



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: Tony Siu Fai Tong

Heard: May 24, 2013 in Calgary, Alberta
Decision and Reasons: October 21, 2013

DECISION AND REASONS

Hearing Panel of the Prairie Regional Council:

Alan V. M. Beattie, Q.C.
Kathleen Jost
Howard R. Mix

Chair
Industry Representative
Industry Representative

Appearances:

Shari L. Boyd)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
Faye Emmanuel)	Assisting Counsel, MFDA
)	
Alan Currie)	Manager, Investigations for the Prairie Region of
)	the MFDA - Witness (primarily by Affidavit)
)	
Tony Siu Fai Tong)	Respondent - Witness (not represented by
)	Counsel)

1. INTRODUCTION

1. This Hearing Panel (“the Panel”) was convened pursuant to a Notice of Hearing dated January 21, 2013, to consider whether alleged violations by Tony Siu Fai Tong (“the Respondent”) of the By-laws, Rules or Policies of the MFDA are proven and, if so, the appropriate penalties to be imposed on the Respondent for the violations.

2. The first appearance in this matter, by teleconference, took place on March 20, 2013, before the Panel. The Respondent participated in the first appearance. The Hearing of this matter on its merits was scheduled to take place on May 24, 2013. The Respondent attended the hearing. He was not represented by Counsel. The Respondent had filed an extensive Reply, with attachments, dated February 18, 2013, which was provided to the Panel members in advance of the Hearing.

3. At the commencement of the hearing, the Panel granted a motion by MFDA Staff Enforcement Counsel that if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

4. The Panel members had, prior to the Hearing, reviewed the Affidavit of Alan Currie, Manager, Investigations for the Prairie Region of the MFDA which addressed the allegations set out in the Notice of Hearing and incorporated extensive supporting documentation. The Respondent had been provided with the Notice of Hearing and the Affidavit of Alan Currie. At the commencement of the hearing the Panel Members, and the Respondent, were provided with written Submissions of Staff of the MFDA and a Book of Authorities. *(All quoted passages herein from the Notice of Hearing and the Submissions of Staff contain the paragraph numbers from those documents; quotations from the transcript of evidence and submissions are referenced as “T, p. __”.)*

5. Evidence at the Hearing on behalf of the MFDA was presented primarily through the

Affidavit of Alan Currie. Mr. Currie was sworn, his Affidavit marked as Exhibit 4, and he responded to several questions from the Respondent and the Panel. The Panel admitted the Affidavit evidence pursuant to Rule 1.6 (“Admissibility”) of the MFDA Rules of Procedure. The Respondent testified under oath and was cross-examined by MFDA Counsel. At the conclusion of the testimony MFDA Counsel and Mr. Tong made submissions on the allegations of misconduct and on penalties and costs (both below).

2. **ALLEGATIONS OF MISCONDUCT**

6. In the Notice of the Hearing the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between July 2006 and August 2008, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending, facilitating the sale or making referrals in respect of the sale of approximately \$1,890,000 of limited partnerships to at least 39 clients outside the Member, contrary to MFDA Rules 1.1.1(a), 2.4.2(b) and 2.1.1.

Allegation #2: Between July 2006 and August 2008, the Respondent had and continued in another gainful occupation which was not disclosed to and approved by the Member by selling, recommending, facilitating the sale or making referrals in respect of the sale of approximately \$1,890,000 of limited partnerships to at least 39 clients outside the Member, contrary to MFDA Rules 1.2.1(d) and 2.1.1. (Allegation #2 was alleged as an alternative to Allegation #1.)

Allegation #3: Between December 2010 and January 2011, the Respondent engaged in conduct unbecoming an Approved Person by providing false and misleading responses to the Member during the course of the Member’s investigation, contrary to MFDA Rule 2.1.1.

Allegation #4: Between December 2002 and February 2011, the Respondent obtained and maintained 7 pre-signed forms in respect of 5 client files, thereby engaging in a practice unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

3. **PARTICULARS**

7. The following is a summary of the facts alleged in the Notice of Hearing and relied upon by the MFDA at the Hearing, reiterated and supplemented in the Affidavit of Alan Currie:

Registration History

1. The Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc. (“Investors Group”, *sometimes referred to as “IG”*), a Member of the MFDA, in Alberta from December 11, 2002 until February 9, 2011 and in Saskatchewan from January 30, 2008 until February 9, 2011. Investors Group terminated the Respondent on February 9, 2011 as a result of the events described herein.

2. During the material time, the Respondent resided in Calgary, Alberta.

3. The Respondent is not currently registered in the securities industry in any capacity.

Background: Concrete Equities and the limited partnerships

4. Concrete Equities Inc. (“Concrete Equities”, *sometimes referred to as “CE”*) was incorporated in Alberta and carried on business in Calgary, Alberta until approximately June 2009, at which time a receiver was appointed.

5. Concrete Equities provided overall management and direction for investments that it formed and held by way of various limited partnerships. Concrete Equities was affiliated with each of the general partners of the limited partnerships (each limited partnership having a separate general partner).

6. Concrete Equities formed the limited partnerships to hold commercial real estate investments in the Calgary area, as well as to fund real estate development opportunities in Mexico. Concrete Equities sold units in the limited partnerships to members of the public by purporting to rely on the offering memorandum exemption from the prospectus and registration requirements available under Alberta securities law. The limited partnerships sold by Concrete Equities included the following nine real estate projects (collectively referred to as the “Concrete LP’s”):

<u>Limited Partnership Name</u>	<u>Project</u>
Safeguard Real Estate Investment Fund Limited Partnership	Deer Valley and Millrise Strip Malls, Calgary, AB
Safeguard Real Estate Investment Fund II Limited Partnership	SNC Lavalin Office Building, Calgary, AB

Safeguard Real Estate Investment Fund III Limited Partnership	Castleridge Plaza Shopping Centre, Calgary, AB
Safeguard Real Estate Investment Fund IV Limited Partnership	Concrete Equities Place Office Building, Calgary, AB
Safeguard Real Estate Investment Fund V Limited Partnership	MEG Place Office Building, Calgary, AB
Safeguard Real Estate Investment Fund VI Limited Partnership	Airways Business Park and Glenmore Commerce Court, Calgary, AB
Safeguard Real Estate Investment VII Limited Partnership	Symcor/Ottis Office Building, Calgary, AB
Santa Clara Real Estate Investment Fund Limited Partnership	El Golfo de Santa Clara, Mexico
Calle Mariposas Limited Partnership	Luna Morado, Mexico

7. In July 2009, Ernst & Young was appointed as receiver for Concrete Equities and seven of the Concrete LP's and their respective general partners. In its December 2009 report, the receiver stated, among other things, that the Concrete LP's had failed to maintain proper books and records, had failed to adhere to prudent governance practices, and had comingled investors' monies. The receiver predicted that the likelihood of the investors in the Concrete LP's receiving all of their initial investment back, let alone the "touted profits", was "dim".

8. On February 16, 2011, the receiver issued a Notice to Investors advising investors in several of the Concrete LP's that there were insufficient assets to fund distributions to unsecured creditors and therefore no residual value remained to be returned to the investors who had purchased units of the limited partnerships.

9. In a decision dated January 9, 2012, (*Aurora, Humeniuk, Jones and De Palma*, November 21, 2011 (2012), ABASC 7, decision at Exhibit E of Alan Currie Affidavit; decision is under appeal) the Alberta Securities Commission (the "ASC") fined four directors and officers of Concrete Equities a total of \$5.6 million in relation to the sale of several of the Concrete LP's. (*One of the directors/officers fined was Vincenza DePalma, Vice-President of Marketing for Concrete Equities.*) The ASC found, among other things, that the offering memorandum used to sell eight limited partnerships was so gravely deficient as to make the offering memorandum exemption under Alberta securities law purportedly relied upon by Concrete Equities unavailable and therefore the distributions of the limited partnership units to investors were illegal.

Allegation #1: Securities Related Business

10. The Concrete LP's were not investments which had been approved by Investors Group for sale by its Approved Persons, including the Respondent. The Respondent became aware of Concrete Equities and its limited partnership offerings in the spring of 2006 through direct communications with Concrete Equities' Vice President of Marketing & Sales. (*He had learned about Concrete Equities through De Palma, to whom he had been referred.*)

11. In the summer of 2006, the Respondent attended his first sales presentation given by Concrete Equities in relation to the Concrete LP's and invited family and friends to attend the presentation with him.

12. The Respondent sold, recommended, facilitated the sale or made referrals in respect of the sale of approximately \$1.9 million of the Concrete LP's to (*at least*) the following 39 clients of Investors Group:

<u>Client</u>	<u>Amount Purchased</u>	<u>Source of funds</u>
SA and CA	\$10,000	Line of Credit ("LOC")
CB	\$170,000	Cash (\$70,000) & LOC (\$100,000)
MB and GA	\$50,000	LOC
MC	\$20,000 - \$40,000	Unknown
JC	\$50,000	LOC
JCH	\$120,000	LOC
CC and AC	\$50,000	LOC
VC and LC	\$70,000	LOC
SC and SC	\$80,000	LOC
KC	\$50,000	LOC
IH and BH	\$10,000	LOC
PH and DH	\$100,000	LOC
CH	\$60,000	Cash
ALA	\$50,000	LOC
SL and AL	\$150,000	LOC
NCL	\$50,000	LOC
YM and AM	\$70,000	LOC
NO and KO	\$40,000	LOC
FP and MP	\$110,000	LOC
KP and KC	\$40,000	Cash
TP and DP	\$90,000	LOC
HB and SB	\$100,000	LOC
VR	\$50,000	LOC (<i>Affidavit, Exhibit BB</i>)
DR and KR	\$300,000	LOC
Total	\$1,890,000 - \$1,910,000	

13. The Respondent recommended that the clients purchase the various Concrete LP's and referred the clients to Concrete Equities for detailed information regarding the various Concrete LP's and to complete the required documentation, including arranging for payment.

14. The Respondent did not disclose to Investors Group that he was selling, recommending, facilitating the sale or making referrals in respect of the sale of the Concrete LP's to clients.

15. The Respondent recommended the Concrete LP's to clients who were interested in investing in real estate or who had some real estate investing experience. The Respondent did not determine whether the clients qualified as eligible investors who were permitted to purchase the Concrete LP's in reliance on the offering memorandum exemption.

16. Between August 31, 2006 and August 18, 2008, the Respondent received \$80,000 in referral fees from Concrete Equities paid either directly to him or to his numbered company, 1350794 Alberta Ltd., as follows:

<u>Date</u>	<u>Payee Name</u>	<u>Amount</u>
August 31, 2006	Tony "Siu Fai" Tong	\$20,000
November 17, 2007	1350794 Alberta Ltd.	\$2,500
August 18, 2008	1350794 Alberta Ltd.	\$20,000
February 1, 2008	1350794 Alberta Ltd.	\$37,500
	Total	\$80,000

17. The referral arrangement by which the Respondent received compensation from Concrete Equities was not between Investors Group and Concrete Equities, was not in writing, and the referral fees received by the Respondent were not paid to or recorded on the books of Investors Group.

18. By engaging in the conduct described above, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of Investors Group, contrary to MFDA Rules 1.1.1(a), 2.4.2(b) and 2.1.1.

Allegation #2: Dual Occupation

19. In the event the activity engaged in by the Respondent described in Allegation #1 did not constitute securities related business, then the Respondent had and continued in another gainful occupation that was not disclosed to and approved by Investors Group by selling, recommending, facilitating the sale or making referrals in respect of the sale of the Concrete LP's to clients, contrary to MFDA Rules 1.2.1(d) and 2.1.1. (*The Respondent indicated that he did not consider his relationship with Concrete Equities an outside business activity as he was not advising clients in relation to the Concrete Equities Investments. He did not disclose his relationship with Concrete Equities to Investors Group. Currie Affidavit, para. 58.*)

Allegation #3: Misleading the Member

20. In November 2010, the ASC received two complaints from clients of Investors Group concerning their purchase of Concrete LP's. The ASC referred the complaints to MFDA Staff, which in turn provided them to Investors Group

for its review and investigation. (*The complaints were from HB & SB and from AL, discussed below at pp. 20, 27.*)

21. On December 19, 2010, in response to a written inquiry from Investors Group, the Respondent provided a written statement by way of email to Investors Group in which he addressed the concerns raised by the clients who had filed complaints with the ASC. In his response, the Respondent indicated that he did not recommend to the clients that they borrow to invest in the Concrete LP's and acknowledged that he did not obtain approval from Investors Group in relation to Concrete Equities as he was not aware that it was required. The Respondent omitted any reference to the compensation he had been paid by Concrete Equities.

