondent had been registered with Investia since 2005 and was currently registered with Investia;
- g. Investia advised Sunset that the Respondent had approximately 40 mutual fund clients with Investia and attended the branch office “once a month to take care of his customers”;

¹⁵ Exhibit 19.

¹⁶ Exhibit 20.

- h. Sunset was terminating the Respondent's employment with Sunset effective August 10, 2011 "for failing to disclose his association with Investia Financial Services";
- i. Sunset advised Investia that the Respondent was "currently the representative for over 850 mutual fund, variable annuity, and variable universal life accounts."

22. On August 8, 2011, Investia conducted an emergency audit of the Respondent's office in Mississauga as a result of the information provided by Sunset¹⁷. Sunset had advised Investia that the Respondent had been a registered broker-dealer with Sunset since 2006 and with another US-based firm since 1993. Investia was advised that the Respondent lived and maintained an office in Inglewood, Colorado. The Investia representatives met with Mr. Yeboah who advised them that the Respondent was in the United States where he lived and that the Respondent visited Canada and the office once a month.

23. The Investia representatives contacted the Respondent by telephone who advised them as follows:

- a. He moved to the United States in 1993 and maintained permanent residence in the United States;
- b. He is a "resident alien" in Canada;
- c. He owns a property in Ajax but while in Canada he stays in a hotel as the property in Ajax is out of town and is not in close proximity to his office;
- d. He files taxes in both countries;
- e. He owns 100% of Infinity Retirement Solutions Inc. He bought out his other shareholder, Robert ('David') Lee;
- f. He spends about 15 to 20 hours per week on his Canadian book of business; and
- g. He set up a 1-800 line with a forward feature to his cell phone which his Canadian clients can use to contact him.

¹⁷ Exhibit 21.

24. During the audit, it was discovered that the Respondent had a secondary website, www.infrs.com, outside his mutual fund practice. The auditor inquired of Investia's sales communication department whether the website was approved.¹⁸ By email dated August 12, 2011, Investia's sales communications department asked a number of questions of the Respondent in relation to the website including whether he was licensed in the United States.¹⁹

25. On August 11, 2011, Sunset terminated the Respondent's association with Sunset. The Respondent took the position that Sunset had no basis upon which to terminate him and he resigned from Sunset.²⁰

26. On April 24, 2012, the Respondent completed the French version of the Investia "Annual Review of Professional Activities (January 1, 2010, to December 31, 2010)" in which he indicated among other things:

- a. His residential address was: *****, Ajax, Ont., ***** and that his residential address had not changed in 2010;
- b. He indicated that he did engage in other remunerated activities outside of his professional activities with Investia;
- c. He indicated that his Internet site was: www.infrs.com;
- d. He indicated that he did not have any clients who lived in the United States.

This disclosure of the secondary website www.infrs.com occurred after the website had been discovered during the audit in August, 2011.²¹

27. On May 16, 2012, Investia terminated the Respondent for the reasons set out in its letter dated May 16, 2012,²² including the use of pre-signed forms and his activities in the United States where he lived and was licensed with a United States securities dealer without Investia's knowledge or approval. In an email dated May 21, 2012, to Investia, with a copy to Torce

¹⁸ Exhibit 22.

¹⁹ Exhibit 22.

²⁰ Exhibit 23.

²¹ Transcript of Examination of Lucy Alfenore, October 19, 2015, at p. 108, ll. 11 to 14.

²² Exhibit 24.

Financial, the Respondent stated “due to my current health and unable to travel very much, I am hereby resigning from my position as a Sales Rep for Investia.”²³

28. In a letter dated July 12, 2012, from the Respondent to the MFDA²⁴ responding to Investia’s reasons for termination, the Respondent stated:

- a. Investia raises concern about my previous activities in the United States and alleges that I have become affiliated with a US Securities Dealer without Investia’s knowledge and approval. In addition to my Canadian Securities License, I do in fact have Securities Licenses in the United States (of which I am also a Citizen). After I commenced my securities business in the United States, I informed Investia of the same. All transactions with Canadian residents were conducted through my Toronto Office, which I still maintain today (with 3 or 4 Canadian Agents of Infinity Wealth Management presently working out of such office). Assertions by Investia that activities in the U.S. were undertaken without their approval are simply baseless, as I previously informed them and at no time have I ever attempted to hide any such facts from Investia.

