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: Paul Leland Wemple

Heard: May 4, 2017 in Toronto, Ontario
Decision: May 4, 2017
Reasons for Decision: June 9, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Kenneth Mann	Industry Representative
Brian Nowak	Industry Representative

Appearances:

Maria L. Abate	)	Counsel for the Mutual Fund Dealers Association of Canada
Paul Leland Wemple	)	Respondent, did not attend and was not represented by counsel

BACKGROUND

1. On August 22nd, 2016, a Notice of Hearing was issued by the Corporate Secretary's Office of the Mutual Fund Dealers Association of Canada (the "MFDA") commencing a disciplinary proceeding against Paul Leland Wemple. A copy of the Notice of Hearing was properly served on the Respondent and was made Exhibit 1 in this proceeding. The Notice of Hearing set out the following allegations:

> **Allegation #1**: Between February 8, 2002 and December 6, 2014, 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, referring or facilitating the sale of unapproved investment products to clients and other individuals outside the Member, contrary to MFDA Rules 1.1.1, 2.1.4, 2.4.2, and 2.1.1, and sections 13.7 to 13.10 of National Instrument 31-103.
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> **Allegation #2**: Between February 8, 2002 and December 6, 2014, the Respondent engaged in dual occupations, which were not disclosed to and approved by the Member, by:
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> (a) selling, recommending, referring or facilitating the sale of unapproved investment products to clients and other individuals outside the Member;
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> (b) acting as the President, the Treasurer and a Director of a corporation known as Syndacore Technologies Management Inc.;
>
> (c) operating, including acting as an Officer and/or Director of, corporations known as Miser Lighting Inc., Miser Lighting Sales Inc. and Magnetic Lighting Sales Inc.
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> contrary to MFDA Rules 1.2.1(c) (now Rule 1.3.2) and 2.1.1.

Allegation #3: From February 8, 2002 to December 6, 2014, the Respondent misled the Member on compliance attestations and during compliance reviews when he failed to disclose that he was:

(a) selling, recommending, referring or facilitating the sale of unapproved investment products to clients and other individuals outside the Member;
(b) acting as the President, the Treasurer and a Director of a corporation known as Syndacore Technologies Management Inc.;
(c) operating, including acting as an Officer and/or Director of, corporations known as Miser Lighting Inc., Miser Lighting Sales Inc. and Magnetic Lighting Sales Inc.;

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

2. The Respondent failed to file a Reply to the Notice of Hearing. The Respondent also failed to attend the first appearance in this matter, which was scheduled for November 2, 2016, although properly served with the Notice of Hearing in accordance with the Rules 4.2(d) and 4.8(1) of the MFDA *Rules of Procedure*.

3. At the first appearance on November 2nd, 2016, among other things, it was ordered that a hearing of this matter, on its merits, would take place on March 21, 2017. On March 17, 2017, the hearing panel adjourned the hearing of the merits, at the request of Staff, and rescheduled the hearing on the merits to take place on May 4, 2017.

4. On May 4, 2017, the hearing on the merits proceeded before the Hearing Panel. In addition to failing to file a Reply to the Notice of Hearing and failing to appear at the first appearance on November 2nd, 2016, the Respondent failed to attend at the hearing on the merits properly scheduled for that day, nor did anyone appear on the Respondent's behalf.

5. Rules 8.4 and 7.3 of the MFDA *Rules of Procedure*, make it clear that where a Respondent fails to serve and file a Reply to a Notice of Hearing or where the Respondent fails to attend a hearing on the merits on the date and at the time and location specified in the Notice of Hearing, a Hearing Panel may:

> *Accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing as proven and impose any of the penalties and costs described in s. 24.1 and 24.2 respectively, of MFDA By-law No. 1.*

Accordingly, at the opening of the Hearing, Staff made a motion for an Order pursuant to Rule 7.3 requiring the Panel to accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing. As a result of the filing of the Affidavit of investigator Stephen M. Davis, dated March 15, 2015 and it being marked as Exhibit 4 in these proceedings, and as a result of Staffs' extensive review on the record of the contents of Exhibit 4, the Panel concluded, with the concurrence of Staff, that an Order pursuant to Rule 7.3 was unnecessary.