22. On December 29, 2010, in response to a written inquiry from Investors Group, the Respondent provided a written statement by way of email to Investors Group in which he denied receiving any compensation personally or through a related party relating to sales or referrals of the Concrete LP's.

23. On January 25, 2011, Investors Group interviewed the Respondent (*by teleconference*) regarding the Concrete LP's, at which time the Respondent again denied receiving any compensation in relation to sales or referrals of the Concrete LP's.

24. The Respondent's statements to Investors Group on December 19, 2010, December 29, 2010 and January 25, 2011 were false and misleading. Among other things, as set out in paragraph 16 above, at the time the Respondent made the statements to Investors Group, he had already received a total of \$80,000 in compensation from Concrete Equities in relation to sales or referrals of the Concrete LP's, which amounts had been paid to him either directly or to his company. The Respondent first omitted disclosure of that fact and then expressly denied receiving any compensation.

25. In July 2011, MFDA Staff obtained a copy of the schedule prepared by the receiver of the commissions that Concrete Equities had paid to various individuals. The Respondent was identified on the schedule as having received a total of \$80,000 in commissions in respect of sales or referrals of the Concrete LP's.

26. On February 27, 2012, MFDA Staff presented the schedule to the Respondent during the course of an interview, at which time the Respondent admitted that he had received compensation from Concrete Equities in respect of sales or referrals of the Concrete LP's.

27. By engaging in the conduct described above, the Respondent engaged in conduct unbecoming an Approved Person by providing false and misleading responses to Investors Group during the course of its investigation, contrary to MFDA Rule 2.1.1.

Allegation #4: Blank Signed Forms

28. After the Respondent was terminated by Investors Group on February 9, 2011, Investors Group reviewed the files of clients whose accounts were serviced by the Respondent. During the review, the following seven pre-signed forms (i.e. blank or partially completed forms signed by the clients) were found in client files:

<u>Client</u>	<u>Pre-signed form</u>
KR	Registered Account Transfer Form
NC & FSL	National Bank of Canada Line of Credit Agreement
CB	Investment Instruction Form, Transfer Authorization, and CRA Direct Transfer Form
HW	Transfer Forms
TB	CRA Direct Transfer Form

29. With the exception of client CB's Investment Instruction Form (for which no determination could be made as to whether or not the form had been used), none of the pre-signed forms had been used by the Respondent to transact business in the clients' accounts.

30. By engaging in the conduct described above, the Respondent engaged in a practice unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

(The Notice of Hearing further set out powers of the Panel regarding possible findings against the Respondent and regarding possible imposition of penalties. It also advised of the requirements of a Reply by the Respondent and the consequences of failure to file a Reply or attend the Hearing.)

4. REPLY OF THE RESPONDENT

8. The Reply of the Respondent (Exhibit 3) includes (paragraph numbers refer to the paragraphs in the Notice of Hearing, above):

Admissions

Tony Siu Fai Tong (the "Respondent") admits the facts alleged and conclusions drawn by Staff of the Mutual Fund Dealers Association of Canada ("Staff") in paragraphs [1-3, 10-13, 16-18, 20, 21, 26-29, 30] of the Notice of Hearing, except as otherwise noted below:

11. I invited 8-10 people, some family, some friends. I did not solicit, advertise or send out any invitations. Commercial real estate LP's were fairly new to the investment marketplace to me and I wanted to learn and understand from my own perspective what they involved as they were all over the media and some of my clients themselves were asking me about them. I invited some who had asked me if they wanted to go to a public seminar with me and what the fuss was all about. Some had invested in residential real estate within my network in the

past, had done well, and were interested.

12. Of the list of clients named in the Notice of Hearing, 30 of the 39 clients named within were introduced to Investors Group (IG) by me. They were clients of Investors Group after meeting with me. The other 9 were a combination of poorly serviced and irritated existing IG clients (JC), redeeming clients whom I rescued from transferring out (NCL), or were clients transferred to my practice when other advisors left. I bought these clients out from management when tenured advisors left or I was sold these assets in an attempt to retain (CB, CC, AC, NO and KO). Of the 30 I brought to IG, 12 requested my assistance in one capacity or another in helping them purchase residential real estate well before CE went bankrupt.

13. 25 of 39 still own their investments in Calgary commercial real estate CE LP's.

20. The complainants were ALA and HB/SB. ALA was a personal acquaintance and friend of the respondent since 1999. He became a client in 2004. HB/SB were introduced to the respondent by CJ, an employee of Concrete Equities sales team and CJ was at that time a client of the respondent. HB/SB were already invested in several limited partnerships by the time they had met the respondent and were already invested in CE Safeguard LP IV before they had met the respondent.

21. At this point, the respondent does not recall the Dec 19 2010 email (*referenced below*). I also do not recall being asked about the compensation piece in the January 8th 2011 or Feb 3rd, 2011 emails. I do recall writing a 4 page email (*January 8, 2011, attached to the Reply*) which detailed much of my involvement with CE and forwarding that to my Regional Director as well as sending an email on February 3, 2011 to Barbara Kaisaris (*Investigator with Investors Group*).

26. The respondent does not recall viewing said schedule but did agree to provide any and all banking records requested in full co-operation with MFDA.

28. During nearly half of my 8.5 year career at IG I employed an administrative (assistant) in one capacity or another, some part time, some full time to assist with the massive amounts of forms and paperwork required of IG consultants. It is possible that these forms were not destroyed and left in files for lack of communication or misunderstanding. Of the clients you identified, I recall having full Compliance Review Audits for NCL and FSL as well as CB and HW sometime between the periods of 2006 and 2011. I believe that these forms would also have to have been missed by myself, my administrative assistant along with the Division Director, Region Director, or Head Office individual who performed several audits on my files at both IG Region Office Calgary Lethbridge and Calgary Centre. I transferred to Calgary Centre officially on December 1, 2010. So this must have been missed at multiple offices by multiple individuals. I am quite positive no additional compliant steps were taken to review my client files during my employ at IG until I was walked off the job on Feb 9, 2011, despite the fact that I was supposedly under "direct supervision" after being in multiple

disputes with CRA (*Canada Revenue Agency*). Many of these forms were signed for the convenience of clients. There would be no benefit of keeping blank client forms in a client file. That is unless someone were trying to malign my character to protect their best interests/assets.

29. For the record, CB was my highest value client at IG. I delivered the Death Claim of her deceased husband (BB) in the fall of 2008. In the spring prior to his death I also suggested they increase BB's life insurance coverage. BB died suddenly on July 1, 2008 and his life insurance proceeds were re-invested at CB's request thereby making CB one of my highest value clients.

Denials

The Respondent denies the facts alleged and conclusions drawn by Staff contained in paragraphs [state paragraph numbers] of the Notice of Hearing, except as otherwise noted below:

14. In early 2007, I attended a sales presentation at the offices of Concrete Equities in Downtown Calgary. I attended along with one of my clients BB, also of Calgary. BB had also arranged for a colleague of his to meet us at the CE offices. BB and EL were both employed with the City of Calgary in the capacity of Plumbing Inspectors. When I arrived to meet BB at the CE offices he was already seated with VDP (*De Palma*), the president of sales and marketing for CE at the time and shortly thereafter we were all joined by BB's colleague EL and EL's wife NL. We all sat through a presentation for Safeguard RE LP III together. BB had mentioned to me that he had been talking to his friend EL about my client service and was hoping EL and NL would consider me as a referral of BB's. At the end of the presentation, EL wished to purchase Safeguard RE LP III. NL had some doubts. At this point I produced my business card and presented it to EL and NL. They proceeded to inform me that they were clients of Investors Group already. I asked them who their advisor was and they mentioned TM. TM and I had worked in the same office (Regional Office 90 Calgary South) for a few years before I transferred to the Calgary Lethbridge office in late 2005. I mentioned to both EL and NL that they should sit down with TM and see if the CE limited partnership was suitable for them. BB decided he wanted to purchase the LP and made arrangements for later on as I left the meeting. Some few weeks later, I was called into a meeting with DL (*Mr. Lush, see p. 18*), my Division Director at IG at the time. TM had complained to BM his Region Director at Region Office 90 about my affiliation with CE and BM subsequently informed DL. I was asked by DL what my relationship with CE was. I mentioned that I had purchased a LP unit in the prior summer with a friend thru home equity and that CE and I were referring clients back and forth. I also mentioned that I had signed a few of the CE sales (*force*) as IG clients and had been sending anyone with interest in CE back to CE for their own discussions. DL mentioned to me at this point that I shouldn't recommend any products that weren't Head Office products and that at an earlier stage in his own career he had gotten a warning for selling LP units in his own LP. I acknowledge that I made a considerable judgement in error by not mentioning that CE had personally written me a cheque for \$20,000.00 for my friends/family who purchased CE LP II the summer of 2006. There was no

agreement, they just wrote me a cheque. At this point I should have asked more questions of IG or Management at the time but as far as I was concerned they didn't care about anything (*about*) me except for my sales #'s... which were going up at the time. Compliance was viewed by many consultants as a necessary evil but I was unaware at this point in time that I was in contravention of any MFDA rules. I had written my IFIC some 5 years earlier and those thoughts were far from my mind. I was on Direct Supervision by Branch Manager as I was being directly garnished by CRA (see attached commission statements) for intermittent periods over an approximate 3-4 year period of duration during my career at IG. My wife and I had just had our first child in November of 2006 after 3 consecutive miscarriages. In January of 2007 my newborn daughter had her first full blown epileptic seizure while I was out on appointments one evening working and life was very very different from that moment on. Had I known the following month later that I would be jeopardizing my career with IG or my relationships with my clients because of an unscrupulous 3rd party or world economic meltdown there is no way I would have gotten past referring the first LP with CE in 2006. I DID disclose that I had a good personal relationship with VDP and CJ of CE and that was commonly known even within my own office. Because of this relationship, many CE clients became clients of IG as a result. No dollars left IG to go to CE.

15. I did not deal in any of the issues regarding eligible or ineligible investors. I suggested to anyone asking me they seek legal counsel on their own if they had questions.

19. I disclosed that my family, friends, and some clients were buying CE LP's to IG in Spring of 2007. If you wish, subpoena the email records of TM, BM, DL and possibly JS. IG did not ask me who. Or how much. Had HG and IG asked me I would have asked the clients and told them anything they wanted. Nobody would ever have been able to invest past LP III and no clients would have lost their money in Mexico or anywhere else. I would not have risked my career or my only source of income (my wife was on bed rest by physician from the first trimester of her pregnancy with my first daughter). At this point I requested to register my home office with the MFDA as I wanted to spend as much time with my wife at home as possible after 3 miscarriages, all the while dealing with garnishment and trying to keep my practice afloat. IG granted this request and I believe the necessary information was passed onto the NRD database.

No Knowledge

The Respondent has no knowledge of the facts alleged and conclusions drawn by Staff in paragraphs [state paragraph numbers] of the Notice of Hearing except as otherwise noted below:

22-25. I cannot concur or deny as I do not have full access to those email records. I was escorted off the premises at IG with no documents. I can and will provide full documentation of emails and excerpts I am in possession of if the MFDA requests such.