- b. Investia’s termination of my Appointment has resulted not from any misconduct on my part. Instead, it was prompt as a direct result of their being notified by Sunset Financial Services, that I had been terminated by Sunset Financial Services, a Broker-Dealer which I was affiliated with in the U.S. since 2006. Sunset asserts that I was terminated, due to the fact that I had failed to disclose my affiliation with Investia in Canada. This simply is untrue, **as Sunset (like Investia) was fully aware of all my business affiliations**; I intend to file legal action against Sunset Financial for substantial damages I have sustained as a result of such termination. The bottom line is that I have at no time during my long career in the financial services industry in Canada or the United States, violated any laws or regulation and Investia’s present claim of “**not being notified**” is simply untrue. (Emphasis added)

²³ Exhibit 25.

²⁴ Exhibit 26.

29. Ms. Alfenore testified that she had been unable to locate any documentation where the Respondent disclosed the nature and extent of his U.S. activities to any of Cartier, Dundee or Investia. She testified that the Respondent had not provided any documentation to her where he disclosed this information to Cartier, Dundee or Investia.

30. Marked as Exhibit 27 was the Respondent's registration history from the National Registration Database. Ms. Alfenore testified that the National Registration Database is maintained by the provincial securities commission which inputs information on to the database relating to the registration of individual representatives. Each dealer has the ability to update the information on the database based on information provided to it by its representative.²⁵

31. Exhibit 27 discloses the following:

- a. At page 140, page 1 of Form 33, in response to a question "Provide all of your residential addresses, including any foreign residential addresses, for the past 10 years", the information provided for the Respondent's residential address is 855 Matteson Blvd. E Suite 1A, Mississauga, Ontario, Canada, L4W 4L6. The Form notes that "lived at this address since – 1999/04". There are no foreign addresses provided and the box is checked for the question "check here if your mailing address is the same as your current residential address provided above."
- b. The Respondent's country of citizenship is checked as Canada. The box "other, specify" is not checked and there is no indication of the Respondent's US citizenship.
- c. Nowhere in the form is the Respondent's US licenses disclosed nor are the names of the US dealers disclosed even though there are questions which elicited this information. The only outside business activity disclosed was Infinity Retirement Solutions Inc. commencing on May 15, 1987.

²⁵ Transcript of Examination of Lucy Alfenore, October 19, 2015, at p. 110-111.

32. Staff filed as Exhibit 28 the FINRA BrokerCheck Broker Summary which sets out the history of a broker's registration in the United States. Exhibit 28 disclosed:

- a. The Respondent was licensed in the United States from 1993 to 1994 and 2002 to 2014, with a number of securities dealers in the United States, including:
 - i. Main Street Securities, LLC – Denver, CO – 01/2003 – 10/2006;
 - ii. Sunset Financial Services, Inc. – Englewood, CO - 09/2006 - 08/2011;
 - iii. Ridgeway & Conger, Inc. - Englewood, CO - 09/2011 - 10/2013; and
 - iv. First Financial Equity Corporation – Aurora, CO - 10/2013 - 02/2014.

- b. The Respondent's employment with Cartier, Dundee and Investia are not disclosed on the FINRA Summary. Other outside business activities of the Respondent are disclosed including his ownership of Infinity Retirement Solutions, Inc.

- c. The Respondent was disciplined by FINRA which was resolved on consent on April 15, 2014. The details of which are as follows:
 - i. "Allegations: Without admitting or denying the findings, Tewahade consented to the sanctions and to the entry of findings that he engaged in an outside business activity without providing his member firm with the requisite written notice. The findings stated that Tewahade did not provide written notice to and receive written approval from the firm prior to engaging in private security transactions through a mutual fund entity.
 - ii. "Resolution: Acceptance, Waiver & Consent (AWC)."
 - iii. "Sanction Type: Suspension;" "Duration: 20 Business Days;" "Start date: 04/21/2014 – End date: 05/16/2014;" "Monetary Related Sanction: Civil and the Administrative Penalty(ies)/Fine(s);" "Total Amount: \$7,500.00;" "Portion Levied Against Individual: \$7,500.00;" "Payment Plan: Deferred."

