



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Yukun Wang

Heard: October 7, 2021 by electronic hearing in Edmonton, Alberta

Decision: October 7, 2021

Reasons for Decision: February 7, 2022

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Howard Mix
Charlene Snell

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
Craig Leggatt)	Counsel for Respondent
)	
)	Respondent
Yukun Wang)	
)	
)	

I. INTRODUCTION

1. On April 29, 2021 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to Sections 20 and 24 of MFDA By-Law No. 1 in respect of Yukun Wang (the “Respondent”).
2. On September 27, 2021 the Respondent and MFDA Staff (“Staff”) entered into a settlement agreement (the “Settlement Agreement”) pursuant to which the Respondent agreed to a proposed settlement of matters for which he could be disciplined under Sections 20 and 24.1 of MFDA By-Law No. 1.
3. On October 7, 2021 the Settlement Hearing was held by videoconference before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”). It was attended by both the Respondent and his legal counsel.
4. At the outset of the Hearing, the Panel granted a motion by the parties to move the proceedings “*in camera*”.
5. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s reasons for that decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to having committed the following violation of the MFDA’s By-laws, Rules or Policies:

On April 30, 2019 and on November 8, 2019, the Respondent sent confidential client information to his personal email address for his personal advantage without obtaining the prior written consent of the clients, contrary to the Members’ Policies and Procedures and MFDA Rules 2.1.3, 2.1.1, 2.5.1, and 1.1.2.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed to the following terms of settlement:
 - a) The Respondent shall be prohibited for a period of 6 months from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No.1;
 - b) The Respondent shall pay a fine of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA By-law No. 1;

- c) The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;
- d) The Respondent shall in the future comply with MFDA Rules 2.1.3, 2.1.1, 2.5.1 and 1.1.2; and
- e) The Respondent will attend in person or via videoconference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The facts which Staff and the Respondent agreed upon to form the basis for the Settlement Agreement are set out at paragraphs 6 through 39 inclusive of that agreement and are reproduced below:

IV. AGREED FACTS

Registration History

- 6. Commencing in December 2015, the Respondent was registered in the securities industry.
- 7. From June 2018 to May 2019, the Respondent was registered in Alberta as a dealing representative with Royal Mutual Funds Inc. (“RMFI”), a Member of the MFDA.
- 8. From June 2019 to November 2019, the Respondent was registered in Alberta as a dealing representative with Scotia Securities Inc. (“SSI”), a Member of the MFDA.
- 9. On or about November 12, 2019, the Respondent resigned from SSI, and he is not currently registered in the securities industry in any capacity.
- 10. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

Sending Client Information from RMFI to the Respondent’s Personal Email Address

- 11. At all material times, Approved Persons of RMFI were required to adhere to a Code of Conduct and privacy and risk management policies which, among other things, prohibited Approved Persons from sending client information to an Approved Person’s personal email address.
- 12. On May 10, 2019, the Respondent resigned from RMFI in order to pursue an opportunity to transfer his registration to SSI.
- 13. Prior to resigning from RMFI, on or about April 30, 2019, the Respondent sent an email from his RMFI email address to his personal email address that attached an Excel workbook containing, among other things, personal information relating to 32 clients of RMFI (the “Spreadsheet”).
- 14. The personal information of RMFI clients that was recorded on the Spreadsheet included the following:

- a. Name;
- b. Gender;
- c. Date of birth;
- d. Employer;
- e. Contact information (including telephone and email);
- f. Employer information;
- g. Total assets;

- h. Contact history;
- i. Client identification number; and
- j. Information with respect to the number and types of accounts at RMFI and bank accounts of the client.

15. The Respondent sent the confidential client information from his RMFI email address to his personal email address without informing or obtaining the authorization of RMFI or the clients.

16. When the Respondent sent the Spreadsheet to his personal email address, the Respondent undermined the ability of RMFI to protect the confidentiality of that information.

17. By emailing personal and financial information of clients to his own personal e-mail address, the Respondent:

- a. put himself in a position to benefit from access to that client information, for example, if he was able to find future employment at another Member or financial institution; and
- b. affected the Member's ability to safeguard the confidentiality of the client information that he sent to his personal e-mail address.