Additional Facts and Conclusions

The Respondent intends to rely on the following additional facts and conclusions at the hearing:

I joined IG in 2002. I started in Red Deer in 2002. Transferred to Calgary South in 2003. Transferred to Calgary Lethbridge in 2005. Transferred to Calgary Centre in 2010. During my tenure, I had 4 Division Directors, and 4 Regional Directors. Was encouraged at all time in all offices to build a strong network with Centres Of Influence (COI's) I built these relationships with many organizations in the hopes of growing my practice at IG. When Concrete Equities came onto the investment landscape in 2006 I viewed it as just another vendor. IG had in the past introduced and brought in many vendors, companies and guest speakers that were non IG entities or services (TD Canada Trust, BMO Investment Lending Group, various Tax and Estate Planning Lawyers) and advocated for us to use their products and services. Many of these vendors had long established relationships with IG consultants and were also, in fact, clients of IG. I believe that if I had known or someone had told me that I was in such violation of MFDA rules or that I could lose everything I had worked so hard for from 2002-2007 and beyond that I never would have even blinked twice at the mention of Concrete Equities. To this day I feel terribly sorry for the losses suffered by my clients, family and friends because of my relationship with CE. I worked diligently all throughout my career to try to better my client's financial positions. We made a lot of people a lot of \$ thru various real estate ventures in my network. In some cases, hundreds of thousands of dollars for some of my clients. Even after CE went into receivership I tried to maintain good relations and communications with the clients and was not selfish in my behaviours or thoughts. Nor did I do anything illegal or underhanded as others may have you believe. I could not have predicted wrongdoing by the managing partners at CE and/or the collapse of the world markets in 2008. IG encouraged me as a consultant to promote the concept of leverage and I showed some of my family friends and clients this concept well before CE ever came along.

I believe that over the course of my 8.5 years at IG that I had positively impacted the majority of my clients, that I mentored and trained many consultants and people genuinely benefitted from my services. In 2008 I was recognized in the top 2% of all IG consultants nationally based on statistics. I was also recognized in 2008, 2009, 2010 as Financial Planner Of The Year in my office. I encouraged the MFDA to review the documents submitted with this reply as I believe the bad has not outweighed the good. I have been open, honest and co-operative with the MFDA since the beginning of their investigation. I have also enclosed some other information (commission statements showing garnishment periods, letters from clients who invested in Concrete Equities and lost money in doing so, and various other literature).

(There are three letters of testimonial attached to the Reply from clients of the Respondent, none of whom are among the investors referenced in these proceedings. The essence of two of the testimonials is captured in the closing comments of one of the letters: "...I find it ridiculous that people blame others for

a minor devaluation in the value of an investment. People who lost money due to Concrete Equities seemed to have broken two of the most important rules of investing. Do not be greedy and if you can't afford to lose value on your principal investment find a safer investment vehicle. No one was coerced into taking Mr. Tong's advice. The best financial planners bring opportunities to their clients and it is the clients' responsibility to follow that advice or not.")

5. EVIDENCE

THE MFDA INVESTIGATION (OTHER THAN REGARDING THE INDIVIDUAL INVESTOR)

9. Mr. Currie was sworn, adopted the evidence in his Affidavit and was made available for cross-examination by Mr. Tong. Mr. Tong referred to his “2010 Annual Consultant Certificate from the compliance department (of IG)” which had been obtained by Mr. Currie in the course of his investigation. MFDA Counsel pointed out that the 2010 Certificate was only produced in the disclosure part of the investigation and was not before us; it was produced and marked as Exhibit 5. The Certificate comprised four pages of questions by IG and answers by Mr. Tong, which included:

<u>Question</u>	<u>Answer</u>
1a. I have not paid referral fees or received a referral fee (including indirect compensation) from any third party other than through Investors Group:	True
1d. I have only made recommendations on or effected trades for products for which I am licensed:	True
1e. I have only made recommendations on or effected trades in mutual funds or securities products which are offered through or sponsored by Investors Group (including IG-MRS):	True
1g. I have not arranged for any client to pre-sign any form(s) and do not maintain any pre-signed form(s) in any client file:	True
2b. If I have any outside business activity or dual occupation, I have disclosed the outside business activity or dual occupation, and it has been approved by my Regional Director and Area Vice-President in addition, it has been reported to Compliance	True

10. Mr. Tong asked Mr. Currie why, since the events in issue occurred before 2010, the

Annual Certificates for years preceding 2010 had not been produced. Mr. Tong explained the reason for asking the question being that he “remember(ed) in previous occasions submitting different responses and....did disclose to IG that I did have a numbered Alberta Limited company for real estate transactions”. He expressed his belief that IG “have some culpability as well” (T, pp. 14-18).

11. The Chair advised Mr. Tong (on several occasions) that he would have an opportunity to present his evidence and requested he get back to the cross-examination.

12. Mr. Currie’s answer to the question was that the MFDA requests all pertinent annual certificates, as well as other relevant documentation, received a 2010 Certificate, and questioned Mr. Tong about it. Mr. Currie testified (T, pp. 19, 21):

I don’t recall him (Mr. Tong) disputing the truth of any of the answers or the questionnaire itself...These certificates are only relevant if they prove something and I already understood from your testimony to me in my questioning of you at our interview, as well as your statements to Investors Group, that you never disclosed to them that you had ever received any referral fees relating to this investment, so that was the only relevance in this investigation. So it wouldn’t really have mattered to me. As long as -- if you had told me something different, that you actually had disclosed to them that you had received referral fees, then that would have been something that would have been relevant evidence,...

13. Mr. Tong said “okay” but proceeded to be critical of IG for not guiding and mentoring him. The Chair again interjected reminding Mr. Tong that IG “is not on trial here” and he should be asking Mr. Currie if there are things that he (Mr. Tong) told IG that have not been disclosed. Mr. Tong acknowledged that he considered Mr. Currie to have been “pretty accurate and pretty straight forward and honest with his dealings with me” (T, p. 25).

14. Mr. Tong was sworn and gave evidence, albeit often rambling and repetitive evidence. He reiterated the statements in his Reply (above) about his successful career, his concern for his clients, his garnishee problems with CRA, his financial situation which precluded him retaining a lawyer for these proceedings beyond the initial stages (who was ineffectual), health issues in his family, his extensive involvement with clients and real estate investments (600-700 transactions), a network which he had with three others outside IG (mortgage broker, realtor and accountant). He explained how he generally helped clients establish home equity lines of credit (which were

used in some cases as a source of funds for the Concrete LP's). He said he advised clients, regarding Concrete LP's, that "the dividend cheque quarterly from CE (would) cover the monthly interest payment on the line of credit" (T, pp. 64, 65).

15. There was considerable testimony from Mr. Tong, including answers to questions from the Panel and questions from MFDA Counsel in cross-examination, about his lack of knowledge regarding "legal requirements", IG policies and MFDA rules and his discussions with IG management. (The terms "accredited investor" and "eligible investor" were used interchangeably in the Hearing; MFDA Counsel pointed out that the correct term is "eligible investor" and that it matters not what term was being used as far as everyone understanding that the investor had to meet certain qualifications to be exempt under the offering memorandum exemption in the Alberta securities laws.) As background to this issue, guidance is provided by passages from the decision of the Alberta Securities Commission in the *Aurora Merits* and *Penalty* decisions (Exhibits E and F to Mr. Currie's Affidavit - the first two passages are from Exhibit F and the last passage is from Exhibit E):

[42] Each Unit seems to have been sold under a subscription agreement that set out, verbatim, the legal definition of "eligible investor", and required the subscribing investor to certify his, her or its eligibility and identify which of the many categories of eligibility applied. In turn, each subscription agreement seems to have been accompanied by a "Risk Acknowledgement" form fashioned after that prescribed by National Instrument 45-106 *Prospectus and Registration Exemptions* ("NI 45-106"), by which a subscribing investor was to acknowledge that the investment was risky and all invested money could be lost. Staff did not take issue with the form of the subscription agreements and risk acknowledgements used by the Concrete Group.

...

[109] We summarize here salient aspects of the investor witnesses' evidence:

...

- Most, when making their investments (or certain of them), were not asked, or could not recall being asked, about being "eligible investors" (as that term is defined in NI 45-106), although one was questioned on aspects of his financial circumstances. Many investor witnesses were not, in fact or apparently, eligible investors when they invested, although some ended up signing a document indicating that they were eligible investors...Some investor witnesses recalled being given documents with markers attached indicating where signatures or initials were required, while others recalled

being told where to sign or initial documents they were given, without explanation.

[8] Units of the LPs - securities - were sold without registration or prospectuses, in purported reliance on the “offering memorandum” exemption, at various times from February 2006 to May 2009. In all, some \$110 million was raised from these sales.

[9] We found multiple deficiencies in the offering memoranda (the “Impugned OMs”) used for sales of Units of six of the eight LPs:

...

[10] In all, we found the Impugned OMs to have been so gravely deficient that the offering memorandum exemption purportedly relied upon in selling those Units was unavailable. The associated distributions were therefore illegal.

16. Mr. Tong acknowledged that he had no knowledge of the concept of “eligible investor” (T, pp. 62, 75, 78). He said (T, p. 75):

...when it came to legalities, I told people to go talk to their lawyers. You know, you want to take this subscription agreement, go speak to your lawyer about it. I’m not good at this kind of stuff. Unfortunately, a lot of people just took my word for it, I guess, and some people did and some people didn’t go take the subscription agreements to their lawyers.

17. Mr. Tong was asked by a Panel Member whether he did not see the reference to “eligible investor” in his own subscription form or in the subscription form which he translated for NCL (discussed below). He said he did not. Initially he testified (T, p. 77):

...when I did my SNC-Lavalin subscription, I gave it to him, he said, Yeah, Tony (*Tong*), there’s risk here.

18. A short time later, when asked again about signing his own subscription form, he seemed to indicate he had not signed one. He testified (T, p. 80):

I bought it through a partner, so I - my partner purchased the investment in his name, and I gave him money to purchase that.

19. He said when he took the IFIC course 12 years ago he “wasn’t a very good student” (T, p. 79).

20. Mr. Tong described how he had built up an extensive business at IG. He testified (T, p. 50):

My block was approximately 10 to 12 million (dollars) at the time. I had roughly 250 to 300 client groups.

21. He went on to state (T, p. 50):

I was very selective -- in my opinion, I was very selective about who -- who was - - I guess it's not up to me to decide who should buy what, but I was pretty careful to only show these types of investments to people I thought were risk appropriate, had the resources. (*He went to discuss the CE investments made by HB and SB, reviewed below.*)

22. Mr. Tong was asked by the Panel to address the allegations against him. He began by testifying (T, p. 74):

A lot of money came into Investors Group from my meetings with people who were contacting Concrete Equities, sitting with them. They became clients of mine, and funds were being transferred into Investors Group from various different other organizations through my contacts at Concrete Equities.

23. He explained that a complaint had been made against him by a senior consultant at IG, the advisor for a husband and wife who "had informed (IG) that I had attempted to sell them a limited partnership in Castleridge Plaza" (*a Concrete LP*). In mid-2007 he met with Mr. Lush, his division director at IG, who told him of a situation in which he was involved early in his career, selling limited partnerships, for which they "slapped him on the wrist and told him not to do it anymore" (T, p. 81). He said Mr. Lush told him he "could get in trouble for that". He said Mr. Lush told him he would "take care of it" and "it didn't get to compliance" (T, p. 82). Asked by the Panel whether, despite that advice, he continued to be involved with CE, Mr. Tong responded (T, p. 86):

I made a very poor error in judgment. I'm willing to admit that.

24. Mr. Tong had continued after that advice from Mr. Lush to deal with numerous clients and investments in CE, discussed below. As to the allegation of misconduct about misleading

responses to IG, Mr. Tong testified (T, p. 86):

David (Lush) asked me if I was selling limited partnerships. In my own mind, I wasn't. I was referring people to seminars, and if they bought it on their own after speaking with their own legal counsel or whatever, that was really their position.

25. He went on to say he wished he had more guidance from IG.

26. Regarding commissions or referral fees he received for facilitating the sale of CE investments (which fees he had denied receiving when asked by IG, above), Mr. Tong testified (T, p. 66):

You know, the referral fee on this project, on SNC-Lavalin, was not something that I had planned upon...I was presented a cheque (*for \$20,000*) some several months later by Mr. De Palma. I wish I never got out of bed that day.

27. He subsequently testified that "I should never have cashed it". Regarding the other \$60,000 in referral fees he said (T, p. 87):

I was having a really hard time financially at that point in time. I wasn't getting any guidance. I'm building a business.