- d. A copy of the “Financial Industry Regulatory Authority - Letter of Acceptance, Waiver and Consent” executed by the Respondent on March 17, 2014, and on behalf of FINRA on April 15, 2014.

33. Mr. Yeboah was examined on August 15, 2013, by Staff. The transcript was marked Exhibit 29. Mr. Yeboah’s examination revealed the following:

- a. The Respondent traveled back and forth from the United States to Toronto;
- b. He lived in the United States and came to Toronto approximately one week a month and worked at the Matheson Boulevard office;
- c. He understood that Investia’s policy was that a representative should report outside business activities to Investia including any additional job as there may be a conflict of interest between the two positions;
- d. He was aware that the annual questionnaire asked about any outside business activities and the requirement for him to report any outside business activities. He disclosed that he was working for a church. He was aware that any changes had to be reported;
- e. He was audited by Investia in 2011; although, he thinks that it was at a different time than the audit of the Respondent.

34. The Respondent’s office manager, Joyce Reid, was examined by Staff on August 15, 2013. The transcript was marked Exhibit 30. Ms. Reid’s examination disclosed the following:

- a. The Respondent maintained a residence and conducted a mutual fund and insurance business in the United States;
- b. Ms. Reid was at the office during the audit by Investia in August 2011;
- c. She provided files to the auditor as requested.

35. The Respondent was examined by Staff on September 17, 2013. The transcript was marked Exhibit 31. The examination revealed the following:

- a. The Respondent confirmed that he was licensed both in Ontario and in the United States for the sale of securities and insurance;
- b. He had tried to make disclosure but there was no method for disclosure. He stated that he tried to do that in 1996 and after. He spoke to the Ontario Securities Commission. There was no methodology or system in place that he was aware of for him to make disclosure of his US license.
- c. There was no regulatory obligation by the MFDA to make disclosure of his US license;
- d. He was aware of the requirement of the MFDA to disclose outside business activities;
- e. He received a copy of Investia's policies and procedural manual and was familiar with it. He received updates to the manual.
- f. He had no other business activity other than his US business;
- g. He disclosed the insurance business to Investia but did not disclose the US business because the form asked the question if he was selling mutual funds which he was doing both in Ontario and in the United States. He said he did not distinguish between the two;
- h. His book of business with Sunset was "probably \$25 million - mutual funds".

36. During the MFDA investigation, Ms. Alfenore located no written evidence from the Respondent or anyone else that the Respondent disclosed his U.S. business activity.

37. Mr. Yeboah was called by the Respondent and testified as follows:

- a. He was told by the Respondent that the Respondent was going to be the subject of an audit;
- b. He received a letter from Investia regarding an audit of his activities and he made an appointment with Investia for the audit. The auditor came to the office and it was after that he learned of the audit of the Respondent. He could not recall

whether his audit was before or after the Respondent's audit but they were separate audits;

- c. He was in Ghana when he received an email from Investia regarding his relationship with the Respondent and providing him time to find another broker;
- d. He was asked by the Respondent if he remembered Mr. Bruce Tian in August 2012 when Mr. Tian was at the office to audit the Respondent asking questions about the Respondent's U.S. business. He could not recall the date of the audit but did recall the conversation where the Respondent told Mr. Tian he did the same thing in the U.S.;
- e. He believed the audit of the Respondent was either 2010 or 2011;
- f. The Respondent was speaking to Mr. Tian on the telephone when he disclosed that Mr. Tian of his dual occupations in Ontario and the United States. Ms. Reid was in the office but the Respondent was not. The Respondent was on a speakerphone.
- g. He did not see any written disclosure by the Respondent to Investia of his U.S. business activities.

38. The Respondent testified about his immigration to Canada and his success as a salesperson for Metropolitan Life. By 1991, he was the number two salesperson in Canada for Metropolitan Life. He then decided to join the rest of his extended family in the United States. Two sisters who lived in Ontario had left for the United States. He joined them in the United States in 1993. He came back to Canada in 1996 and then moved back to the United States in 1997.

