



**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: Boyd Dean Yahn**

Heard: September 7, 2017 in Saskatoon, Saskatchewan

Decision: September 7, 2017

Reasons for Decision: December 6, 2017

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC

Chair

Nada Israeli

Industry Representative

James Samanta

Industry Representative

Appearances:

David Babin

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Counsel for the Mutual Fund Dealers  
Association of Canada

Boyd Dean Yahn

Not in attendance personally or by counsel

## **I. Allegations**

1. The allegations that brought this matter to hearing are as follows:
  - a) between about November 5, 2004 and January 31, 2013, the Respondent recommended to that least 679 clients concentrate all or a substantial portion of their investment holdings in precious metals sector funds, without using adequate due diligence to assess the suitability of his investment recommendations, on a client by client basis having regard to the essential Know-Your-Client (“KYC”) factors relevant to each individual client, including the client’s risk tolerance, investment objectives and investment knowledge contrary to MFDA Rules 2.2.1 and 2.1.1;
  - b) between about November 5, 2004 and January 31, 2013, the Respondent recorded on account forms in respect of least 679 clients that the clients had, among other things, “100% high” risk tolerance, “100% aggressive growth” investment objectives, and “good” or better investment knowledge, in order to ensure that the clients’ KYC information matched his investment recommendations to concentrate all or a substantial portion of the clients’ investment holdings in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1;
  - c) between about November 5, 2004 and January 31, 2013, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in precious metals sector funds, thereby failing to ensure that his recommendations were suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1; and
  - d) between about November 5, 2004 and January 31, 2013, the Respondent failed, in his capacity as a Branch Manager, to adequately supervise the activities of an Approved Person, SW, who recommended that clients concentrate all or a substantial portion of the clients’ investment holdings in precious metals sector funds, contrary to MFDA Rules 2.5.5, 2.2.1 and 2.1.1.

## **II. Background**

2. The Respondent Boyd Dean Yahn (“Respondent”) was a registered mutual fund sales person (now known as dealing representative) from December 18, 2001 to December 13, 2015.

3. Since September 2008 the Respondent believed, based on his own studies, that due to a systemic failure of the financial markets, the value of gold was predictable year over year. He formulated an investment strategy of his own design (“Gold Strategy”) and recommended to at least 679 clients that they concentrate all or much of their investment holdings in precious metals sector funds.

4. The Respondent’s practice was to first explain and recommend the Gold Strategy to his clients, then express his concerns about the instability of the Canadian and American financial systems. Even where the clients would not choose the Gold Strategy, the Respondent would continue to press upon them his concerns about the instability of the financial markets.

5. During this interval, the Respondent acted as branch manager and supervised one SW, an Approved Person who shared his perspective, and also concentrated investments for clients’ holdings in precious metals sector funds.

6. The Respondent made known to his previous mutual fund dealers HollisWealth Advisory Services Inc. (‘HollisWealth’) with whom he worked until May 20, 2014, and Sterling Mutual Inc. (“Sterling”) with whom he worked until December 31, 2015, his preference for recommending Gold Strategy to his clients. In each case the mutual fund dealers’ final response was to require only that those clients execute an Acknowledgment and Release form (“Form”) to relieve the employers from liability that might arise from the clients’ reliance on the Gold Strategy.

7. Subsequently, the MFDA launched disciplinary proceedings against HollisWealth and Sterling, which concluded with settlement agreements in which each admitted liability for noncompliance with MFDA rules pertaining to supervision of Approved Persons.

8. The MFDA contended that the Respondent's conduct breached the due diligence standards of practice for Approved Persons set out in the MFDA Rules 2.2.1 and 2.1.1 and 2.5.5, which require the dealing representative to assess the suitability of recommendations on a client by client basis, taking into account the individual client's risk tolerance, investment objectives and investment knowledge.

9. The MFDA further contended the Respondent recorded inaccurate investment objectives and investment knowledge on the client account forms so that they would conform to his Gold Strategy recommendations.

10. The MFDA also contended the Respondent's application of the Gold Strategy did not properly represent the risks of investing in precious metals sector funds, and failed to ensure the recommendations were suitable to the clients and in line with their investment objectives.