28. He said he had responded to a question in an email from IG about receiving compensation: "I believe I answered no".

29. Mr. Tong made the same admissions to MFDA Counsel in cross-examination regarding Mr. Lush telling him not to recommend products to clients that were not IG products and about denying to IG that he had received referral fees. He also acknowledged that he did not receive approval from IG "for any of the activities" (T, p. 97). He acknowledged that he knew he was required to comply with IG policies and procedures and MFDA rules and policies. Later, in cross-examination, he was asked whether, at any time he described to IG that he received referral fees from CE, he responded (T, p. 108):

Did I disclose to the member at any time? I have to look at my e-mails, Ms. Boyd. It wasn't a question that I am prepared to answer.

30. He then admitted that he had acknowledged to IG on at least two occasions during the investigation, that he had not disclosed to IG when specifically asked whether he had received compensation from CE.

THE INDIVIDUAL INVESTORS

(For the reader's better comprehension we have consolidated the specific evidence in Mr. Currie's Affidavit, the Respondent's Reply and testimony of the Respondent under each of the names of persons who were involved with the Respondent and the Concrete LP's. At the Panel's suggestion the first investor complaints to be reviewed were those of HB and SB, it being apparent that the detailed examination of their situation would provide the best assessment of the Respondent's credibility.)

HB AND SB

31. The Affidavit of Mr. Currie includes the following paragraphs:

25. In their November 23, 2010 email complaint, the Bs indicated that they were referred to the Respondent and after attending several marketing presentations provided by Concrete Equities, they invested \$50,000 in limited partnership IV and \$50,000 in the Luna Morada, Mexico project using funds from their home equity line of credit. See Exhibit "B" to this my affidavit.

26. On or about May 22, 2007, the Bs provided a bank draft for \$50,000 payable to Bishop & McKenzie LLP in trust. Further, they completed a subscription agreement for 1 unit of the Safeguard Real Estate Investment Fund IV Limited Partnership. Attached hereto and marked as Exhibit "O" to this my affidavit is a copy of the draft, subscription agreement and unit certificate.

27. The Bs first learned of Concrete Equities through a television advertisement and contacted a Concrete Equities sales representative. The sales representative advised the Bs that they needed a financial advisor and referred them to the Respondent. After meeting with the Respondent, they returned to the Concrete Equities office with the bank draft for the investment. Mr. B indicated that the Respondent recommended the investment with Concrete Equities to them. Attached hereto and marked as Exhibit "P" to this my affidavit is an excerpt from the transcript of the interview of the Bs conducted October 28, 2011.

28. On or about October 12, 2007, the Respondent sent email correspondence to the Bs providing information regarding another investment opportunity through Concrete Equities; namely, Luna Morada and attached the Luna Morada

presentation booklet. Attached hereto and marked as Exhibit "Q" to this my affidavit is a copy of the October 12, 2007 email and presentation booklet.

29. On or about October 12, 2007, the Bs provided email correspondence to the Respondent indicating they were interested in the Luna Morada investment and wanted more information. The Respondent replied by setting up an appointment to discuss the investment. Attached hereto and marked as Exhibit "R" to this my affidavit is a copy of the October 12, 2007 email.

30. On or about October 16, 2007, the Bs provided a bank draft payable to Fraser Milner Casgrain LLP in trust to purchase a partnership unit in the Luna Morada investment. On or about November 8, 2007, Concrete Equities Inc. provided correspondence to the Bs confirming their purchase of the Luna Morada limited partnership unit. Attached hereto and marked as Exhibit "S" to this my affidavit is a copy of the bank draft, November 8, 2007 correspondence and the unit certificate.

31. In the Respondent's statement to Investors Group on December 19, 2010, he indicated that the Bs had purchased the Safeguard Real Estate Investment Fund IV Limited Partnership unit prior to their first meeting and that he did discuss the Luna Morada project with them as they were already in discussions with Concrete Equities staff regarding additional investments. See Exhibit "L" to this affidavit.

32. The Respondent indicated that the email regarding Luna Morada was only sent to close friends and people he thought might be interested in the project. Attached hereto and marked as Exhibit "T" to this my affidavit is an excerpt from the interview of the Respondent conducted on February 27, 2012.

33. Investors Group contacted the Bs via telephone on February 1, 2011 and confirmed the Bs position that they met with the Respondent prior to completing the paperwork required for the Concrete Equities investment in May of 2007 and that the Respondent was in favor of the Concrete Equities investment. Attached hereto and marked as Exhibit "U" to this my affidavit is a copy of the record of verbal discussion prepared by Investors Group.

34. The Respondent's notes in the client file indicate that he had contact with the Bs on April 29, 2007 and May 19, 2007, both dates are prior to the Bs Concrete Equities investment on May 22, 2007. Attached hereto and marked as Exhibit "V" to this my affidavit is copies of the notes from the client file.

35. Investors Group investigated the complaint of the Bs and concluded that no monies from Investors Group were used to purchase either of the Concrete Equities investments and that the email providing information about the Luna Morada investment was sent from the Respondent's personal email address. Attached hereto and marked as Exhibit "W" to this my affidavit is a copy of the Investors Group Complaint investigation summary.

32. The complaint of Mr. and Mrs. B (Exhibit "B" to Mr. Currie's Affidavit) refers to their making the investment to "provide for our retirement as well as pay for our son's education".

They state that they were referred to the Respondent who “advised us to invest \$50,000.00 in Concrete Equities Place, otherwise known as Limited Partnership IV” and “soon after, Tony further advised us to invest in Luna Morada in Mexico - an additional \$50,000.00”. Mr. B referred to earning income from driving a school bus (for workers, not students) and other part-time employment. They referred, with some emotion, to the adverse effects the loss has had on their family.

33. The Respondent’s Reply includes (by reference to the paragraph number in the Notice of Hearing, above):

20. ...HB and SB were introduced to the respondent by CJ, an employee of Concrete Equities sales team and CJ was at that time a client of the respondent. HB (and SB) were already invested in several limited partnerships by the time they had met the respondent and were already invested in CE Safeguard LP IV before they had met the respondent.

34. In the course of the investigation by IG and in response to a request from Mr. Bisson, Regional Director of IG, seeking specifics regarding clients, the Respondent provided an email to IG dated December 19, 2010 (Exhibit “L” to Mr. Currie’s Affidavit), which included:

They already had \$50k of CE LP when I met them in spring of 2007. They had also just sold their rental property. They also had other LP’s with other firms - Crown Properties, etc. I mentioned concern of 2 - 63 yr olds taking speculative risk at their age but they mentioned not having any pensions after working out of country for nearly 30 years as missionaries. Previous to their purchase of any LP’s they had made about \$140k on a condominium that they had bought and rented out and then flipped in the previous few years. I signed them as IG clients, transferred their assets, set up a SWP on \$100k they invested with us and proceeded to do some planning. They have made money on their managed monies at IG and I have tried to do other planning all the way through the relationship with them - Life insurance, Long term care insurance, RESP’s for their young adopted son, etc. Their rep at CE contacted me when the Luna Morada LP came out and asked me what I thought. I mentioned that it wasn’t my decision and that he should ask the clients directly as they were his clients before mine. I was at their home on Tuesday the 2 days previous to my hearing of the initial complaint to the MFDA. Nothing was said of any of the Concrete Equities investments. They did ask me about DSC fees and I believe that their bank had put them up to the idea of ASC/MFDA but it doesn’t matter at this point. SB is retired (never worked to my knowledge) and HB drives a school bus now but was retired when I met him. I spent Christmas eve dinner at the B’s church along with the (*another family*) in 2007 at their request as their guests. CE brought them to IG.

35. In the MFDA investigation interview with Mr. Tong on February 27, 2012 (Exhibit “T” to Mr. Currie’s Affidavit) Mr. Tong was asked, and responded:

Q: Now you mentioned that (HB) had already invested in Concrete Equities when you met him, but my understanding is that he was referred to you by CE before he invested.

A: No...my understanding was CE was that he...had already purchased CE Place downtown and he wanted to know more about whether or not more product fit his profile.

36. The MFDA had a telephone discussion with Mr. and Mrs. B on February 1, 2011 (record of discussion is Exhibit “U” to Mr. Currie’s Affidavit). They advised that they had met with a representative of CE who said they needed a financial adviser and referred them to Mr. Tong. They “did not complete any papers with CE before meeting Tony”. The notes record that “Tony was in favour of the CE investment” and they decided to buy it. Regarding the Luna Morada investment, the notes of the discussion record are:

- Tony was meeting with them every so often. (In) one of the meetings, Tony mentioned there was a new opportunity to invest. Does not recall date of meeting.
- No one from CE contacted them about Luna Morada.
- Tony mentioned there was a new investment opportunity maturing in 18 months and paying a high rate of interest (return) of 18%.
- Tony provided them with a brochure on Luna Morada (this was provided at the next meeting).
- They thought Tony was giving them a special favour by recommending the investment.
- They had misgivings about Mexico and Tony assured them that it was OK.
- They thought Tony invested into this project also and meant well.
- After meeting with Tony, they proceeded to get a bank draft for \$50,000 and made the purchase.
- Tony did not discuss risks of borrowing to invest with them.
- Tony did not discuss risks or suitability of the investments with them.
- After purchases in CE & Luna Morada, Tony did mention that the investments were risky.

37. In the course of his testimony regarding Mr. and Mrs. B, which was extensive and somewhat disjointed, the Respondent said variously (T, pp. 29-49) that:

(1) After they had been referred to him by Mr. Jackson of CE “for financial planning advice”, he reviewed their assets and liabilities and determined that they were each 63

years old and close to retirement, they had sold a property and had \$130,000 in a GIC (on which they had to pay capital gains tax of \$10,000 or \$12,000), they had \$40,000 - \$45,000 in RRSPs, and \$18,000 investment in a limited partnership, owned a house which was mortgage free except for a line of credit, and owned a condominium which they rented out. He said he was “concerned, at their age, based on their cash flow, expenditures, they wouldn’t have enough (in retirement)”.

(2) He suggested they should transfer their money to “an agency like Investors Group because we have access to multiple different bank GICs (and) they would be able to shop the (best) rates”; they did so. He established “a conservative portfolio (GIC or bond fund)” with a “systematic withdrawal plan (approximately \$600 per month) to supplement their income”.

(3) His recollection was that Mr. B’s risk tolerance was “moderate aggressive” and Mrs. B’s was “moderate” and he said “it didn’t seem to match up with speculative” (i.e. the *Concrete LP’s*).

(4) Although he has seen from the complaint of Mr. and Mrs. B that they did not recall him discussing risk, he recalls doing so (Mr. and Mrs. B said it was *after* the investments were made, see above).

(5) He understood that they had already agreed to purchase the first LP and had arranged the line of credit.

38. There were the following exchanges between members of the Panel and the Respondent (T, pp. 38-52):

Q: (*Following Mr. Tong’s description of the concerns he had about Mr. and Mrs. B’s financial situation*) I think that’s interesting, and what you’re telling us is that you were very conscious of what they needed to do and how best to plan, be in conservative funds. All of that has a little bit of conflict with the evidence that they bought these units, including the Mexican one, after you’d had original discussions with them about conservative investments. So can you address that, how they got into that?

A: I don’t believe that (Mr. B) would have not purchased that first unit,

whether he had or not, irregardless of what I said or done. (Mr. B) was primarily concerned about having to provide for his family...I do remember specifically telling (Mr. B and Mrs. B) that I was not investing in any of the Mexican projects. When they had questions about them, I referred them directly to Concrete Equities sales staff.

...

Q: So it was fairly clear, then, that there was - there wasn't sufficient monies in their bank accounts accounting for tax on top of that to buy both an Investors Group investment for a hundred thousand and the LPs from Concrete Equities; is that correct? Some of that money had to be borrowed somewhere along the line, because it looks like they bought \$100,000 of LPs, according to the affidavit?

A: Yes....So when I met with them, my intention was to sign them as clients, bring them over and try and do some cash-flow planning for them and some insurance planning for them, because I had some concerns about a lot of their (circumstances)...I had suggested they consider some long-term care while they were still under the age of 65, healthy and eligible.

Q: You've met with them, you've counselled them on conservative investments, and this is all prior to October 2007, right? So how does the Mexican investment happen and how is it that you get a referral fee out of it?