39. He testified that:

- a. In 1997 he got a mutual fund license in Ontario with Regal Capital which was bought out by Dundee;
- b. He did not have the securities license in the United States until 2000. He only had an insurance license;

- c. He had cancer in 2005 and 2011 which made it difficult for him to travel even for clients in Colorado;
- d. He told the Sunset vice president while he was in Colorado that he had a securities license in Ontario;
- e. He tried to tell Investia of his US business but there was no methodology in place to properly disclose anything;
- f. He never sold a U.S. product to a Canadian citizen nor a Canadian product to the U.S. public;
- g. It was never his intent not to disclose what he was doing and how he was doing it;
- h. He lived at *****, Ajax, from 2005 to about 2012. He simultaneously lived in the United States “because sometimes I have two residence.” He had a condo on Lakeshore Boulevard for three years which he sold. In his view, he had an address at *****, Ajax, Lakeshore Boulevard and 855 Matheson Blvd.;
- i. The residence at *****, Ajax, is owned by his in-laws;
- j. He spends most of his time in Colorado;
- k. He does not recall whether he disclosed a US address to Investia. He said that he had been faxing and sending stuff from the United States;
- l. he currently operates Infinity Retirement Solutions in Canada and Infinity Wealth Management in Colorado.

III. MFDA RULES

40. MFDA Rule 1.2.1 sets out the required individual qualifications of salespersons and in Rule 1.2.1(c) provides for “Dual Occupations”. The rule states that “an Approved Person may have, and continue in, another gainful occupation, provided that:

(iii) *Member Approval*. The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation.”

41. MFDA Rule 1.1.2 provides:

1.1.2 Compliance by Approved Persons. Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

42. MFDA Rule 2.1.1 sets out the standard of conduct to be met by Members and Approved Persons. It states:

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.

43. MFDA Rule 2.5 sets out the minimum standards of supervision required of each Member. Rule 2.5.1 sets out the Members Responsibilities as follows:

2.5.1 Member Responsibilities. Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

IV. Submissions

A. MDFA Staff

44. Staff provided written submissions to the panel setting out in detail their position on the issues before us.

45. Staff submits that the Respondent has breached Rule 1.2.1(c) as he did not disclose to Investia his outside business activities in the United States and failed to obtain its approval to carry on his outside business activities in the United States.

46. Staff provided us with its view of the rationale for the need to disclose outside business activities and provided case law in support of its position.

47. Staff submits that the conduct of the Respondent in failing to disclose his outside business activity in the United States was a breach of the standard of conduct of the Respondent as he was obliged to by both the MFDA Rules and his contractual obligations with Investia to disclose to it his outside business activities and obtain its approval which he failed to do.

48. Staff further submits that MFDA Rules 1.1.2 and 2.5.1 require Members to establish, maintain and implement policies and procedures to ensure that its business is handled in accordance with the By-laws, Rules and Policies of the MFDA and any applicable securities legislation.

49. MFDA Rule 1.1.2 provides that the Respondent has an obligation as an Approved Person to comply with the By-laws and Rules as they relate to the Member or the Approved Person.

50. Staff submits where Approved Persons disregard their obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined. They submit that the Respondent in disregarding his obligations undermined the Member's ability to supervise his conduct.

51. Staff submits that:

- a. sufficient evidence exists to find that the Respondent failed to disclose his outside business activities to his Member;
- b. by failing to do so, the Respondent also breached the policies and procedures of the Member;

- c. the Respondent's actions constitute misconduct contrary to MFDA Rules 1.2.1(c), 1.1.2 and 2.5.1.

B. Respondent's Submissions

- 52. The Respondent filed written submissions in response to Staff's Submissions.

- 53. The Respondent submits:
 - a. Although he did engage in outside business activities in the United States, such outside business activities were in fact disclosed to and approved of by the Member.
 - b. His residential address was disclosed to the Member.
 - c. Even if he failed to make the required disclosures to the Member and to obtain approval of his Outside Business Activities (which he "expressly and vehemently" denies), such failure to disclose was a technical violation of MFDA Rules, and does not constitute "misconduct" on his part.