The Facts

6. As a result of the filing of Exhibit 4 and its extensive review at the Hearing, the Hearing Panel was able to conclude and confirm the following facts:

(a) the Respondent was a highly experienced dealing representative sponsored by multiple MFDA Dealer Members from 2002 to 2014, namely FundTrade and FundEX*;*

(b) that between February 8, 2002 and December 6, 2014, the Respondent sold, recommended, referred or facilitated the sale of at least $1.3 million USD of limited partnerships offered by **Graoch Associates** ("Graoch") to 21 Member clients and 5 other individuals;

(c) the investigation conducted by Mr. Davis confirmed that Graoch was a real estate investment business based in the United States with a Canadian office in the province of British Columbia;

(d) the Respondent's activities with respect to the Graoch limited partnerships included: approaching clients and other individuals to invest in the limited partnerships; providing clients and other individuals with copies of offering memoranda; assisting clients and other individuals to complete subscription agreements; collecting cheques from clients and other individuals payable to Graoch in respect of investments in ongoing limited partnerships; forwarding the completed offering memoranda and cheques for investments in the limited partnerships to Graoch and providing clients and other individuals who invested in the limited partnerships with information pertaining to their investments;

(e) for his activities related to Graoch, the Respondent received commissions and for at least one of the limited partnerships the Respondent received a commission of 4.5% on the sales he facilitated;

(f) these investments were not investments approved for sale or carried on through the account of any Member nor were they disclosed to any Member by which the Respondent was employed;

(g) in or about 2012, the limited partnerships ceased paying monthly distributions and some clients and individuals have been unable to recoup their investments;

(h) in addition to his activities with Graoch, in 2005, the Respondent agreed to assist CFMII Technologies, another corporation, to raise capital for itself and for four (4) related companies: Fibro Light Technology Inc., Composotech Structures Inc., Miser Lighting Inc., and Mag-Sail Turbines Inc., by offering a debenture (which the Respondent created) to investors;

(i) in order to offer the debenture to investors, the Respondent incorporated **Syndacore Technologies Management Inc.** ("Syndacore Technologies") and appointed himself as President, Secretary, Treasurer and Director;

(j) the investigation conducted by Mr. Davis found that between 2005 and 2008, the Respondent sold, recommended, referred or facilitated the sale of at least $905,000 in debentures offered by Syndacore Technologies to 19 clients and 2 other individuals;

(k) after purchasing the debenture, investors were entitled to receive quarterly interest payments calculated at a rate of 5% of their investment per annum and to share in the future profits of CFMII Technologies and its four (4) related companies;

(l) the Respondent's activities with respect to the debentures included approaching clients and other individuals to invest; providing clients and other individuals with investment contracts to purchase the debentures; assisting with the completion of the investment contracts; signing the investment contracts on behalf of Syndacore Technologies; collecting cheques from clients and other individuals payable to Syndacore Technologies and depositing the cheques into a bank account controlled by him and transferring the monies received from clients and other individuals to CFMII Technologies;

(m) for his role in the sale of the debentures, the Respondent was entitled to receive up to $16,000 per year ($10,000 annually to Syndacore Technologies and $500 per month to the Respondent in his capacity as a Board Member) and a further $150,000 through payments to Syndacore Technologies;

(n) the Respondent solicited investments in the debentures until early 2008 and Syndacore Technologies issued quarterly interest payments until June 2008 after which time CFMII Technologies and its four (4) related companies began to experience financial difficulties. By 2010, three (3) of the four (4) companies under the CFMII umbrella had failed and in 2012, the fourth also failed. To date, investors and individuals who purchased the Syndacore Technologies debenture have been unable to recover their investments;

(o) Mr. Davis' investigation has confirmed that the debentures offered by Syndacore Technologies were not investments disclosed by the Respondent to his Member, were not approved by his Member and were not sold through the facilities of his Member;