A: ...it was definitely a speculative investment...yielding, I think, something like 32 or 33 percent, somewhere between 30 and 36 percent. (He referred to the email he sent out to family and friends, including Mr. and Mrs. B (Exhibit "Q" to Mr. Currie's Affidavit))....They came back with questions. I said I would call them back 'cause I didn't know too much about the investment. I did have a total of ten clients invested in Luna Morada, so \$500,000 -- well, not -- not ten clients, but \$500,000 worth of \$50,000 subscription agreements, and they were some of my closest family or friends or people that were strictly interested in real estate and not interested in mutual funds. (Mr. and Mrs. B sent an email on October 12, 2007 to Mr. Tong saying: "We're interested. Tell us more." Mr. Tong "booked a meeting with them" at which he "believe(d) I may have given them a one-page information sheet about the investment"; *he did.*) (He referred to the email which he sent which included reference to one of the incentives for investment being "greed".)

....

...I thought that (Mr. and Mrs. B) could benefit from having that lift of \$12 or \$13,000 in a year-and-a-half, or whatever the case may be, to assist them in the cash flow. I had no idea that the world economies would do what they did in 2008, the summer.

Q: So did you advise them one way or the other regarding the investment?

A: I thought I advised them that it would be -- it would be okay, considering the circumstances... And I couldn't think of any other -- too many ways to provide them with injection of cash without jeopardizing their hundred-thousand dollar investment. Just because I didn't invest in Mexico doesn't mean I -- I don't think that it would have come to fruition... (He referred to his being under "quite a bit of personal stress" with the CRA garnishment and his wife "on bed rest for a full year".)

Q: (*He again referred to his being "careful about these types of investments" and said none of the children of Mr. and Mrs. B were in a position to assist them.*) So I assume that means that you'd be all the more careful with (Mr. and Mrs. B)?

A: I should have been more careful with (Mr. and Mrs. B). I trusted the wrong individuals at Concrete Equities.

39. In cross-examination Mr. Tong was referred to his log notes at IG which indicated he met with Mr. and Mrs. B on May 19, 2007 and was referred to the bank draft for \$50,000 which was dated May 22 (Exhibit "O" to Mr. Currie's Affidavit). He was referred to the Subscription Agreement and Unit Certificate for Mr. and Mrs. B's investment in the Concrete LP which was dated May 22. He acknowledged "according to this information I guess so", i.e. he met with Mr. and Mrs. B *before* they purchased the first CE Limited Partnership. He acknowledged that he had discussed that investment with them on May 19.

40. In cross-examination Mr. Tong was referred to the email which he sent out to numerous people, including Mr. and Mrs. B regarding the Luna Morada LP in Mexico (Exhibit "Q" to Mr. Currie's Affidavit) which included:

This is not open to the general public. I am working through the executive management team at Concrete Equities, and it is not on the website, nor can you call in and buy it without my assistance.

41. There was the following question and answer:

Q: So I just want to confirm that any person that you sent this e-mail to would have had to come to you in order to purchase this investment; is that correct?

A: If you read the e-mail, yes, that could be perceived that way.

42. In cross-examination, after referring to Mr. and Mrs. B saying that Mr. Tong gave them the one-page document, and him denying that he did, he was referred to the e-mail and gave the following answer:

A: It's possible I would have attached to it, yeah. It looks like I attached it as an attachment. Yeah, it's possible that I would have forwarded this information via e-mail.

Q: (*After referring to his evidence that his practice was to refer people to representatives of CE for any information.*) And rather than referring them to somebody at Concrete Equities, you met with them to discuss it; is that correct?

A: I can't even remember if I met with them after this e-mail or not. At this point, I cannot be for sure in my recollection that I went to see them and told them anything about the project from that point forward.

Q: Okay. But, previously, you had indicated that you did, in fact, meet with them after this e-mail.

A: It's -- was so long ago and I can't see why I would just go and meet with them to talk about this project, when I hadn't met with a lot of clients to talk about any of the projects. In fact, the other nine investors in Morada, they were all dealing with Investors Group directly, except for maybe the exception of maybe (Mr. L) (*discussed below*).

AL

43. In response to an email from the Alberta Securities Commission to CE investors, AL (*described in Mr. Tong's Reply as ALA*) responded by the following email (Exhibit "B" to Mr. Currie's Affidavit):

I understand you are interested in hearing from investors in Concrete Equities. I purchased one share of the SNC Lavalin building through an Investors Group representative named Tony Tong. He convinced me to get a line of credit against my only home, which I did and I gave him \$50,000. I still owe the bank \$50,000. He neither confirmed that I was an "eligible investor" nor did he explain what that meant (I wasn't at the time, and he knew it, he had my financial information).

I thought that this was an excellent opportunity to jump on the Calgary real estate boom and Tony Tong of Investors Group assured me that the management team

at Concrete Equities was competent. As it turns out, only one of us was right.

44. AL gave permission to forward on his complaint which the ASC did to the MFDA. The Affidavit of Mr. Currie includes:

21. Investors Group subsequently completed its investigation of AL's complaint and determined that no monies were transferred from the Member to purchase any Concrete Equities Limited Partnership units. The summary also indicated that the client log notes indicate that the Respondent attended the Concrete Equities presentation with the client in July 2006 and that the Respondent assisted the client in opening the home equity line of credit, also in July 2006.

22. The Respondent provided a written statement to Investors Group on December 19, 2010 in relation to the complaint of AL. The Respondent indicated he had known the client personally since 1999 and that he became a client in 2003. The Respondent admitted to speaking to AL about Concrete Equities in 2006 and that he invited him to attend the presentation but indicated that he was not aware of how the client paid for the investment. (*He said he learned subsequently that the funds came from the line of credit.*) Attached hereto and marked as Exhibit "L" to this my affidavit is the December 19, 2010 email statement of the Respondent.

23. On or about November 17, 2008, the Respondent completed a 'Personal Financial Review' for AL and his wife evidencing the limited partnership unit as an asset and a corresponding debt of \$50,000 - "TD HELOC". From this I was able to conclude that the Respondent was aware of how AL paid for the Concrete Equities Investment. Attached hereto and marked as Exhibit "M" to this my affidavit is a copy of the Personal Financial Review.

24. The Respondent later indicated that AL wanted to invest in Concrete Equities and was aware that the interest on the loan to purchase the investment would be tax deductible. This knowledge was the result of discussions between the client and the Respondent and also the clients own personal knowledge. The Respondent indicated he simply referred AL to one of his bank contacts to set up a line of credit.

45. In the course of Mr. Tong's testimony regarding AL (T, pp. 38-66) he said:

A: When I first got the complaint, I was pretty upset, disappointed that the complaint -- I think AL's complaint was that -- primarily that I told him to take his line of credit and go and purchase this investment...I did refer him to do a line of credit but it was well before Concrete Equities came on line...He wanted to purchase it. His interest, from my perspective, was deductibility of the (interest) expense...The income from the investment would have covered the expense payment on the interest payment for the

line of credit. (He was asked whether he recommended the investment.) Well, I wanted to buy the investment and at that point in time I think a lot of people, because they felt that I wanted to buy it, bought it as well...He had this money in his home and I know he wanted to do something with it.

Q: I've heard a lot about interest and income and so on. I haven't heard anything about the merit of the investment...I mean, what did you discuss with him as to whether he should get into this or not?

A: I thought that we would exit the development at the end of five years, sell it, and pay down primary mortgage. It wasn't to hold the investment forever or anything like that.

Q: Okay. So you're saying it's fine?

A: Yeah. I don't remember him asking me what the risk was or -- or should I buy it. I think, of that first seminar, a lot of people left the meeting, and if they had questions about it, they contacted Concrete directly in a lot of cases.

Q: Did you get a referral fee on this?

A: You know, the referral fee on this project, on SNC-Lavalin, was not something that I had planned upon. (*Referral fees are discussed above at p. 19*).

* * * * *

46. Mr. Currie's Affidavit contained several paragraphs (paras. 40-54) setting specifics of the complaints and/or the investigations regarding Concrete Equities Investments made by IH and BH, VR, DR and KR, MB and GA, NCL and FSL, TP and DP, all of whom are included in the chart of investors in the Notice of Hearing (above, p. 6). Investors Group filed METS Event Reports with the MFDA regarding all of these investors. Investors Group also determined that in each case no monies from IG were used to purchase the Concrete Equities Investments. Investors Group did not pay any money to the investors in response to their demands, on the basis that the investments were acquired outside of Investors Group

IH AND BH

47. On January 8, 2011, Mr. Tong provided an email statement to Investors Group indicating that IH and BH had purchased a Concrete LP in the Santa Clara Mexico project. It was a \$10,000 unit purchased through their line of credit. Mr. Tong later admitted that he informed IH and BH

about Concrete Equities and suggested they should look at some of the Concrete Equities products. In a teleconference interview with Mr. Currie, IH and BH advised him that “Tony advised us that (the limited partnership investment) would be a good way to go because the interest (on the line of credit) was also tax deductible.

VR

48. VR made a written complaint to Investors Group in which he indicated he received misleading advice from Mr. Tong to invest in Concrete Equities (\$50,000) and to borrow money from the line of credit to pay for the investment (Affidavit, para. 40). In his complaint form VR said that Mr. Tong “gave a rosy picture of investing in Concrete Equities for good returns”. In his complaint and demand for compensation from Investors Group (Affidavit Exhibit “BB”) he refers to his family’s “psychological and emotional stress” as a result of “this misleading advice”. In his January 8, 2011 email statement to Investors Group (Exhibit “Y”) Mr. Tong said VR had heard a Concrete Equities advertisement on the radio and had questioned Mr. Tong about it; he said “I knew someone on their (*Concrete Equities*) sales teams and he contacted them on his own”.

DR AND KR

49. DR and KR purchased six Concrete Equities Limited Partnership units (\$300,000). On March 4, 2011, KR sent an email to Ms. Kaisaris, Manager, Compliance Investigations, Investors Group (Exhibit “GG”):

It was a pleasure talking to you today. We have felt extremely let down and powerless with regard to Concrete Equities and Luna Morada since we found out that it was not at all what we were told it was and that it was not an Investor’s Group product. Basically we felt duped. It was nice to have someone like you who listened to our frustration.

When we met Tony Tong the first thing he wanted to do “for us” was to get HELOCs on all of the rental property that we own “so that we could start investing it and putting it to work for us”. We own 6 properties including our primary residence that all had around \$150k owing on each. Of course we didn’t have \$300k to invest so this was how we could get the money. Initially Tony encouraged us to sell a couple of the properties (he had a great realtor that could do that job) but when we said that we would never consider selling any of our houses, he went to the HELOCs. I wish I had never met Tony Tong. He messed

up so many things in our financial situation. We trusted him when he insisted that we switch mortgage lenders, we trusted him to take out and reinvest our RRSPs, he insisted we were better off to change to his accountant (who caused us more headaches and we basically fired him in the end). He wanted us to change our life insurance to “his guy” (we didn’t) and move the kid’s RESPs into something else as well (didn’t do that either). As I am telling you this now I am thinking, how could I have been talked into doing all of that and thank goodness I stood my ground on some of it. I have been making, what amounts to, an additional mortgage payment each month of more than \$1000. And that is just covering the interest. As of January, we took those HELOCs and added them onto the existing mortgages that we have so that we can begin to pay down the principal, not just the interest.

I would like Investors Group to reimburse me for the \$300k that I am out as well as the interest that I have paid over the last 3-4 years.

Tony was very careful not to email anything regarding Concrete Equities or Luna Morada. He always insisted we meet at a Starbucks and talk about it where he told my husband and I that he could promise us that we could retire in 5 years and that we would regret not selling “the headaches known as rental properties and investing all of it with him”. I do have all of the paperwork that shows that we own 2 units of Luna Morada and 4 units of Concrete Equities. I will fax those to you.

Thank you so much Barb for forwarding my complaint to the appropriate people and I look forward to hearing from you.

50. In his January 8, 2011 email to Investors Group (attached to the Respondent’s Reply) Mr. Tong, after a lengthy introduction about what he had discussed with DR and KR regarding suggestions he made, and saying he had introduced himself as “a consultant for Investors Group”, stated:

...(DR) had discovered via conversation with (LL) that he had purchased some Mexican LP’s. (DR and KR) seemed interested and asked me about the projects. I referred them to speak to CE directly. I found out sometime after that they had put a majority of their primary home’s equity into the Mexican LP’s. I had an idea that they might, but not \$200k. I brought them to IG.