- 54. The Respondent submits that after moving to the United States in 1993 and establishing a business relationship with a FINRA Broker-Dealer, he spoke in 2005 with representatives of Investia and explained to them that he had set up a business in the United States and he needed guidance as to how this needed to be disclosed to MFDA and the Member. He further submits that he spoke with the Ontario Securities Commission, seeking similar guidance and was told that there was only a handful of Canadian Brokers that were also licensed in the United States. He submits that these attempts to seek guidance (in order to comply with the "Outside Business Activities" reporting and approval requirements) proved to be futile inasmuch as everyone he spoke to simply responded "they did not know what I needed to do." He submits that he omitted disclosure of his Outside Business Activities on subsequent required Reporting Forms, "with a good faith belief that he did not have to make such a disclosure, given the lack of direction given to me by appropriate personnel of the Member."

55. The Respondent submits that even though he had his permanent residential address in the United States after 1993, he listed a Canadian address on disclosures made to the Member, because he also maintained a residence in Ajax, Ontario. He submits that he believed that he was to provide an address whereby any legal notices could be served on him in Canada. He further submits that as he was spending one week a month in Canada, he considered the address in Canada to be his permanent residential address as it related to his business activities in Canada.

56. The Respondent submits that he never concealed from anyone, including the Member, that he had moved to the United States and that he was conducting securities business in the United States. He submits that the Member had actual knowledge of his business activities in the United States and the Member never raised any concerns or objected to his outside business activities. He further submits that the Member knew that he was traveling back and forth from the United States to Canada in order to service clients in Canada. He submits that in 2010 he expressly disclosed his Outside Business Activities to Investia's auditor, Mr. Bruce Tian.

57. The Respondent submits that given the Member's failure to provide him with proper guidance as to how to disclose his outside business activities and its' failure to object at any time to his outside business activities, he has complied with MFDA Rules and/or Member Rules with respect to disclosure of his outside business activities. He further submits that given the Member's actual knowledge of his Outside Business Activities and its failure to object, the Member implicitly approved of his Outside Business Activities.

58. The Respondent submits that each of the cases referred to by Staff, *Re: Jose Luis Bautista*, [2012], MFDA File No. 201143, decision dated July 24, 2012, *Re: Bayant S. Dhindsa*, [2012], MFDA File No. 201119, decision dated May 15, 2012 and *Re: Meiz Mohammed Majdoub*, [2010], MFDA File No. 201010, decision dated November 12, 2010, are distinguishable because in each case in addition to the failure to disclose and obtain approval for outside business activities, each of the cases had additional factors which are not present in this case. He submits that there is no evidence of any independent wrongdoing arising out of his United States business interest; at no time during the transaction of his business in the United

States, did the Member want him to cease-and-desist from such activities and he never attempted to conceal from anyone that he was conducting outside business activities in the United States.

59. The Respondent also submits that the decision in *Puri (Re)*, [2014], 2014 IIROC 6, decision dated January 20, 2014, is also distinguishable because even though there were dual registrations in the United States and Canada, there was evidence of misconduct by the representative in that case independent of the failure to disclose outside business interests.

60. The Respondent submits that even if he failed to disclose and secure approval of his Outside Business Activities, which he denies, the facts and circumstances of this case do not support any finding that he is engaged in any misconduct. He submits that all of the evidence supports a finding that at all relevant times during which he conducted business in the United States and Canada, he has dealt fairly, honestly and in good faith with all of his clients and there is no evidence that any of the actions undertaken by him with respect to his clients constitute a conflict of interest. He submits that he never solicited any of his Canadian clients to open accounts with him as part of his United States business activities or vice versa; he has maintained high standards of ethics and conduct in the conduct of his business; none of his business activities can be considered unbecoming or detrimental to the public interest; his conduct has been consistent with the standards described in MFDA Rule 2.1.1; and there is no evidence to support any finding that his absence from Canada in any way was detrimental to the best interest of his clients.

V. Analysis and Decision

A. Introduction

61. The By-laws, Rules and Policies of the MFDA support its mandate to regulate the distribution side of the Canadian mutual fund industry in order to protect the investor public and strengthen public confidence in the Canadian mutual fund industry. These By-laws, Rules and Policies require mutual fund dealers to adopt the policies and procedures which meet the regulatory requirements of the MFDA.