(p) in addition to the Graoch limited partnerships and the Syndacore Technologies debenture, between 2003 and 2008, the Respondent sold, recommended, referred or facilitated investments of at least $1.3 million in a condominium development project known as **Chateau Royal**, offered by **Panterra Federated Properties Corp.** ("Panterra") to 26 clients and 9 individuals;

(q) the Respondent's activities with respect to Chateau Royal included approaching clients and other individuals to invest in the project; providing clients and other investors with sales documentation and assisting with the completion of forms; collecting cheques from clients and other individual in respect of their investments; forwarding completed sales documentation and cheques to Panterra and providing clients and other individuals who invested in the project with information and ongoing updates pertaining to their investments;

(r) the Respondent received a commission of approximately 8% of the total investments made by clients and other individuals;

(s) the Respondent did not disclose his involvement with Chateau Royal or Panterra to his Member. Neither Chateau Royal nor Panterra were investments approved for sale by the Member or sold through the Member accounts and the Member did not have a referral arrangement with either Chateau Royal or Panterra;

(t) sometime in 1988, the Respondent also incorporated **Syndacore Holdings Inc.** ("Syndacore Holdings") which remained in operation until at least August 9, 2014. The Respondent did not disclose or received approval for Syndacore Holdings to or from the Member; and

(u) finally, on June 29, 2007, the Respondent, through his corporation Syndacore Holdings, entered into an agreement to become a distributor of **Miser Lighting Inc.** ("Miser Lighting") products. Miser Lighting was a business which supplied and sold energy efficient lighting systems and was one (1) of the four (4) companies related to CFMII Technologies;

(v) on June 15, 2009, the Respondent incorporated and became the sole officer of **Miser Lighting Sales Inc.**, ("Miser Lighting Sales") to operate his business relating to the distribution of lighting systems. The Respondent did not disclose his involvement with Miser Lighting, Miser Lighting Sales or Magnetic Lighting Sales Inc. to the Member and the Member did not approve these activities.

7. The investigation conducted by Mr. Davis, and his subsequent Affidavit also speak to the Respondent's attempts to mislead the Member regarding his outside business activities.

8. During the course of his investigation, Mr. Davis reviewed the policies and procedures of the Members which sponsored the Respondent's registration as a dealing representative. Mr. Davis determined that the Members' policies and procedures required the Respondent to obtain approval from his Member prior to engaging in outside business activities.

9. Furthermore, in his affidavit, Mr. Davis lists the following seven (7) occasions where the Respondent attempted to mislead his Member regarding his outside business activities:

(a) during a compliance examination conducted by FundTrade on May 10, 2005;
(b) on an Annual Associate Compliance Audit form submitted to FundEX on or about May 23, 2007;
(c) on a FundEX Annual Associate Compliance Audit Report dated June 12, 2007 and an Outside Business Activity Approval Form signed October 2, 2007;
(d) on an Outside Business Activity Approval Form submitted to FundEX on August 21, 2008;
(e) during a compliance examination conducted by FundEX on September 21, 2009;
(f) during a compliance examination conducted by FundEX on May 30, 2012; and
(g) during a compliance examination conducted by FundEX in July 2012.

10. Therefore, beginning in May 2005 through to at least July 2012, the Respondent repeatedly failed to disclose his participation in multiple outside businesses, the sale of securities outside the Member, referral arrangements, conflict of interests and personal financial dealings with Member clients. The Respondent also violated the policies and procedures of his Member and interfered with the Member's ability to supervise his activities by consistently misleading the Member on every occasion on which they sought to collect more information about the Respondent's activities.

Discussion

Sale of Securities Outside the Member: MFDA Rule 1.1.1(a)

11. MFDA Rule 1.1.1(a) prohibits an Approved Person from engaging in securities related business in any form that is not carried on for the account of the Member, through the facilities of the Member and in accordance with MFDA By-Laws and Rules.[1] This is often referred to as the prohibition on selling securities "off book".

MFDA Rule 1.1.1(a).

12. As demonstrated by the evidence presented to the Hearing Panel in the Davis Affidavit, the Respondent clearly engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending or facilitating the sale of alternative investments products not carried by his Member.

13. MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. The rule creates a regime whereby an Approved Person is only permitted to sell investment products that have first been approved for sale by the Member (following appropriate product due diligence) and which are sold through the facilities of the Member ensuring the trading activity is subject to appropriate review and supervision.

14. 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) protects primarily the interest of Member clients, but also the interests of Members and Approved Persons.

[1] MFDA Rule 1.1.1(a) has two exceptions, neither of which is applicable to this case: an Approved Person is authorized to trade in deposit instruments outside the Member provided the Approved Person complies with the requirements of MFDA Rule 1.2.1(d) "Dual Occupations"); and (ii) an Approved Person who is an employee of a bank is permitted to engage in a broader range of securities related business as permitted under the *Bank Act (Canada)* and applicable regulations.

15. As was expressed in the often cited matter of *Re Thomson*, a 2004 decision of the Investment Dealers Association of Canada ("IDA") referencing the Conduct and Practices Handbook course offered by the Canadian Securities Institute ("CSI") (adopted in the MFDA matter of *Re: Kent Owen Westgard*):

> Consideration for the financial integrity and moral responsibilities of one's firm are essential to the business dealings of the Registered Representative….[T]he standard is clear in that an RR must not trade in securities other than through the firm employing the RR, and the firm must have knowledge and give consent for these business dealings….[S]uch activities done by a registered representative employee without the knowledge of the member firm may expose the member firm to vicarious liability for the actions of its employee. This provision is for the protection of the investors, as well as member firms. When a transaction is done off the books, the Association member loses the ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor.
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> *Re Thomson,* [2004] I.D.A.C.D. No. 49 (Pacific District Council) at paras. 56 - 60.
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> *Re: Kent Owen Westgard* [2010] Hearing Panel of the Prairie Regional Council, MFDA File No. 200937, Decision dated July 15, 2010 ("*Westgard*") at paras. 51- 52.

Referral Arrangements: MFDA Rule 2.4.2

16. MFDA Rule 2.4.2(a)(i)(ii) and (iii) defines referral arrangements and section (b)(i) through (iii) identifies the permitted arrangements for Approved Persons or Members.

> *MFDA Rule 2.4.2*.

17. The Respondent entered into referral arrangements with Graoch Associates, Syndacore Technologies Management Inc., and Panterra Federated Properties Corp., that were not in accordance with the permitted arrangements as per MFDA Rule 2.4.2

18. By engaging in referral arrangements outside of their Members, Approved Persons effectively prevent the Member from, among other things, monitoring and accounting for referral payments, ensuring that clients are given sufficient information regarding conflicts of interest and fees that will be paid under the arrangements, ensuring that any recommendations made to clients are in the best interests of clients are not inappropriate in the circumstances and

establishing controls to prevent situations where unlicensed or improperly licensed individuals may be acting in furtherance of trades or where individuals may be providing advice beyond the limits of their registration.

Referral Arrangements in Respect of Specific Securities, MSN-0043, March 4, 2013.

James Woloshen (Re) [2011], Hearing Panel of the Central Regional Council, MFDA File No. 201029, Decision dated June 20, 2011 ("*Woloshen*"), at para. 29.

Sections 13.7 to 13.10, National Instrument 31-103.

Conflicts of Interest: MFDA Rule 2.1.4

19. In addition to a violation of the Rules regarding referral fees, the Respondent also breached MFDA Rule 2.1.4. MFDA Rule 2.1.4 is the conflict of interest rule which governs Approved Persons. The Respondent violated MFDA Rule 2.1.4 by engaging in personal financial dealings with clients and creating an actual and unresolved conflict of interest that was not addressed through the exercise of responsible business judgment.

MFDA Rule 2.1.4.