Sending Client Information from SSI to the Respondent's Personal Email Address

18. At all material times, Approved Persons of SSI were prohibited from using their personal email accounts for business purposes, and, in particular, were prohibited from sending or forwarding confidential client information of SSI to personal email accounts.

19. In June 2019, the Respondent became registered with SSI. Upon becoming registered, the Respondent forwarded the Spreadsheet from his personal email address to his new business email address at SSI, without the knowledge or consent of RMFI and without the knowledge or consent of the RMFI clients whose confidential information was recorded on the spreadsheet.

20. After the Spreadsheet was sent to the Respondent's business email at SSI, the confidential information of clients of RMFI became accessible by SSI, and its affiliate bank, Scotiabank. The Respondent thereby further undermined the ability of RMFI to safeguard the confidentiality of the client information by allowing confidential information of RMFI clients to become accessible to a third party.

21. While registered at SSI, the Respondent added a second worksheet to the Spreadsheet which contained, among other things, personal information relating to 4 clients of SSI.

22. On or about November 12, 2019, the Respondent resigned from SSI, intending to seek employment with another financial institution.

23. Prior to resigning from SSI, on or about November 8, 2019, the Respondent sent an email from his business email address at SSI to his personal email address and attached the Spreadsheet, which was updated with the second worksheet containing personal information relating to 4 clients of SSI.

24. The personal information of SSI clients that was recorded on the second worksheet included the following:

- a. Name;
- b. Gender;
- c. Date of birth;
- d. Contact information (including telephone and email);
- e. Employer information;
- f. Total assets;
- g. Contact history; and
- h. Information with respect to the number and types of accounts at SSI and bank accounts of the clients.

25. The Respondent sent the confidential client information from his SSI email address to his personal email address without informing or obtaining the authorization of SSI or the clients.

26. When the Respondent sent the Spreadsheet to his personal email address, the Respondent undermined the ability of SSI to protect the confidentiality of that information.

27. The Respondent sent the confidential information of SSI clients that was recorded on the Spreadsheet to his personal email address for his personal use and benefit as he had access to that confidential client information for use in a future position at a Member of a financial institution or for other purposes.

28. By sending the Spreadsheet to his personal email address as described above, the Respondent failed to maintain information relating to clients or the business and affairs of clients in confidence, facilitated the use of that information for his personal advantage and engaged in conduct that was contrary to the Members' policies and procedures and MFDA Rules.

Members' Investigations

29. In November 2019, SSI personnel discovered the Spreadsheet, and subsequently notified RMFI. Both SSI and RMFI commenced investigations into the Respondent's conduct.

30. As part of RMFI's investigation, it reviewed the trading activity of the 32 RMFI clients that were identified on the Spreadsheet and did not identify any concerns.

31. On November 27, 2019, the Respondent signed an acknowledgement confirming that he had destroyed all physical and digital copies of the Spreadsheet and had not forwarded the confidential information of clients of SSI to any third party.

32. On March 19, 2020, the Respondent signed an acknowledgement confirming that he had destroyed all physical and digital copies of the Spreadsheet and had not forwarded the confidential information of clients of RMFI to any third party (other than his own business email address at SSI).

Additional Factors

33. There is no evidence that the Respondent received any financial benefit from his conduct.

34. There is no evidence of any client financial loss caused by the Respondent's conduct.

35. No complaints have been received by RMFI or SSI from clients whose confidential information was sent to the Respondent's personal email address.

36. The Respondent has provided evidence to Staff that he is suffering from financial hardship, which includes a limited income and the servicing of debt, expenses, and other liabilities.

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

38. The Respondent has cooperated with the MFDA's investigation into his conduct as well as the investigations conducted by SSI and RMFI.

39. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing in this case.

V. ANALYSIS

Role of the Panel

9. The role a Hearing Panel performs at a Settlement Hearing is fundamentally different from the role it performs at a Contested Hearing.

10. When considering a settlement agreement, a Hearing Panel has only two options: either to accept or reject the settlement agreement.