62. We agree with Staff that failure to disclose outside business activities and dual occupations impedes a Member's ability to supervise an Approved Person to ensure that he or she is acting in accordance with the policies and procedures of the Member and the By-laws, Rules and Policies of the MFDA as well as applicable securities legislation.

63. We also agree with Staff that failure to disclose outside business activities/dual occupations prevents a Member's ability to ensure that clients and the general public are aware that the outside business activity is not the business or responsibility of the Member and that any actual or potential conflicts are dealt with appropriately.

B. Allegation #1

64. Allegation #1 is:

Allegation #1: Between May 6, 2005 and June 18, 2012, the Respondent had and continued in another gainful occupation that was not disclosed to and approved by the Member by carrying on business as a registered representative of two FINRA Member firms in succession, contrary to MFDA Rules 1.2.1(c) and 2.1.1.

65. MFDA Rules 1.2.1(c) (Dual Occupations) and 2.1.1 read:

1.2.1(c)(iii) *Member Approval.* The Member for which the Approved Person carries on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation.

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.

66. There is no question that in the documents completed by the Respondent for Investia that he did not disclose that he was carrying on business as a registered representative of Sunset Financial Services, Inc. nor Ridgway & Conger, Inc., two FINRA Member firms, operating in the United States.

67. In our view, the documents completed by the Respondent in connection with his employment by Investia over the years clearly indicated that he was to disclose any outside business activities.

68. Nowhere in these documents did he disclose that he was, during the relevant period, a registered representative for the sale of securities in the United States for Sunset Financial Services, Inc. or Ridgway & Conger, Inc.

69. The Respondent acknowledges that he was employed by Sunset Financial Services, Inc. or Ridgway & Conger, Inc., among others. He seeks to avoid responsibility for failing to disclose his employment by these two firms on the basis that he tried to make disclosure by that there was no method for disclosure. He says that he tried to do so in 1996 and after. He takes the position that there was no regulatory obligation by the MFDA requiring him to make this disclosure. We note that the Respondent states that he told the Investia representative at the audit of his business of his securities business and licenses in the United States in 2010. The date of the audit of his business was in August 2011 after Investia had learned of his dual occupations in the United States with Sunset Financial Services, Inc.

70. We disagree with the Respondent. First, under Rule 1.2.1(c), there was an obligation for him to make Investia aware and obtain Investia's approval for him engaging in other gainful occupation. Acting as a registered representative for two security firms in the United States is clearly engaging in another gainful occupation. The Respondent failed to do this. There are no letters or emails from the Respondent to Investia disclosing his employment by the two security firms and requesting approval. The Respondent has been under such an obligation since at least 2003 when he entered into the Agent Agreement with Cartier Partners referred to in paragraph 5 above. He agreed not to engage in any gainful occupation, other than Cartier Partners business

without that the approval of Cartier Partners. He also agreed not to “conduct any securities related to business ...with, in respect of, on behalf of any person other than Cartier Partners.” It was clear that the approval had to be in writing in accordance with Cartier Partners policies. The Respondent has produced no approval in writing from Cartier Partners.

71. When he completed the Application for Transfer referred to in paragraph 7, he was asked to “include all current employment and business information. This is to include any positions you hold outside of the mutual fund industry. Attach additional page(s) if space is insufficient.” He did not disclose that as of March 5, 2005, he was employed by Main Street Securities, LLC, in the United States as a registered representative for the sale of securities. There was no ambiguity in this question. The Respondent could have and should have made the disclosure about his employment with Main Street Securities, LLC.

72. There was an opportunity to disclose the same information when he completed the Investia “Information Disclosure Consent” which he failed to do.

73. The Representative Contract the Respondent entered into with Investia on May 8, 2005, referred to in paragraph 11, obligated him to comply with the MFDA Rules, By-laws and legislation and to comply with the policies and procedures of Investia. He agreed to notify Investia in writing of any change in information relating to himself as an Approved Person. In our view, this also obligated the Respondent to disclose that he was licensed to carry on business in the United States and obligated him to advise Investia when he changed his employment from Main Street Securities, LLC to Sunset Financial Services, Inc. and then to Ridgway & Conger, Inc.

74. We simply do not accept the Respondent’s evidence and assertion that he was unable to disclose to Cartier Partners, Dundee and Investia that he was licensed to sell securities in the United States.