20. MFDA Rule 2.1.4 imposes two (2) broad requirements on Members and Approved Persons with respect to conflicts of interest. Firstly, Members and Approved Persons must be alert to the creation of potential or actual conflicts of interest arising in connection with business or any other type of transaction conducted by them, for them, for a client or with a client. Secondly, if such a potential or actual conflict of interest arises, it must immediately be disclosed in writing to the client in advance of the transaction in question proceeding. At all times, it is the obligation of the Member and Approved Person to ensure that a potential or actual conflict of interest is addressed by the exercise of responsible business judgment influenced only by the best interest of the client.

21. In cases where an Approved Person facilitates investments by clients in companies in which the Approved Person has an interest, such conduct raises a significant, actual conflict of interest that in almost all cases will be impossible to resolve in favour of the client.

Re: Jose Luis Bautista, [2012], MFDA File No. 201143, Decision dated July 24, 2012 ("*Bautista*").

22. Certainly, the Respondent engaged in personal financial dealings (which created an actual conflict of interest) with clients by offering and selling approximately $905,000 in a debenture investment, created by his own company, Syndacore Technologies, to 19 Member clients. As stated in the Davis Affidavit, for his role in the sales, the Respondent was paid or was to be paid $16,000 per year and a further $150,000 to his company.

23. The failure of an Approved Person to remain vigilant to potential or actual conflicts of interest when conducting business with or for clients is an abdication of one of his or her most important responsibilities. When an actual conflict of interest is present, it must be reported to the Member and resolved with only the best interests of the client in mind. Failure to keep client interests first is a failure of the Approved Person to deal fairly, honestly and in good faith with clients and is contrary to what is demanded by MFDA Rule 2.1.4.

Outside Business Activities/Dual Occupations: MFDA Rule 1.2.1(c) [amended MFDA Rule 1.3.2]

24. MFDA Rule 1.2.1(c) articulates the rights of and restrictions on an Approved Person to hold dual occupations or conduct business activities outside the Member. The Rule seeks to ensure that only authorized dual occupations are carried on by an Approved Person and that they are done so with the knowledge and approval of the Member.

MFDA Rule 1.2.1(c).

25. Hearing Panels have consistently held that the outside business activities and dual occupations of Approved Persons must be disclosed to Members as undisclosed occupations may not only be to the detriment of clients, but may also conflict with the work for which Approved Person's are employed. Such violations have been regarded by MFDA Hearing Panels and Hearing Panels of the Investment Industry Regulatory Organization of Canada ("IIROC") as being very serious.

26. Findings of misconduct for failing to disclose and obtain approval of outside business activities have been made regardless of whether the Approved Person earned any compensation from the activity and regardless of whether a Member may have been lax in supervising the activities of the Approved Person. Panels have also confirmed that it is the responsibility of the Approved Person to seek and obtain the required approval.

> *Bautista*, *supra*.
> *Re: Bemelekot W. Tewahade,* [2015], MFDA File No. 201425, Decision dated January 13, 2016.

27. By engaging in gainful occupation outside the business of the Member without advising the Member or obtaining the Member's approval, the Approved Person effectively prohibits the Member from ensuring that applicable securities legislation, the Member's own regulatory obligations and the Member's own internal procedures are in compliance. The failure to disclose and seek approval of the activity by the Approved Person also prevents an assessment of whether the MFDA, its Members or the mutual fund industry are being brought into disrepute.

28. Most importantly, it also prevents a Member's ability to ensure that clients and the general public are aware that the outside business activity is not the business or responsibility of the Member and that any actual or potential conflicts are dealt with appropriately.

Compliance by Approved Persons: MFDA Rules: 1.1.2 and 2.5.1

29. MFDA Rule 1.1.2 requires each Approved Person who conducts or participates in any securities related business in respect of a Member to comply with the By-laws and Rules as they relate to the Member or the Approved Person. Accordingly, as an Approved Person, the Respondent was required to comply with the policies and procedures that were established and implemented by his Member.

MFDA Rule 1.1.2.

30. MFDA Rule 2.5.1 requires each MFDA Member to establish, implement and maintain policies and procedures to ensure that the handling of its business is in accordance with MFDA By-laws, Rules and Policies and applicable securities legislation.

MFDA Rule 2.5.1.