51. In the interview of the Respondent by Mr. Currie of the MFDA (Exhibit “II”) the Respondent, as is his propensity, tended to talk about matters other than Concrete Equities and had to be reminded several times by Mr. Currie that he wanted to “get to the point about Concrete Equities”. There was the following exchange between Mr. Currie and Mr. Tong:

Q: Did you tell them about what the rates of return are? What did you tell

them?

A: I told them that they could look on the website and their prospectus, each of the individual projects was on their website and if they wanted to talk to someone, they could talk to someone down there.

Q: Did you suggest that they should invest in it?

A: You know what, there's the challenge itself. They asked me if I was invested in it and I told them I wasn't going to invest any money in Mexico (*he had told them he had a CE Limited Partnership unit in Calgary*). I didn't feel comfortable in that project, okay? They invested in Mexico. They wanted to invest. I don't think if I had told them, no, don't invest, that they would have gone and not done it. I think they were pretty dead set on doing it.

Q: Did you recommend the company?

A: Sorry, did I recommend Concrete Equities?

Q: Yes.

A: They asked me about the company.

Q: They said that you told them that they would be able to retire within five years with this investment.

A: Wow, no, I don't believe that was the case. I would never say that to a forties couple that are self-investing like that. As planners, we never say when you can retire...I didn't tell (DR) or (KR) that they can retire in five years. There's no way in the world that I told them that. I've never told anybody in my time when they could retire.

MB AND GA

52. Mr. Currie's Affidavit includes:

49. (MB) contacted Investors Group on March 22, 2011 and indicated that the Respondent brought the Castleridge Plaza (Safeguard Real Estate Investment Fund III Limited Partnership) investment opportunity to his attention, together with (GA) and that the Respondent claimed he was working with Concrete Equities at the time. The Respondent informed the clients that he would receive compensation from Concrete Equities and arrange for a marketing presentation to be provided by De Palma. Further, the clients claim that the Respondent recommended that they borrow \$50,000 to invest in the limited partnership. Attached hereto and marked as Exhibit "JJ" to this may affidavit is a copy of the March 22, 2011 email.

50. (MB) provided further emails evidencing the Respondent's involvement with Concrete Equities and the sale of various investment/development projects (Exhibit "KK"):

- January 7, 2009 - email from (NH), Aspen Rise at Parkland Beach to the Respondent. The email provided the Respondent with information (including brochures and Bylaws) about the Aspen Rise at Parkland Beach development project and stating that they would require deposits of \$5,000 via signed purchase contract. The Respondent forwarded the email to the client stating: "some of you may be interested in this project. If you have any questions you can contact me. Feel free to pass to friends and family as well."
- February 18, 2009 - (MB) emailed the Respondent inquiring about a letter he received from Castleridge stating that they would no longer be paying the quarterly payments. The Respondent responded "I have a meeting with them at 330 today. Will call you later."

51. The Respondent indicated that the Castleridge opportunity was brought to the attention of the clients from another client but that he did answer questions about the project for them when they raised it with him. The Respondent also confirmed that he received compensation for this arrangement with Concrete Equities but that he would not have informed the clients of this arrangement. Attached hereto and attached as Exhibit "LL" to this my affidavit is an excerpt of the interview of the Respondent conducted February 27, 2012.

53. The transcript of the interview of Mr. Tong by Mr. Currie (Exhibit "LL") provides a great many examples of Mr. Tong's propensity to obfuscate and deflect, with Mr. Currie having, over seven pages of transcript, to continuously ask him to deal with Concrete Equities and answer whether he recommended to GA that he and MR make the Concrete Equities investment and use the line of credit to pay for it. Mr. Tong first said "yes, if they say it", then, "I can't remember", then, "probably", then a further deflection to the point that Mr. Currie said "let's move on". Mr. Tong also said that although he received compensation he would not have told that to the clients.

NCL AND FSL

54. Mr. Currie's Affidavit includes:

53. On March 10, 2011, (CL, the son of NCL & FSL) contacted Investors Group as his parents did not speak English. It was confirmed that the clients invested \$50,000 in Luna Morada and the Respondent attended the Concrete

Equities offices with the clients to execute the paperwork so as to act as a translator. Attached hereto and marked as Exhibit "NN" to this my affidavit is a copy of the Complaint Investigation Summary.

54. The Respondent admitted to translating documents for (FSL) and indicated that this was the only occasion where he assisted a client with a subscription agreement for a Concrete Equities investment. Attached hereto and marked as Exhibit "OO" to this my affidavit is an excerpt of the interview of the Respondent conducted February 27, 2012.

55. In the interview by Mr. Currie, there was the following question and answer:

Q: Did you provide any of the risk disclosure that would have been listed in the offering memorandum to the clients verbally?

A: No. Did I provide them? I told them it was real estate, there's risk here, okay? You should look at the memorandum and -- if they've given you a memorandum, you should actually have someone look at it.

56. The Investors Group Complaint Investigation Summary regarding NCL and FSL (Exhibit "NN") states that Investors Group "cannot get hold of clients to discuss their complaint". (The METS Event Report of Investors Group regarding these clients "indicated that the Respondent recommended that the clients invest \$50,000 in an investment not approved by the Member and outside the Respondent's registration" (para. 7 of Mr. Currie's Affidavit).

TP AND DP

57. Mr. Currie's Affidavit includes:

55. On April 5, 2011, (TP) and (DP) contacted Investors Group and indicated that the Respondent introduced them to Concrete Equities (and that they were not clear whether Investors Group was involved in real estate ventures). The clients purchased 1 unit of limited partnership III on February 8, 2007 for \$50,000 and 4 units of the Santa Clara Real Estate Investment Fund Limited Partnership on December 18, 2007 for \$40,000. The investments were funded by the clients' line of credit. Attached hereto and marked as Exhibit "PP" to this my affidavit is a copy of the Member's Complaint Investigation Summary.

56. The Respondent admitted that he referred (DP) to Concrete Equities as an alternative to the client's plan to purchase a cottage property. Attached hereto and marked as Exhibit "QQ" to this my affidavit is an excerpt from the transcript of the interview of the Respondent conducted February 27, 2012.

58. Mr. Tong's email of January 8, 2011 (attached to his Reply) includes:

...He (DP) heard of the CE investments and asked me if they were good real estate investments. I mentioned my knowledge of CE growing quickly as a company in comparison to its peer group and he met with them on his own accord.

59. Mr. Currie's interview of Mr. Tong (Exhibit "QQ") includes:

Q: So you suggested that maybe the recreational property wasn't a good investment at that time because of the prices?

A: Yes.

Q: So then you recommended?

A: I won't say that I recommended this in place of that (*i.e. the cottage*).

Q: You won't say -- you mean the specific Castleridge?

A: Yes.

Q: So what did you recommend? What did you –

A: So I suggested to him that I had invested in a project with a company in Calgary that was already in the ground and they were doing another project. And he had interest in it and we met with him.

Q: "We" being who?

A: De Palma, Vincenzo, the VP of market met with him, okay?

Q: And you?

A: Yes...(DP) would not have learned about the product had I not talked about it. Had I not talked about the project, Castleridge Plaza, he would not have learned about the product, or he might have, but I wouldn't have known about it. He invested in the project. Yes. He invested in the project that he heard about from me. I guess...What I would have said to (DP), without going word for word is, you know what, where's the harm in looking at something like this as an alternative to what you've already done.

6. **SUBMISSIONS OF STAFF OF THE MFDA REGARDING THE ALLEGATIONS OF MISCONDUCT**

60. Staff Enforcement Counsel submitted written Submissions and a Book of Authorities. In the Submissions, Counsel referred to the following MFDA Rules of Procedure, MFDA Rules and MFDA By-law:

- Rules of Procedure 1.6, 1.8 & 13.4 (*Admissibility of Evidence, Hearings Open to the Public and Evidence by Sworn Statement*)
- MFDA Rules 1.1.1(a), 1.2.1(d), 2.1.1 and 2.4.2(b) (*Business Structures, Compliance by Approved Persons, Standard of Conduct, Referral Arrangements*)
- MFDA By-law No. 1, sections 1, 24.1.1(b) and 24.2 (*Definitions, Power of Hearing Panel to Discipline - Approved Persons, Costs*)

61. Counsel, in her written Submissions, submitted the evidence establishes that:

- The Respondent was registered with Investors Group commencing in December 2002 and was employed there until February 9, 2011. (Affidavit para. 4 & 5)
- Between July 2006 and August 2008, the Respondent sold, recommended, facilitated the sale of or made referrals of limited partnership units offered by Concrete Equities to at least 39 clients outside the member, totaling approximately \$1,890,000.
- The Respondent admits that he invited 8-10 people to a marketing seminar conducted by Concrete Equities in spring of 2006. (Reply pg. 1; Affidavit para. 18).
- The Respondent referred several other clients to Concrete Equities between 2006 and 2008, including providing email correspondence to them in relation to Concrete Equities products (See for example, Affidavit para. 28).
- In July 2009, Concrete Equities together with the limited partnerships and general partners were placed into receivership (Affidavit paras. 9 & 10).
- Several of the limited partnerships that were in receivership had insufficient assets and therefore there was no residual value for the holders of the limited partnership units. They included Safeguard Real Estate Investment Fund VI Limited Partnership, Calle Mariposas Limited Partnership and Santa Clara Real Estate Investment Fund Limited Partnership (Affidavit paras. 15 & 16).
- It does not appear that any of the clients who invested in Concrete Equities limited partnerships used monies from their account with the Member, but rather a large percentage of them used monies from lines of credit (Affidavit Exhibit D).

- The Respondent admitted that he did not disclose to or get approval for his arrangement with Concrete Equities to Investors Group (Affidavit para. 58).
- The Respondent received at least \$80,000 in commissions from Concrete Equities as a result of his arrangement with them. The commissions were paid to the Respondent personally or to his numbered company between August 31, 2006 and February 1, 2008 (Affidavit para. 60).
- The Respondent provided the names of clients and non-clients who invested in Concrete Equities (Affidavit para. 69).
- The Respondent admitted to referring clients to Concrete Equities.
- The Respondent indicated that sometime in 2006 he was informed by his branch manager at Investors Group that he shouldn't recommend any products that weren't Head Office products (Reply, pg. 6). The Respondent continued to have an arrangement with Concrete Equities after 2006 and received commissions after 2006.

(MISLEADING THE MEMBER)

- In 2006 when he was first approached by his branch manager in relation to his relationship with Concrete Equities, the Respondent did not indicate to his branch manager that he had received \$20,000 in commissions from Concrete Equities (Reply, pg. 6).
- On December 19, 2010, when asked by Investors Group about his relationship with Concrete Equities, the Respondent failed to inform the Member that he received commissions from Concrete Equities (Affidavit, para. 63).
- On December 29, 2010, the Respondent specifically denied receiving compensation from Concrete Equities either personally or through a related party (Affidavit para. 64).
- On January 25, 2011, the Respondent again denied receiving any compensation from Concrete Equities when questioned by the Member. However, the Respondent received at least \$80,000 in commissions from Concrete Equities which the Respondent admitted to MFDA Staff (Affidavit paras. 65 & 66).

(BLANK SIGNED FORMS)

- 7 pre-signed forms for 5 clients were located in files of clients whose accounts were serviced by the respondent (Affidavit, para. 67).
- The Respondent admitted that he had clients sign documents and then determined which of the documents were needed and in the case of the 5 client files, the forms that were not needed were placed in the client files (Affidavit, para. 69).