75. We disagree with the Respondent’s submissions in relation to *Re: Jose Luis Bautista*, *Re: Bayant S. Dhindsa* and *Re: Meiz Mohammed Majdoub*. These cases are not distinguishable on

the basis suggested by the Respondent. In each of these cases, the failure to disclose and obtain approval of outside business activities was the basis for the finding of misconduct with respect to that issue. It was the Respondent's obligation to obtain approval. The onus in this hearing was on the Respondent to prove that he had obtained approval. On the evidence before us, he has not done so.

76. We agree with the decision in *Puri (Re)*, [2014], 2014 IIROC 6, decision dated January 20, 2014, that failure to disclose dual registrations in the United States and Canada was misconduct. Clearly, being a registered representative in the United States is engaging in another gainful occupation.

77. We also agree that the failure to make disclosure as required was a contravention of Rule 1.2.1(c) and Rule 2.1.1 (Standard of Conduct). The failure to comply with his contractual obligations and the policies and procedures of the Canadian Member firm during the period May 6, 2005, to June 18, 2012, by disclosing his outside business activities/another gainful occupation was a failure to meet the high standards of ethics required by Approved Persons. This failure was found to be a failure to meet the high standards of ethics in *Re: Jose Luis Bautista and Re Tonnies*, [2005] MFDA No. 200503.

78. We find that Allegation #1 has been established.

C. Allegation #2

79. Allegation #2 is:

Allegation #2: Between May 6, 2005 and June 18, 2012, the Respondent failed to comply with the policies and procedures of the Member by:

- (a) failing to provide his correct permanent residential address to the Member; and
- (b) engaging in outside business activities which were not disclosed to and approved by the Member;

thereby interfering with the ability of the Member to supervise the Respondent, contrary to MFDA Rules 1.1.2 and 2.5.1 and MFDA Rule 2.1.1.

80. MFDA Rule 1.1.2 provides:

1.1.2 Compliance by Approved Persons. Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1.(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.

81. Rule 2.5.1 sets out the Members Responsibilities as follows:

2.5.1 Member Responsibilities. Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

82. Staff relies as well on Rule 2.1.1 (Standard of Conduct) which is set out above.

83. As found above, the Respondent notwithstanding his obligation to disclose his outside business activities to Investia in relation to his employment as a registered representative in the United States, failed to do so. He breached Rule 1.1.2. In failing to comply with Investia's policies and procedures with respect to disclosure of outside business activities which Investia was required to establish, implement and maintain by virtue of Rule 2.5.1, he interfered with the ability of Investia to supervise him.

84. With respect to the allegation that he failed "to provide his correct permanent residential address to the Member", we find that he did fail to do so. Based on the evidence before us including the acknowledgment by the Respondent, during the relevant period his permanent residence was in Colorado and not in Ontario. His permanent residence was not *****, Ajax. This was the address of his in-laws. He appeared to use it as a mail drop although he may have stayed there from time to time. The evidence was that when he visited Ontario approximately one week per month, he stayed near his office at 855 Matheson Blvd., Mississauga. At no time on any of the material filed with Investia did he disclose his

address in the United States although the forms requested that information. In order for Investia to meet its regulatory obligations and to properly supervise the Respondent, it needs to know where he lives and if he lives in more than one place, it needs to know all of the addresses used by the Respondent.

85. These two failures by the Respondent constitute a failure to observe high standards of ethics and conduct contrary to Rule 2.1.1.

86. We accordingly find that Allegation #2 has been established.

VI. Conclusion

87. We find that the Staff of the MFDA have established on the evidence before us that the Respondent has committed violations of the MFDA Rules as set out in the two allegations made against the Respondent.

88. As a result of these findings of misconduct, we need to address the issue of penalty. We direct that the Manager of Hearings Administration proceed to set a date for hearing of submissions with respect to the appropriate penalty.

89. A number of the submissions of the Respondent were submissions that go to penalty as opposed to liability. The Respondent may make those submissions at the penalty hearing.

DATED this 13th day of January, 2016.

“W.A. Derry Millar”

W.A. Derry Millar
Chair

“David W. Kerr”

David W. Kerr
Industry Representative

“Colleen Waring”

Colleen Waring
Industry Representative

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