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. [1999] I.D.A.C.D. No. 17 at page 12

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at page 9

12. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected, is because Hearing Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also a factor for the Hearing Panel to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras. 22 and 23

13. The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.

British Columbia (Securities Commission) v Seifert, 2007 BCCA 484, para. 31

14. Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has been frequently cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

15. Hearing Panels have repeatedly expressed the view that generally, settlement agreements should be accepted, bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;

- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at para. 34

Appropriateness of the Proposed Penalty

16. The primary goal of all securities regulation is investor protection.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at para. 68

17. In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.

Pezim v British Columbia (Superintendent of Brokers), *supra*, at paras. 59 & 68

18. In determining the appropriateness of a proposed penalty, Hearing Panels frequently cite the decision in *Breckenridge (Re)*, where the Hearing Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) specific and general deterrence;
- d) the protection of the MFDA's membership; and
- e) protection of the integrity of the MFDA's enforcement processes.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, 2007 LNCMFDA 38, at paras. 75 & 76

19. The Hearing Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

- a) the seriousness of the allegations proved against the respondent;

- b) the respondent's experience in the capital markets;
- c) the level of the respondent's activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) 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;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge (Re), supra, at para. 77

MFDA Sanction Guidelines

20. On November 15, 2018, the MFDA issued Sanction Guidelines (the "Guidelines") to assist Staff and Respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings.

21. The Guidelines, as their name suggests, are not mandatory. They state, under the heading "Purpose of the Sanction Guidelines":

... The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. The Sanction Guidelines are intended to provide a summary of the key factors upon which discretion may be exercised consistently and fairly in like circumstances, but are not binding on Hearing Panels. The list of key factors in the Sanction Guidelines is not exhaustive, and Hearing Panels may consider other aggravating and mitigating factors as appropriate.

Hearing Panels should always exercise judgement and discretion, and consider appropriate aggravating and mitigating factors in determining appropriate sanctions in every case. In addition, Hearing Panels should identify the basis for the sanctions imposed in the Reasons for Decision.

MFDA Sanction Guidelines, p.1

22. In cases involving the type of misconduct in the present case, the following factors as set out in the Sanction Guidelines are relevant to the Panel's decision:

- a) General and specific deterrence;
- b) Public confidence;
- c) Seriousness of the allegations proved against the Respondent;
- d) The Respondent's recognition of the seriousness of the misconduct;
- e) Previous decisions made in similar circumstances; and
- f) The Respondent's ability to pay.

Application of the factors listed above in the present case

Seriousness of the misconduct

23. In making our findings in this matter, the Panel has accepted and agreed with Staff's submissions, both written and oral.

24. The misconduct at issue in this matter involves the Respondent's failure to maintain confidentiality of the confidential client information he received by virtue of his registration at two separate Members.

25. In particular, the Respondent sent confidential client information to his personal email address. He also uploaded the confidential client information of one Member to the data base of another Member.

26. The Panel finds that this conduct constitutes a clear breach of MFDA Rule 2.1.3 as well as the standard of conduct Rule 2.1.1.

27. MFDA Rule 2.1.3 states:

2.1.3 Confidential Information

(a) All information received by a Member relating to a client or the business and affairs of a client shall be maintained in confidence by the Member and its Approved Persons and other employees and agents. No such information shall be disclosed to any other person or used for the advantage of the Member or its Approved Persons or other employees or agents without the prior written consent of the client or as required or authorized by legal process or statutory authority or where such information is reasonably necessary to provide a product or service that the client has requested.

(b) Each Member shall develop and maintain written policies and procedures relating to confidentiality and the protection of information held by it in respect of clients.

28. When an Approved Person sends confidential client information to their personal email address without the client's consent, they have failed to ensure that the information has been "maintained in confidence". Such conduct compromises: the client's privacy interests; the ability of the Member and client to have control over where the information resides or may go next; and

the ability of the Member to maintain the information on its secure server, thereby exposing the information to theft and/or unauthorized access by third parties that would be undetectable by the Member.

29. In the present matter there is the additional concern of the confidential client information of one Member having been made accessible to another Member.

30. MFDA Rule 2.1.1 sets the standard of conduct to be followed by all Approved Persons. It is a broad rule which is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule has been interpreted and applied in an purposive manner in a wide range of circumstances. As the Hearing Panel in *Breckenridge (Re)* stated:

The Rule articulates the most fundamental obligations of all registrants in the securities industry.

Breckenridge (Re), supra, at para. 71

31. MFDA Rule 2.1.1 requires that an Approved Person among other things:

- a) Deal fairly, honestly and in good faith with clients;
- b) Observe high standard of ethics and conduct in the transaction of business; and
- c) Not engage in any business, conduct or practice which is unbecoming or detrimental to the public interest.