11. The MFDA also contended that the Respondent's conduct constituted a failure to adequately supervise the activities of SW, who also recommended the Gold Strategy to her clients.

12. Enforcement Counsel for the MFDA on September 7, 2017 confirmed to this Hearing Panel prior to the commencement of the hearing, the following facts:

- a) the Notice of Hearing was personally served on the Respondent on April 24, 2017,
- b) legal counsel for the Respondent advised Enforcement Counsel on May 29, 2017 that he was ceasing to act for the Respondent and the latter:
  - i. would not be participating in the disciplinary process;
  - ii. was no longer registered in the securities industry,
  - iii. was of the opinion that the disciplinary process was more properly focused on HollisWealth and Sterling, and

- iv. acknowledged that MFDA did technically retain jurisdiction over a non-member for five years from his withdrawal from the organization.
- c) A letter was delivered by courier to the Respondent dated August 31, 2017 stating that the hearing on its merits would proceed on September 7, 2017 at the Bessborough Hotel in Saskatoon, Saskatchewan commencing at 10:00 a.m.

13. Enforcement Counsel cited both s. 24.1.4 of MFDA By-law No. 1, and the case authority of *Taub v. Investment Dealers Association of Canada* [2009] 98 O.R. (3s) 169, for the proposition that notwithstanding that he ceases to be an Approved Person, such Approved Person remains subject to the jurisdiction the MFDA. Moreover, the MFDA Rules of Procedure 13.4, 13.5 and 7.3 permit a hearing panel to proceed with a hearing on the merits in the absence of the Respondent and to receive and rely on affidavit evidence in making findings of fact.

14. This Hearing Panel delayed the commencement of the hearing proceedings for several minutes after the 10 a.m. published start time to allow for the possibility that the Respondent might still attend.

15. During this interval, it was brought to the attention of the Chair by Mr. James Samanta, one of the industry representatives, (“Mr. Samanta”) that he was currently employed by an entity that had acquired ownership of one of the previous mutual fund dealers of the Respondent subsequent to the material dates of the actions of the Respondent under consideration at this hearing.

16. The Chair canvassed with the representative whether his independence in participating on the hearing panel would be compromised by that circumstance. The Chair further canvassed with Enforcement Counsel whether he had any objections to the industry representative continuing to serve.

17. After considering industry representative’s comments and Enforcement Counsel’s submission raising no objection to the industry representative continuing to participate, the Chair

ruled that the hearing panel would proceed as constituted. Enforcement Counsel indicated he would follow up on this point with additional written submissions.

18. The additional written submissions provided by Enforcement Counsel fortified the Chair's ruling and set out below are the reasons to support that conclusion.

### **Relevant facts found**

- a) On August 4, 2017 and more than three years after the Respondent left HollisWealth, HollisWealth amalgamated with Investia Financial Services Inc. ("Investia"), a Member of the MFDA.

### **Issue to be Determined**

- b) The issue to be determined is whether Mr. Samanta's employment by Investia gives rise to an appearance that he might be influenced in deciding of this matter by virtue of his employment relationship.

### **Test for Finding Reasonable Apprehension of Bias**

- c) The governing principle is not whether *actual* bias exists but whether or not a *reasonable apprehension* of bias exists.
- d) As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. To ensure fairness the conduct of members of administrative tribunals has been measured against a standard of reasonable apprehension of bias. The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator." *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 ("*Newfoundland Telephone*"), at para. 22:

- e) As stated by Justice de Grandpre in *Committee for Justice and Liberty v. Canada (National Energy Board)*, [1978] 1 S.C.R. 369 at p. 13:

“...the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. The test is “what would an informed person, viewing the matter realistically and practically -and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”

- f) The conduct of members of administrative boards which are primarily adjudicative in their functions must be such that there can be no reasonable apprehension of bias with regard to their decision, that is to say, similar to the standard applicable to courts. (*Newfoundland Telephone (supra)* at para. 27.