62. With respect to "Securities Related Business" Counsel made the following submissions:

(a) MFDA Rule 1.1.1(a) prohibits an Approved Person from engaging in securities related business in any form with the minor exceptions set out in the Rule (neither of which are applicable to the matter at hand) that is not carried on for the account of the Member, through the facilities of the Member and in accordance with the By-law and Rules;

(b) MFDA Rule 2.4.2(b) prohibits an Approved Person from having a referral arrangement outside the Member and from being paid referral fees outside the Member;

(c) MFDA Rule 1.1.1 and 2.4.2(b) are fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry;

(d) MFDA Rule 1.1.1(a) and 2.4.2(b) create a regime whereby an Approved Person is only permitted to sell investment products that have first been approved for sale by the Member (following appropriate product due diligence) and which are sold through the facilities of the Member (thereby ensuring the trading activity is subject to appropriate review and supervision, both at the time of the sale and in the future). By limiting the authority of an Approved Person to trade only in securities approved for sale by the Member and through the facilities of the Member, MFDA Rule 1.1.1(a) and 2.4.2(b) protects primarily the interest of Member clients, but also the interests of the Member and Approved Person;

(e) MFDA Hearing Panels have consistently held that Approved Persons who sell, recommend, facilitate the sale of or make referrals of securities to clients which have not been for sale by the Member are engaged in securities related business outside the Member;

(f) In the present case, the conduct of the Respondent as shown by the evidence clearly constitutes securities related business resulting from a referral arrangement. The securities related business was conducted outside the Member and therefore was a contravention of MFDA Rules 1.1.1 and 2.4.2.

63. With respect to “Outside Business Activity”, Counsel submitted:

(a) In the alternative, if the Hearing Panel does not find that the conduct in this matter constitutes securities related business, it is the submission of Staff that the conduct resulted in an undisclosed outside business activity;

(b) MFDA Rule 1.2.1(d) sets out the requirements that an Approved Person must comply with in order to have and continue in another gainful occupation. Specifically, Rule 1.2.1(d) (iii) requires an Approved Person to ensure that the Member approve any such outside business activity of the Approved Person;

(c) An Approved Person must request and obtain approval from his or her Member to engage in outside business activity. The Request must be in a form, and to an extent

sufficient to enable the Member to assess whether the activity complies with the constituent elements of MFDA Rule 1.2.1(d) and is an activity which the Member is prepared to allow the Approved Person to engage in;

(d) The Respondent had a regulatory obligation to disclose to and obtain prior approval from Investors Group for his arrangement with Concrete Equities (whether the arrangement was in writing or not). His failure to do so circumvented Investor's Group's approval (or non-approval) of the outside business activity as well as Investor's Group supervision of the Respondent's compliance with MFDA requirements concerning his outside business activities. As a result, (if the Respondent's conduct did not constitute securities related business) the Respondent contravened MFDA Rule 1.2.1(d) (undisclosed outside business activity).

64. With respect to "Standard of Conduct", Counsel submitted:

(a) MFDA Rule 2.1.1 provides:

2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standards of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which (is) unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1 or as may be prescribed by the Corporation.

(b) MFDA Rule 2.1.1 is broad in its application and articulates the standard of conduct to be followed by all MFDA Members and Approved Persons. Hearing Panels have consistently stated that the Rule encompasses "the most fundamental obligations of all registrants in the securities industry."

(c) Where an Approved Person conceals outside business activity from the Member, the Approved Person has failed to observe high standards of ethics and conduct in the transaction of business and has also failed to refrain from engaging in business conduct or practice which is unbecoming or detrimental to the public interest. This is even more so the case when an Approved Person undertakes securities related business outside the Member.

(d) Therefore, whether the conduct of the Respondent in this matter resulted in securities related business or an undisclosed outside business activity, it has resulted in a contravention of MFDA Rule 2.1.1.

(e) An Approved Person who misleads or fails to respond fully or accurately to his or her Member has undertaken misconduct which fundamentally undermines the ability of the Member to fulfill its obligations to supervise the Approved Person's conduct in

accordance with the MFDA's By-laws, Rules and Policies. Such conduct is unbecoming and detrimental to the public interest and is a breach of the high standards of ethics and conduct that is articulated in MFDA Rule 2.1.1.

(f) It is submitted that the Respondent provided false and misleading information to the Member in relation to the true nature of his relationship with Concrete Equities and in particular in relation to his earning commissions as a result of his relationship.

(g) By failing to provide full and accurate responses to Investors Group's inquiries, the Respondent interfered with Investor's Group's ability to fully conduct a reasonable supervisory investigation of the Respondent's activities and failed to observe high standards of ethics and conduct contrary to MFDA Rule 2.1.1.

65. With respect to "Blank Signed Forms", Counsel submitted:

(a) MFDA has provided guidance with respect to the issue of blank pre-signed forms in MFDA Staff Notice MSN-066, which states:

Some Member and Approved Persons have taken the position that pre-signed forms can be used appropriately in certain situations for convenience of a client. MFDA Staff does not agree with this position. Even in cases where there is no evidence of intent to use a pre-signed form for the purpose of discretionary trading, the use of such forms must be prohibited in part because their existence destroys the integrity of the audit trail for activity in the relevant client's account

(b) As confirmed in Re: *Price*, the existence of pre-signed forms undermines the integrity of the audit trail:

...the presence of the client's signature of a trade form can no longer be taken as confirmation that the client authorized a particular trade. It also compromises the ability of the Member to subsequently investigate and respond to a client complaint concerning the propriety of trading activity in his or her account.

(c) For these reasons, pre-signed forms are prohibited regardless of whether the Approved Person's intention is to enhance client convenience, and irrespective of whether a client ostensibly endorsed the practice.

(d) Where an Approved Person has obtained, possessed or used blank pre-signed forms, such as in the matter at hand, the required standard of conduct has not been met and therefore, such conduct constitutes a contravention of MFDA Rule 2.1.1.

66. Regarding the allegations of misconduct Counsel referred to the following decisions:

Kenneth Roy Breckenridge, Central Regional Council Decision dated November 14,

2007, MFDA File No. 200718, at pp. 17, 18, 20

Wayne Larson, Prairie Regional Council Decision dated October 14, 2009, MFDA File No. 200806, at p. 18

Meiz Mohammed Majdou, Prairie Regional Council Decision dated November 12, 2010, MFDA File No. 201010, at para. 5

Kent Owen Westgard, Prairie Regional Council Decision dated July 15, 2010, MFDA File No. 200937

Gary Alan Price, Central Regional Council Decision dated April 18, 2011, MFDA File No. 200814

7. **SUBMISSIONS OF THE RESPONDENT REGARDING THE ALLEGATIONS OF MISCONDUCT**

67. The Respondent made numerous comments throughout the course of the evidence which were essentially submissions, as well as submissions in argument. He made the following statement (T, p. 18):

For me, the question is not whether or not I did these activities that I'm accused of. The question is -- is I recognize that there is error in what I did and I do have remorse and it's something that I will have to deal with with family and friends for the rest of my adult life. For me, it's more of why has there been such a huge attempt by Investors Group to paint this brush on my face when I believe that they have some culpability, as well.

68. He said he had told his branch manager about his relationship with Concrete Equities but then acknowledged that his branch manager told him not to continue the involvement; however, he acknowledged that he *did* continue to be involved.

69. His overall position was that he had very little to do with decisions by the investors to purchase Concrete Equities investments and, with an exception or two, did not recommend the investments. He said how much he cared about protecting his clients from imprudent investments and the lengths to which he went on their behalf.

70. He submitted that he was one of the top producers at IG and brought in a lot of business to IG. On the other hand, he acknowledged that he was facing financial pressures, including three

years of garnishee by CRA between 2005 and 2007, as well as family health issues.

71. He stated that “the reason we had blank client forms is mostly for convenience” and that “Investors Group makes it seem like we had some kind of malicious intent” (T, pp. 126, 127).

72. He attributed the downfall of Concrete Equities in good part on “the world economy collapse”.

73. He made numerous references to the lack of guidance which he received from IG and said the action against him by IG was (T, p. 129):

Just like a big witch-hunt. I guess I’m going to be the poster boy for following the compliance line at IG.

8. SUBMISSIONS OF STAFF OF THE MFDA REGARDING PENALTIES

74. Staff Enforcement Counsel submitted written Submissions and a Book of Authorities. In the written Submissions Counsel made the following submissions regarding “Factors Concerning Appropriateness of Penalty” (paragraph numbers are from the written Submissions):

32. The primary goal of securities regulation is the protection of the investing public. In addition to this primary goal, securities regulation is concerned with ensuring market efficiency and maintaining public confidence in the system as a whole.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557, 1994 CanLii 103 (SCC) at p. 38

33. There are numerous factors that should be taken into account in determining the appropriate penalty to be imposed on a person who contravenes MFDA By-laws, Rules and Policies. “...sanctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent likely future harm to the capital markets. [citation omitted]”

Arnold Tonnies, Prairie Regional Council Decision dated June 27, 2005, MFDA File No. 200503, at pp. 21, 22

34. General deterrence should also be considered in determining an appropriate sanction.

36. MFDA Hearing Panels generally take into account the following factors in determining what is an appropriate penalty:

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

Tonnies, supra at p. 23

37. An additional factor for a Hearing Panel to consider in determining the appropriate penalty to be imposed upon a Respondent in a disciplinary proceeding is the MFDA Penalty Guidelines. The MFDA Penalty Guidelines are not mandatory but rather provide a suggestion of the types and ranges of penalties that may be appropriate for particular case types.

38. The MFDA Penalty Guidelines recommend consideration of the following penalties for an Approved Person:

- Securities Related Business Outside the Member: fine - minimum of \$10,000; write or re-write an appropriate industry course; period of increased supervision; suspension; permanent prohibition in egregious cases (e.g. undisclosed activity resulting in client loss);
- Standard of Conduct: fine - minimum of \$5,000; write or re-write an appropriate industry course; suspension; permanent prohibition in egregious cases;
- Complaint Handling contraventions: fine - minimum of \$5,000; write or re-write an appropriate industry course; suspension; permanent prohibition in egregious cases.

NATURE OF MISCONDUCT

40. Approved Persons carry on a business which is based upon the trust of

clients and clients rely upon them to act in accordance with MFDA Rules and Policies. Therefore, the penalties imposed for failing to do so should reflect the gravity of the breaches and the importance of maintaining the trust of clients and the public generally in Approved Persons of the MFDA.

Hill & Crawford Investment Management Group Ltd., Central Regional Council Decision dated June 23, 2009, MFDA File No. 200834, at paras. 3, 4

41. The misconduct in this matter resulted in serious regulatory violations. The misconduct occurred on an ongoing basis and involved a number of different clients.

CLIENT HARM

42. In total, the Respondent sold, recommended, facilitated the sale of or made referrals in relation to \$1,890,000 worth of investment products sold by Concrete Equities.

43. At this time, it appears that several of the clients have lost all or the majority of the investment and the status of the remainder of the investments are unknown but at this time, the clients may lose all or some of the money they invested.

75. Counsel also referred to the fact that the Respondent had not previously been the subject of any MFDA disciplinary proceedings, but that he was an experienced registrant and ought to have known that his activities were in contravention of MFDA By-laws, Rules and Policies. Counsel submitted that although the Respondent co-operated with the MFDA during its investigation of this matter, Staff would submit that he has not acknowledged or accepted the seriousness of the misconduct. The Respondent earned at least \$80,000 in commissions from Concrete Equities in relation to his arrangement with them. Counsel submitted that a permanent prohibition on the authority of the Respondent to conduct securities related business with an MFDA Member, a fine and a cost award are serious penalties which will serve to deter others in the capital markets from engaging in similar activity.

76. Counsel submitted that the penalties proposed are appropriate and consistent with the Penalty Guidelines. She relied on previous decisions made in similar circumstances, referring to the following cases:

Tadeusz ("Ted") Bytnar, Prairie Regional Council Decision dated February 10, 2011, MFDA File No. 201015

In *Bytnar* the Panel found that the Respondent, an Approved Person, engaged in securities related business, interfered with the Member's ability to conduct a reasonable supervisory investigation and failed to cooperate with the MFDA. The respondent was found to have sold, referred or facilitated the sale of an investment product to 4 individuals, 2 of whom were clients of the Member. The panel ordered the following penalties: (1) permanent prohibition; (2) \$90,000 fine for engaging in securities related business; (3) \$10,000 fine for interfering with the Member; (4) \$50,000 fine for failing to cooperate; and (5) \$7,500 in costs.