32. The Panel finds that the Respondent's conduct also constitutes a breach of MFDA Rule 2.1.1.

33. The requirement to keep clients' information confidential was also a requirement which was set out in the policies and procedures of both Members involved in this matter. The Respondent's conduct, therefore, also constituted a breach of MFDA Rules 2.5.1 and 1.1.2.

34. MFDA Rule 2.5.1 states:

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

35. MFDA Rule 1.1.2 states:

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

36. MFDA Hearing Panels as well as the Alberta Securities Commission have held that the interaction between these two Rules establishes that an Approved Person must comply with a Member's policies and procedures.

Frank (Re), MFDA File No. 201407, Hearing Panel of the Central Regional Council, Decision and Reasons (Misconduct) dated May 5, 2015, at paras. 57-58

Botha (Re), 2021 LNABASC 3 (QL), at paras. 133, 152-155

37. In light of the above, the Panel finds the Respondent has engaged in serious misconduct.

Respondent's past conduct and experience in the markets

38. The Respondent has been registered in the securities industry since December 2015 and as a result, ought to have known and complied with the requirements of both the MFDA and the Members involved in this matter

39. He has not, however, been the subject of any prior discipline proceedings by the MFDA.

40. The Respondent has not been registered in the mutual fund industry since November 2019.

Recognition by the Respondent of the seriousness of the misconduct

41. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the additional time and expense of a full contested hearing on the merits.

42. At the Settlement Hearing the Respondent's counsel made a submission in which, in addition to confirming the submission made by Enforcement Counsel, he highlighted that the Respondent cooperated with Staff from the outset as well as with the Members and their investigations.

43. He advised that the Respondent is very remorseful for the circumstances he created and recognizes and takes full responsibility for his conduct.

44. He told the Panel that the Respondent has taken all necessary steps to ensure that the client information at issue remained confidential, including destroying all electronic copies of the

information that were in his possession. He confirmed that the Respondent never had any hard copies of that information

45. He also submitted that the Respondent never had any intention to deceive the clients or to treat their information in a dishonest or deceitful way.

Harm suffered by the client and benefits received by the Respondent

46. There is no evidence of either client loss or benefits received by the Respondent.

Ability to pay

47. At the Hearing, in response to the Panel's questions, Staff confirmed that the Respondent had provided sufficient evidence of financial hardship to satisfy them in submitting that his ability to pay a fine should be a factor for the Panel to consider.

Deterrence

48. Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an appropriate factor to be taken into account when determining the appropriateness of a penalty.

Cartaway Resources Corp. (Re), [2004] 1 NSCR 672 SCC at paras. 52-62

49. The effect of general deterrence should advance the goal of protecting investors. A penalty should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction ... The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged ...

Cartaway Resources Corp. (Re), *supra*, at para. 61

50. The Panel agrees that the combined effect of a 6 month prohibition, a fine of \$5,000 and costs of \$2,500 is a substantial penalty which will be sufficient to achieve the goals of both specific and general deterrence.

51. We agree with Staff's submission that these penalties are necessary in order to communicate to other Approved Persons that the misconduct engaged in by the Respondent in this matter has no place in the mutual fund industry.

52. This sanction will prevent future misconduct by the Respondent, will deter others from engaging in similar misconduct and will improve overall compliance by mutual fund industry participants.

Previous decisions made in similar circumstances

53. The Panel considered the following cases which were submitted by Enforcement Counsel as being cases in which penalties have been imposed in similar circumstances.

CASE	FACTS	OUTCOME
<i>Mitha (Re)</i> ¹	<p>The Respondent:</p> <ul style="list-style-type: none"> • sent emails from her business email address to her personal email address attaching documents containing confidential information of clients of the Member without the consent of the clients, thereby failing to maintain in confidence all information received by the Member relating to clients; and • altered her manager’s written assessment of her performance on a performance review document, inserted the electronic initials of her manager and Regional Vice President on the performance review document without their knowledge or approval, and submitted the performance review to another financial institution in support of an application for employment. 	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> • 12 month prohibition • Fine of \$5,000 • Costs of \$2,500
<i>Roche (Re)</i> ²	<p>The Respondent:</p> <ul style="list-style-type: none"> • permitted non-Approved Persons TS and KW to conduct securities related business through the Member; and • failed to comply with the policies and procedures of the Member by producing and distributing 80 portfolio summaries to 45 clients without the knowledge or involvement of the Member; <u>where the Respondent produced Portfolio Summaries for clients who were spouses, the clients had not provided their prior written consent to authorize the sharing of their individual account information to anyone (including their spouse).</u> 	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> • 3 month prohibition • Fine of \$12,500 • Costs of \$2,500