- g) In *R. v. R.D.S.*, [1997] 3 S.C.R. 484 (“*R.D.S.*”) at para. 111, the majority of the Supreme Court of Canada (“SCC”) noted that the test set out by Justice de Grandpre in *Committee (supra)* contains a two-fold objective element: the person considering the alleged bias must be reasonable, and the apprehension of bias itself must also be reasonable in the circumstances of the case. ... Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including ‘the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold’.”

- h) The SCC in *Wewaykum Indian Band v. Canada*, [2003] S.C.J. No. 50 (“*Wewaykum*”, at paras. 76-78, explained that in applying the test, first, the reasonable apprehension of bias must rest on serious grounds, in light of the strong presumption of judicial impartiality and not merely on grounds that would meet the standard of a very sensitive or scrupulous conscience. Second, the inquiry must be thorough without any shortcuts and remain highly fact-specific. The facts must be addressed carefully in light of the entire context and the

particular circumstances. Third, the standard remains the same, whenever the issue of disqualification is raised.

### **Reasonable Apprehension of Bias in The Securities Regulatory Context**

- i) The test has been applied in securities regulatory proceedings. See *Norshield Asset Management (Canada) Ltd. (Re)*, 2009 LNONOSC 73 (OSC Panel) at para. 53, and *Xanthoudakis v. Ontario Securities Commission*, [2011] O.J. No. 4870 (O.C.J. Div. Ct.) at para. 26,
- j) In *Northern Securities (Re)*, 2012 LNIROC 33 (Ontario Hearing Panel) at para. 36, affirmed LNONOSC 1023 (OSC Panel) at paras. 71-77 and para. 321 it was noted that typically, reasonable apprehension of bias cases fall into four categories: (1) financial interest in the outcome; (2) relationships with persons involved in the case; (3) outside knowledge or involvement with matters in dispute; and (4) inappropriate comments or behavior.
- k) In *Legare (Re)*, MFDA Case 200813, Transcript of Reasons of the MFDA Hearing Panel dated June 30, 2010 the respondent brought a motion alleging reasonable apprehension of bias on the grounds that certain hearing panel members served as members of the MFDA Pacific Regional Council during the same period as two officers of the Member firm that terminated the respondent. Evidence originating from the two officers of the Member firm was used at the hearing; however, the officers themselves were not witnesses at the hearing. The hearing panel dismissed the motion stating at page 29 that it found no evidence presented of any relationship, association, communication or contact whatsoever, direct or indirect, between panel member Thomas and Gail Winzoski and Greg Cameron during the time they were members of the Pacific Regional Council of the Mutual Fund Dealers Association, and no evidence of any relationship, association, communication or contract between those persons that related to, directly or indirectly, the respondent, Marlene Legare, at any time; that is to say,

before or during the period when they were members of the Mutual Fund Dealers Association Pacific Regional Council.

### **Application to the Present Case**

- l) Applying the test articulated in the foregoing line of authorities, as Chair of this hearing panel, I find that an informed person, viewing the matter realistically and practically, would conclude that:
  - (i) as there is no direct connection or relationship between Mr. Samanta and the Respondent or the subject matter of this proceeding
  - (ii) as the Respondent left HollisWealth in May 2014, which was more than three years before it, amalgamated with Investia in August 2017.
  - (iii) As Mr. Samanta's current employment with Investia is an indirect connection which is too remote or tenuous to give rise to a reasonable apprehension of bias, and accordingly,
  - (iv) the mere association of a hearing panel member with a person or organization, absent additional factual circumstances that would give rise to a reasonable apprehension of bias, is insufficient.]
  - (v) there is no evidentiary basis to rebut the presumption that Mr. Samanta will act impartially and a reasonable person with knowledge of these circumstances would not perceive a pre-disposition or bias resulting from this relationship.
  
19. This Hearing Panel then proceeded with the hearing in absence of the Respondent.
  
20. The reasons below consider the allegations in turn but treat allegations (a) and (b) jointly.

### III. Allegations (a) and (b)

#### A. Applicable Law

21. Enforcement Counsel submitted that MFDA Rule 2.2.1 codifies the “Know-Your-Client” and “Suitability” obligations which previous hearing panels have recognized as an essential component of the consumer protection scheme of securities legislation. See *Pretty (Re)* MFDA File No. 201128 Hearing Panel of the Atlantic Regional Council, Decisions and Reasons dated January 30, 2014, at para. 89 (“*Pretty (Re)*” and *Daubney (Re)* 31 OSCB 4817 at para 15. (“*Daubney, (Re)*”).