Breckenridge (above)

In *Breckenridge* there were two allegations against the respondent: (1) that he engaged in securities related business outside the Member and (2) he deliberately concealed his outside business activity from the Member. The respondent did not earn any compensation but believed that once the project 'got going' he would be compensated. In total 59 clients invested approximately \$1.7 million Canadian and \$85,000 USD in the investment product. The Panel ordered the following penalties: (1) permanent prohibition; (2) fine of \$350,000; and (3) costs of \$7,500.

Lorne Michael Piett, Prairie Regional Council Decision dated September 25, 2012, MFDA File No. 201206

In *Piett*, the Panel found that the respondent engaged in securities related business outside the Member and failed to respond fully and accurately to the inquiries from the Member during its investigation. The respondent sold 3 investment products to 10 clients outside the Member. The respondent earned approximately \$157,000 in commissions as a result of his arrangement and reimbursed two clients personally \$38,233 of the DSC fees they incurred to invest in the investment products. The Panel ordered the following penalties: (1) permanent prohibition; (2) fine in the amount of \$175,000; and (3) costs of \$7,500. In determining the amount of the fine, the Panel indicated that "if deterrence is a factor, any fine must exceed the gain and we have determined that a fine which is 50% greater than the commissions earned is an appropriate deterrent in this case".

Price (above)

In *Price* the respondent was found to have obtained, possessed and used pre-signed forms, engaged in discretionary trading and failed to comply with the Member's directive to destroy all pre-signed forms. The Panel ordered the respondent be prohibited from acting in a supervisory capacity for 2 years and a fine of \$5,000. There was no cost award due to the special circumstances relating to the proceeding of the case.

9. **SUBMISSIONS OF THE RESPONDENT REGARDING PENALTIES**

77. The Respondent, in the course of the Hearing, said (T, p. 85):

...I don't feel that if I pay a \$90,000 fine, \$7,500 in costs, and permanent prohibition, I don't think that's going to benefit anybody. I don't think anything's going to be learned from that, other than they're going to put a tighter leash on consultants.

78. In his submissions on penalties, Mr. Tong stated (T, p. 137):

...I understand the fine. I'm not sure where the permanent prohibition -- does Ms. Boyd (*MFDA* Counsel) think I'm a danger to the public and this may occur again? I lost my book. I've been unemployed for a tremendous amount of time. I've lost the trust of family and friends, and I treated my clients, many of my clients, like family. If you look at some of the submissions, based on some of the testimony that Mr. Currie took, these clients aren't looking for -- to have me punished or prohibited. I didn't see a single instance of that. They're looking to get their money back.

If I could give them their money back, I would. I'm not able to do that in this capacity and I definitely wouldn't be able to do that in any capacity with a permanent prohibition or \$90,000 fine....I just don't see where the public is served if I'm permanently prohibited from doing what I've been doing for the last eight years of my life.

I disagree (that I have not acknowledged or accepted the seriousness of the misconduct and not accepted responsibility for the misconduct). After Concrete Equities went bankrupt, I tried to maintain contact with as many of my clients to try to work through that situation. I worked with the receiver, Ernst & Young, to work through that. I worked through my accountant and my network to figure out whether or not the losses would be declarable as capital losses in their investment portfolios, because many of these were nonregistered...I went to town hall

meetings to try to assist my client base. None of this was to cover my tracks or -- try to hide what I had done.

I think that I'm being scapegoated for peoples' decisions in -- in regards to their investments in some particular cases. For people to say that they don't know that they're investing in a risky investment, to me, is a little bit unbelievable at this point. I don't want to sound too bitter about it, but I still am in touch with many of my former clients and former colleagues.

I don't -- I can understand that you would want one or the other. I just find it a little bit difficult to accept that you would like both, the prohibition and the fine.

Costs, I'm absolutely fine with that...It was entirely my fault. I should have known better. I shouldn't have taken the money and provided for my family.

I think (the prohibition) is a little bit too harsh, considering that I only showed these products to people that were keenly interested in them, that had already had real estate investment experience.

My intention was never to make a whole bunch of money off referral commissions from -- from Concrete Equities. My intention was to put a piece of real estate investment into my own portfolio for later. Having a child with a disability who would never work and may live under my roof for the rest of her life, you need rental income.

I was very good at (insurance). I'm still probably going to be very good at it, given the opportunity. So I really don't know how this MFDA license is affecting any of my other licenses, in particular, my life (insurance) license. I don't wish to be the scapegoat for Investors Group to keep their other consultants in line and not lose assets. I don't think that's going to serve anybody's benefit.

I believe that most of my clients were under the impression from the letter sent to them by the compliance department at Investors Group that there was an opportunity for them to receive money back and so they gave testimony. I don't recall seeing in any of the testimony that I forced anybody to buy anything for personal profit, that I put anybody's name on a piece of paper.

Sorry. This is two years of pent-up emotion and a lot of personal difficulty accepting what other people think.

I didn't do it strictly for the money. I needed the money. I was in trouble. I made a bad judgment call. But I don't think that should -- I don't think I was purposely out of deflect or -- or misinform or deceive the public in any way.

10. DECISION AND REASONS REGARDING THE ALLEGATIONS OF MISCONDUCT AND REGARDING PENALTIES

ALLEGATIONS OF MISCONDUCT

79. We accept and adopt the submissions of Staff (above), including the summary of facts. In our view the misconduct of Mr. Tong has been proven beyond any doubt. While we recognize that he had no previous disciplinary record, and faced some difficult family and financial circumstances, we consider his misconduct to have been egregious and demanding of severe penalties. The most serious misconduct includes:

(a) Regarding Allegation 1, he engaged in recommending and/or facilitating the sale of at least \$800,000 of limited partnerships in Concrete Equities to at least 8 clients (14 clients if husbands and wives or partners are included separately). These are the 8 clients whose involvements are summarized above. There were obviously many other clients and similar situations, as referenced by the Respondent in his email of January 8, 2011 (attached to his Reply) and as listed in the Notice of Hearing. The sale of investments to all these clients total approximately \$1.8 million and although there was not specific evidence about the other approximately 16 clients (25 if husbands and wives or partners are included separately), there can be no doubt that many of them had discussed Concrete Equities with the Respondent. These investments were not carried on for the account and through the facilities of the Member, Investors Group, although some of the clients believed that to be the case. (Investors Group denied any of the claims made by clients on the basis that the investments were “acquired outside of Investors Group”.)

The need to have investment products approved for sale by the Member ensures that the securities and trading activity are subject to corporate review and supervision. Clearly, in this case, several, if not many, of the investments were not suitable for the clients. A notable example is HB and SB whose situation is reviewed at some length above. We are satisfied that those clients, and others, were much more influenced by Mr. Tong to buy the investments and borrow against lines of credit than Mr. Tong still is not prepared to acknowledge. Where he was prepared to admit that he had some involvement, his usual rationale for recommending or not dissuading the clients from the investment was that “the income from the investment would have covered the expense (interest on line of credit) payment”. The situation would probably have been much different if the Member had knowledge of, and an opportunity to consider whether to approve, the investments by

many of the clients.

(b) The purported ignorance, or lack of knowledge, of Mr. Tong, despite his eight plus years in the industry, of “eligible investor” and Rules of Investors Group and the MFDA did not speak well to his continuing in the industry. He professed to being very careful about the financial situation of his clients but his actions, in several instances at least, belied the self-serving expressions of concern. He did finally acknowledge, at the Hearing, when pressed: “I should have been more careful with (HB and SB)”.

(c) Whether framed as Allegation 1 or Allegation 2, we are satisfied that both Allegations have been proven (“securities related business” outside the Member and “another gainful occupation which was not disclosed to or approved by the Member”, particulars of both Allegations being set out in the Notice of Hearing. It is significant that Mr. Tong acknowledged he had told his Branch Manager of having some dealings with CE (the extent of the disclosure being unclear) and was given a break by the Branch Manager of not pursuing it but telling Mr. Tong to stop the involvement or he would “get in trouble”. Despite that warning, Mr. Tong continued his involvement and received referral fees of \$80,000 in total. Yet Mr. Tong, throughout his testimony and submissions, was critical of Investors Group for lack of guidance and supervision. Such an assertion rings hollow in the face of his ignoring the very direct guidance and warning he got from his Branch Manager. He finally acknowledged at the Hearing, when pressed: “I made a very poor error in judgment. I am willing to admit that”.

(d) Regarding Allegation 3 (“misleading Member”) Mr. Tong lied at least twice to Investors Group in the course of their investigation about whether he received referral fees. He admitted it only after being shown evidence from the receiver. He also stated in his Investors Group 2010 Annual Consultant Certificate that he had not received referral fees. He says now that he should not have accepted the fees (and even that the first \$20,000 was not expected). It is a little late to be coming to that rationalization and especially after not coming clean about the fees during the Investors Group investigation. He also did not acknowledge, in the investigation, that he continued his involvement with Concrete Equities. We are satisfied that Allegation 3 has been proven as set out in the particulars of the Notice of Hearing.

(e) There were multiple instances of misleading and false testimony by Mr. Tong, such that we find Mr. Tong to have not been a credible witness. That, in itself, is reason for him not being permitted to continue in the industry. Several examples will suffice:

- He insisted throughout, including in his Reply, that HB and SB had purchased their Concrete LP before he met with them, even to the point of suggesting that his log entries may not have been accurate. When presented with contrary evidence at the Hearing he acknowledged that the purchase *was* made after he had met with them (and according to HB and SB after he told them he “was in favour of the CE investment”).
- It is difficult to accept his denial of knowledge about “eligible investor”, having translated a Subscription Agreement for a client and signing his own Subscription Agreement (although his evidence was also at odds in that regard, stating at one point that he did not sign a Subscription Agreement because he invested with a partner who had presumably signed the Agreement).
- He first denied that he gave a one page Concrete Equities document to HB and SB then, when referred to his email, acknowledged that “it’s possible I would have attached it”. There is no doubt that the document was attached.
- Regarding referral fees he was again evasive. He first suggested it was not a question he was prepared to answer (T, p. 108), but finally acknowledged he did not disclose the information to Investors Group.
- He testified (p. 19 above) that he was only “referring people to seminars” and they would decide whether to buy. It was obvious, in the course of his testimony, that he had much more interaction with the clients about the Concrete LP’s. Particularly telling is his email to numerous people regarding the Luna Morada LP in Mexico, in which he said “...it is not on the website, nor can you call in and buy it without my assistance” (p. 26 above). He also said in another email to MB (p. 33 above): “If you have any questions you can contact me. Feel

free to pass to friends and family as well”. Furthermore, there are numerous instances where he recommended Concrete LP’s.

80. Although we do not condone the use of “blank forms”, we are not satisfied that the “blank forms” infraction by Mr. Tong constitutes a significant breach of the rules in the circumstances of this case. It appears that it was not only Mr. Tong who was obtaining blank forms from clients. The infraction involved only 3 or 4 clients. Mr. Tong said it was “for convenience”, which is no excuse, but there was no evidence of use of the forms or of any harm resulting from the use of blank forms. Our determination is not to be considered as having any application beyond the circumstances of this case; future cases involving use of blank forms will, in all probability, result in appropriate penalties.

11. PENALTIES

81. We accept and adopt the submissions of Staff on penalties (above). We are satisfied that the penalties sought by the MFDA are appropriate and are in accordance with the MFDA Penalty Guidelines and the decisions of Panels relied upon by MFDA Counsel. One result of the misconduct is that the clients have suffered significant harm. The MFDA Penalty Guidelines refer to an example of when a permanent prohibition may be appropriate: “undisclosed activity resulting in client loss”. Accordingly, it is our decision that the following penalties and costs proposed by the MFDA are imposed on the Respondent:

- (a) a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No.1;
- (b) a total fine in the amount of \$90,000, pursuant to section 24.1.1(b) of MFDA By-law No.1; and
- (c) costs attributable to conducting the investigation and hearing of this matter in the amount of \$7,500, pursuant to section 24.2 of MFDA By-law No.1.

DATED this 21st day of October, 2013.

“Alan V. M. Beattie”

Alan V. M. Beattie, Q.C.,
Chair

“Kathleen Jost”

Kathleen Jost,
Industry Representative

“Howard R. Mix”

Howard R. Mix,
Industry Representative

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