¹ *Mitha (Re)*, MFDA File No. 202073, Hearing Panel of the Central Regional Council, Reasons for Decision dated May 14, 2021, Staff’s Book of Authorities, Tab 14

² *Roche (Re)*, MFDA File No. 201420, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated November 17, 2014, Staff’s Book of Authorities, Tab 15

CASE	FACTS	OUTCOME
<i>Scott (Re)</i> ³	<p>The Respondent:</p> <ul style="list-style-type: none"> processed a redemption in client AP's account based upon email instructions received from a third party fraudster (who had gained unlawful access to the client's email account), contrary to the Member's policies and procedures which required the client's identity to be verified and prohibited accepting trade instructions by email; requested, obtained and used a pre-signed form in order to change client AP's banking information with the Member; processed a redemption in the account of client AP without making inquiries of client AP regarding which funds were to be redeemed and in what amounts; completed portions of an account form wherein the Respondent falsely represented that she had verified client AP's and client MB's identifies; and <u>disclosed confidential information about the investments held in client MB's account, without client MB's authorization (the Respondent had disclosed the confidential information to a fraudster posing as MB's spouse).</u> <p>Clients AP and MB were spouses.</p>	<p>Settlement Agreement:</p> <ul style="list-style-type: none"> 1 month suspension Fine of \$10,000 Costs of \$5,000
<i>Wong (Re)</i> ⁴	<p>The Respondent:</p> <ul style="list-style-type: none"> <u>while an Approved Person of one Member, accessed the confidential client database of another Member, without the knowledge or approval of either Member and used the information obtained to solicit clients.</u> <p>The other Member had inadvertently provided the Respondent with a logon that enabled him to access numerous confidential client accounts, and the Respondent identified 24 high net worth clients who he sent solicitation letters to.</p> <p>The Respondent initially falsely advised his Member that the solicitation letters had been sent to individuals that the Respondent had identified from a list of donors in a publication; he subsequently admitted his conduct.</p>	<p>Agreed Statement of Facts:</p> <ul style="list-style-type: none"> 3 year prohibition from acting in a supervisory capacity Proficiency examination prior to acting in a supervisory capacity Ethics course Fine of \$7,000 Costs of \$1,000

54. Enforcement Counsel reviewed the facts in each of the four decisions set out above and advised that the facts in the *Mitha* decision were the most similar to the facts in the instant case.

³ *Scott (Re)*, MFDA File No. 201647, Hearing Panel of the Central Regional Council, Reasons for Decision dated April 12, 2017, Staff's Book of Authorities, Tab 16

⁴ *Wong (Re)*, MFDA File No. 200709, Hearing Panel of the Central Regional Council, Reasons for Decision dated June 19, 2007, Staff's Book of Authorities, Tab 17

He submitted that while the facts in the other cases were not as useful for the purposes of comparison, they did show that a breach of client confidentiality can lead to penalties.

55. Based on our review of the cases, the Panel is satisfied that the proposed penalty contained in the Settlement Agreement falls within the range of penalties appropriate for the type of misconduct which is the subject of these proceedings.

VI. CONCLUSION

56. Having reviewed the Settlement Agreement and having considered the submissions from both Staff and counsel for the Respondent, the Panel is satisfied that the penalty proposed in the Settlement Agreement is reasonable and proportionate having regard to the Respondent's conduct in the circumstances of this case.

57. We find that this penalty will deter the Respondent and other Approved Persons from engaging in the type of conduct that is the subject of these proceedings and will advance both the public interest and the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

58. The Panel, therefore, accepts the Settlement Agreement.

DATED this 7th day of February, 2022.

“Sherri Walsh”

Sherri Walsh
Chair

“Howard Mix”

Howard Mix
Industry Representative

“Charlene Snell”

Charlene Snell
Industry Representative