22. In the decision of *Lamoureux (Re)* [2001] A.S.C.D. No 613, (“*Lamoureux (Re)*”) the hearing panel ruled that these obligations are closely connected. The “know your client” obligation is to learn about the client, their personal financial situation, financial sophistication and investment experience, and investment objectives and risk tolerance. The suitability obligation to determine whether an investment is appropriate for a particular client requires both that the Approved Person understands the investor product and knows enough about the client to assess whether the product and client are a match.

23. The cases of *Daubney (Re)* and *Lamoureux (Re)* (supra), and MFDA Staff Notice 0069 issued April 14, 2008, set out a three stage analysis of suitability, which obligates an Approved Person to undertake the following step sequence:

- a) Use due diligence to know the product and the client;
- b) Apply sound professional judgment in establishing the suitability of the product for the client; and
- c) Disclose the negative as well as positive aspects of the proposed investment. (*Daubney (Re)* at para 17; *Lamoureux (Re)* at para 7 and 21)

24. These cases also establish that the obligation to ensure that investment recommendations are suitable is particularly important where the clients have insufficient investment experience and sophistication to enable them to recognize and assess the risks involved in an investment.

25. Rule 2.2.1 embodies the Know-Your-Client (“KYC”) obligation as follows:

Each Member and Approved Person shall use due diligence:

- a) to learn of the essential facts relative to each client and to each order or account accepted;
- b) to ensure that the acceptance of any order for any account is within the bounds of good business practice; and
- c) to ensure that each order accepted or recommendation made for any account of the client is suitable for the client and in keeping with the client and investment objectives.

26. The KYC obligation requires the Approved Person to accurately collect client information including: personal financial situation, income, net worth, liquid assets, employment status, current and continued financial obligations, age relative to retirement, risk tolerance and investment objectives, investment time horizon and investment experience. (*Daubney (Re)* at para 18-19; *Lamoureux (Re)(supra)* at paras 13, 14 and 18).

27. Importantly, a KYC form filled out with the involvement of an Approved Person in an incomplete or inaccurate way undermines the validity of the suitability analysis. As well, a mischaracterization by the Approved Person of the client experience, investment horizon or objectives in a way designed to validate an otherwise unsuitable investment recommendation constitutes a serious breach of the Approved Person’s obligation to act in the client’s best interests. (*See Popovich (Re)* MFDA File No. 201240, Hearing Panel of the Central Regional Council, Decisions and Reasons dated January 14, 2015, at para. 161.)

28. The suitability obligation requires the Approved Person take the information gathered from the client in fulfillment of the KYC obligation and apply it to investment products and strategies appropriate to the client’s personal and financial circumstances. It includes a determination of whether a proposed investment meets client’s objectives while staying within

the acceptable level of risk to the client as determined by the client's comfort level and overall circumstances. (See *Lamoureux (Re)*(supra) at para 19).

29. The decisions in *Pretty (Re)* at para 102 and *Lamoureux (Re)* (supra) at para 20 establish that an investment strategy is not appropriate for a client unless he or she has the sophistication necessary to understand the risk, the willingness to accept the risk and a capacity to withstand the potential adverse consequences that may result.

**B. Position of the Parties in respect of Allegations (a) and (b)**

30. The position of MFDA is that the manner by which the Respondent obtained agreement from 679 clients to follow his Gold Strategy breached MFDA Rule 2.2.1 by:

- a) failing to use adequate due diligence to assess the suitability of his recommendations on a client by client basis having regard to the KYC factors relevant to each individual client including the clients risk tolerance, investment objectives and investment knowledge,
- b) recording in the account forms that each of the clients had 100% high-risk tolerance, 100% aggressive growth investment objectives and good or better investment knowledge in order that the KYC Information matched his recommendation to apply the Gold Strategy.

31. The position of the Respondent, as gleaned from his statements entered in evidence, appears to be that since he was transparent in explaining his rationale to his employers and clients before implementing the Gold Strategy, his conduct met the spirit behind the MFDA Rules stating KYC and suitability obligations.