31. The obligation of Approved Persons to comply with the policies and procedures of their Members is a cornerstone of the self-regulatory system. Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined. Staff submits that this is exactly the situation created by the Respondent in the present case with his refusal to adhere by the established policies of the Member and through his less than candid disclosure on the multitude of compliance materials circulated by his Member.

> *In the Matter of Arnold Tonnies,* [2005], MFDA File No. 200503, Decision dated June 27, 2005 *("Tonnies")* at para. 17.

32. The Advisor's Agreement, signed between the Member and the Respondent outlined the obligations of the Approved Person and the policies of the Member towards outside business activities. The various compliance forms issued and annual audits regularly conducted by the Member on the Respondent further reviewed the importance of disclosing outside business activities and the process for doing so. These materials also served to provide guidance to Approved Persons inquiring about this issue and directing them to contact compliance for assistance or to further discuss the matter.

33. Further, Member's policies and procedures are often drafted and designed to meet a Member's regulatory obligations, including those imposed by the MFDA. By failing to comply with the Member's policies and procedures, the Respondent breached MFDA Rule 1.1.2 and interfered with the Member's ability to comply with the requirements of MFDA Rule 2.5.1 to

operate their business in accordance with the governing By-laws, Rules and Policies and with applicable securities legislation.

Standard of Conduct: MFDA Rule 2.1.1

34. Finally, MFDA Rule 2.1.1 articulates the standard of conduct to be followed by all Members and Approved Persons. The rule encompasses the most fundamental obligations of all registrants in the securities industry.

MFDA Rule 2.1.1.

35. The notion that Approved Persons are to conduct themselves in accordance with "high standards of ethics and conduct" in the transaction of business has been examined in a number of previous MFDA disciplinary hearings.

Tonnies, *supra*.

36. While the phrase "standard of conduct" or "high standards of ethics" is not clearly defined in the Rules or case law, it is clear that the Respondent signed an Advisor's Agreement with his various Members outlining his duties and responsibilities which, among other items, included agreeing not to participate in any business or occupation other than a mutual fund salesperson without disclosure to and consent from the Member.

Tonnies, supra at pp. 17, MFDA Book of Authorities at Tab 11.

37. The Respondent was aware of the terms and conditions of his employment but proceed to breach both his contractual obligations with his Members and his regulatory obligations with the MFDA when he repeatedly failed to disclose his outside business activities, their related concerns and the true nature of the activities for a period of almost 12 years. Surely, such flagrant and continuous violation of the advisor's agreement, the Members policies and procedures and regulatory requirement is contrary to the ethical standards expected of persons participating in the financial services industry.

RESULT

38. In coming to its conclusion with respect to misconduct, the Panel considered Exhibit 4, being the Davis Affidavit, and the extensive references to that Affidavit to which we were referred by Staff. The Panel also considered both the written and oral submissions of Staff and the extensive case law to which we were referred. After doing so, the Panel was unanimously satisfied that a finding of misconduct against the Respondent for violations of MFDA Rules 1.1.1(a), 2.1.4, 2.4.2, 1.2.1(c), 2.1.1, 1.1.2, 2.5.1 and for violations of sections 13.7 to 13.10 of National Instrument 31-103 was appropriate. The Panel further concluded that the specific misconduct alleged in Allegations No. 1, No. 2 and No. 3 in the Notice of Hearing dated August 22nd, 2016 had been proven.

Penalty

39. In coming to its conclusion with respect to penalty, the Panel considered the penalty guidelines, the substantial case law to which it was referred, and the oral and written submissions of Staff with respect to penalty and the findings of fact set out above.

40. In coming to its conclusion with respect to penalty, the Panel was also mindful of the fact that:

(a) The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers) [1994], S.C.J. 58, *Iacobucci, J. at paragraphs 59 and 68,* MFDA Book of Authorities at Tab 3.

(b) The role of an MFDA Hearing Panel is similar to that of a provincial securities commission in so far as it protects the public interest by removing, permanently or for a period of time, from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets.