### **C. Evidence Submitted**

32. This Hearing Panel received the uncontested evidence of Patricia West, Senior Investigator with the MFDA, (“West”) who tendered her sworn affidavit, supplemented by oral testimony under oath.

33. The evidence of West was that:

- a) The Respondent was registered as a mutual fund salesperson with HollisWealth from December 18, 2001 to May 20, 2014 and then with Sterling from May 27, 2014 to December 31, 2015.
- b) In the transcript of his interview with MFDA on February 4, 2015 marked as Exhibit 10 to the West affidavit, (the “interview” or “Transcript”) the Respondent explained the rationale for the Gold Strategy, which included the following points:
  - i. He had observed symptoms suggesting that the Canadian and American financial markets were due for a “currency destruction event”, and such a system failure required an entirely different investment approach.
  - ii. From looking at historical studies and observing the US debt curve, he believed that year over year the value of gold had become predictable, contrary to the traditional view, which was that it was high risk.
- c) The Respondent began to recommend to clients in 2008 that, in line with his Gold Strategy, they purchase precious metals (mainly gold) sector mutual funds with a high percentage of their investment capital.

#### **1. Know Your Client information**

34. The West affidavit contained documents from HollisWealth, which revealed that to implement the Gold Strategy, the Respondent knowingly recorded his clients’ KYC nearly

uniformly, with 95% of his clients displaying 100% high-risk appetite and 100% aggressive growth as their investment objectives.

35. In the interview (Transcript p 19), the Respondent said he marked the KYC forms for his clients as 100% high risk and 100% aggressive growth, not because they described the client, but to keep their investment options open. The Respondent confirmed that in his view as the (financial) system was "broken", their options must be "to pursue what you need to pursue". (Transcript p. 19)

## **2. Suitability**

36. In the interview, the Respondent said he would first explain the Gold Strategy to the clients and why he recommended it before he would record their KYC information. The Respondent told his clients the Gold Strategy presented a lower risk than investing in traditional money market and bond funds, given the instability of the Canadian and US financial systems.

37. Even after clients opted against pursuit of the Gold Strategy, he would continue to voice his concerns about the instability of the Canadian and American financial systems.

38. The Respondent also admitted he did not record client KYC information as a reflection of the actual clients' investment knowledge, risk tolerance or investment objectives, and he considered the risk tolerance he recorded was "a reflection of their desire to be able to hold whatever they want".

## **D. Findings of Fact**

39. This Hearing Panel found the un-contradicted evidence of West to be credible and reliable. It was based primarily on, and consisted of, an evidently impartial account of answers to questions in the interview given by the Respondent himself.

40. As a result, this Hearing Panel made the following findings of fact:

- a) The Respondent decided based on his own investigations, that in September 2008 the Canadian and US financial markets were experiencing a system failure. He concluded that this belief justified reliance on an investment perspective that the value of gold had become predictable, contrary to the generally accepted view, which was that it was high risk.
- b) As a result of adopting such belief, the Respondent concluded that he was entitled to treat investment in precious metals sector mutual funds, including gold, as reasonable rather than high risk.
- c) As a further result of adopting such belief, the Respondent concluded that he was entitled to apply his Gold Strategy to performing investment advice obligations to his clients.
- d) The Respondent formulated what he called a Gold Strategy, which was based on the foregoing belief.
- e) The Respondent began to recommend to clients in 2008 that, in line with his Gold Strategy, they purchase precious metals (mainly gold) sector mutual funds. He continued this practice until December 2015, when he departed the industry.
- f) The Respondent did not conduct the traditional KYC or suitability inquiries, such as conducting individual interviews with clients to assess their particular financial circumstances or investment objectives or risk appetite or knowledge of financial markets.
- g) The Respondent did not conduct the traditional KYC or suitability inquiries, such as ascertaining what investment products might be a suitable match for the individual client.
- h) The Respondent first explained the Gold Strategy to prospective clients before or in any event of determining their personal circumstances, and then entered nearly uniform information for the KYC forms of his clients, which then supported the application of the Gold Strategy.
- i) The Respondent contended that his conduct was justified on the basis of his honestly held belief that the extraordinary circumstance of a financial system

failure justified extraordinary departure from the obligation to comply with MFDA Rules.