In The Matter of Robert Roy Parkinson [2005], Hearing Panel of the Ontario Regional Council, MFDA File No. 200501, Panel Decision dated April 29,

2005 ("*Parkinson*"), citing with approval *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] S.C.J. 38, *("Asbestos Minority Shareholders*") per Iacobucci, J. at paragraphs 42 and 43.

(c) 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.

Re: Arnold Tonnies, [2005]*,* Hearing Panel of the Prairie Regional Council, MFDA File No. 200503, Panel Decision dated June 27, 2005*,* at paras. 44 and 47*,* citing with approval *Asbestos Minority Shareholders* at paragraph 43.

(d) General deterrence is an appropriate consideration in making orders that are both protective and preventative. A penalty must re-affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.

Tonnies, supra at para. 47*,* MFDA Book of Authorities at Tab 6 citing *Re Cartaway Resources Corp.,* [2004] 1 S.C.R. 672 at paragraph 61.

(e) In exercising its discretion to impose a penalty, the Hearing Panel should take into account the following considerations:

(i) the protection of the investing public;
(ii) the integrity of the capital markets;
(iii) specific and general deterrence;
(iv) the protection of the MFDA's membership; and
(v) the protection of the integrity of the MFDA's enforcement processes.

Tonnies, supra at p. 11.

(f) Other factors that Hearing Panels frequently consider when determining an appropriate penalty include the following:

(i) the seriousness of the allegations proved against the Respondent;
(ii) the Respondent's past conduct, including prior sanctions;
(iii) the Respondent's experience in capital markets;
(iv) the level of the Respondent's activity in the capital markets;
(v) whether the Respondent recognizes the seriousness of the improper activity;
(vi) the harm suffered by investors as a result of the Respondent's activities;
(vii) the benefits received by the Respondent as a result of the improper activity; and
(viii) previous decisions made in similar circumstances.

Tonnies, supra, at p. 11.

41. In determining the appropriate penalties to impose on a Respondent, the Hearing Panel may consider any particular aggravating and mitigating factors that are unique to the matter before them.

42. The Panel considered the following **aggravating** factors relevant to this matter:

(a) the Respondent had been registered as a dealing representative in Ontario for a period of at least 13 years from 2001 to 2014;
(b) the Respondent's misconduct occurred uninterrupted throughout the entirely of his career as a dealing representative;
(c) the Respondent has at least 6 undisclosed business activities;
(d) not only did the Respondent conduct outside business activities, but the Respondent also created a debenture for purchase by clients and other individuals;
(e) the Respondent likely benefitted financially from his misconduct although Staff has not been able to quantify the financial benefit;
(f) the majority of the clients' investments in the outside businesses promoted by the Respondent failed and efforts by clients and other individuals have also failed;
(g) the Respondent does not appear to have clearly advised clients that the outside business activities and investments he was offering were outside of FundEX,

thereby increasing risks to the Member and other dealing representatives at FundEX; and

(h) it appears that commencing in 2005, the Respondent deliberately withheld information on his outside business activities and their true nature to his Member on each occasion at which they sought to collect information and to clarify his activities.

43. The above aggravating factors must be weighed against the following **mitigating** factors:

(a) the Respondent has no previous disciplinary history;
(b) the Respondent cooperated with the investigation into his activities; and
(c) it does not appear that the Respondent intends to re-register or continue as a dealing representative.

44. For all the above reasons, the Panel unanimously concluded that the appropriate penalty to be applied to this Respondent was:

(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 s. 24.1.1(e) of MFDA By-law No. 1;

(b) A fine of $250,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(c) Costs attributable to conducting the investigation and prosecution of this matter in the amount of $10,000 pursuant to s. 24.2 of MFDA By-law No. 1; AND

(d) If at any time a non-party to this proceeding, with the exception of the bodies set out in s. 23 of MFDA By-law No. 1, request production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA privacy policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure.*

DATED this 9th day of June, 2017.

"Frederick W Chenoweth"

Frederick W Chenoweth
Chair

"Kenneth Mann"

Kenneth Mann
Industry Representative

"Brian Nowak"

Brian Nowak
Industry Representative

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