- j) There was no reliable objective evidence presented to support the Respondent's belief that the financial system sustained a system failure from September 2008 to December 2015.
- k) There was no evidence that any of the Respondent's clients suffered financial losses as a result of the application of the Gold Strategy.

### **E. Analysis**

41. The Respondent contended that his belief that the financial system was broken entitled him to advise his clients that investing in the precious metals sector money markets was low or medium risk.

42. However, the Respondent did not recommend his Gold Strategy only to clients who were objectively sophisticated in financial markets or presented themselves as desirous of engaging in high risk trading.

43. The Respondent recommended his Gold Strategy to all his clients, including those who were elderly, had limited annual incomes, and little knowledge of the financial markets.

44. Moreover, the Respondent endeavored to induce his clients to request his Gold Strategy before conducting the steps of performing due diligence to know the product and the client, applying sound professional judgment in establishing the suitability of the product for the client, and disclosing the negative as well as positive aspects of the proposed investment.

45. The effect of securing completed KYC client forms that were in fact false would facilitate achieving approval of his employers for trading activity that would not normally be approved if the true and correct information had been recorded.

46. There was no reliable evidence that the Respondent's belief that the financial system was broken was well founded, or in any event, entitled him to circumvent his obligation to perform the KYC and suitability obligations.

## **F. Conclusions**

47. In the view of this Hearing Panel, the modus operandi of the Respondent was deeply flawed. Nowhere in the MFDA Rules is it stipulated that an Approved Person may abandon the duties to their clients clearly outlined in those same rules by reason that they hold personal views about what is in the best interests of their clients. In short, no Approved Person is above MFDA rules.

48. The Respondent knew or should have known that he was acting in breach of clearly articulated duties, and he was enabled in doing so, for the time period in question, by taking advantage of the trust placed in him by clients who relied upon his expertise and the fact that he was clothed with the authority of an MFDA license to act as a mutual fund salesperson (now known as a "dealing representative").

49. In the opinion of this Hearing Panel, the lack of evidence of any financial loss to the clients in the material interval of time is irrelevant. It was a mistake for the Respondent to delude himself, his clients and his employers into the belief the end, i.e., no financial losses, would justify the means, i.e., breach of the MFDA rules.

50. This Hearing Panel finds that no belief of the Respondent in the superiority of his knowledge of investment strategies, no matter whether honestly held, justified any departure from compliance with the MFDA rules. Accordingly, it concludes on the facts found that the Respondent did not comply with the obligations of an Approved Person in MFDA Rules 2.2.1 and 2.1.1 and 2.5.5.

#### IV. Allegation (c)

##### A. Law Applicable

51. An Approved Person does not satisfy the disclosure obligations simply by obtaining the client signature on a waiver or acknowledgment form. Disclosure must be provided in a meaningful manner. This means the Approved Person must make an objective determination that the client understands the risks and features of the strategies being recommended and has made an informed decision to proceed with the recommendation. (See *Lamoureux Re*, (supra) at p 16 and *Gareau (Re)* (supra) at p 142.).

52. Even after an Approved Person reasonably determines that an investment strategy would be appropriate and has proceeded to recommended it to the client, he or she remains obligated to disclose all the salient material relevant to this strategy, including negative factors involved in the transaction prior to executing the trade on the client's behalf. (See *Lamoureux (Re)* (supra) at p 21.) This means a risk assessment based on an Approved Person's optimism in the venture or his or her own judgment, is not an objective assessment of the risk. It is not sufficient unless it is based on a realistic an objective assessment of the circumstances of the investment and the investor. (See *Bilinski (Re)*, 2002] B.C.S.C.D. No. 127 at para. 346)

53. The completion of inadequately explained forms such as acknowledgements or waivers does not constitute the meeting of the Approved Person's disclosure obligations. As stated in *Popovich (Re)* (supra) at para 161, disclosure must be provided in a meaningful way so that the Approved Person can confidently determine that the client understands the risks and features of the products strategies that are being recommended and is making an informed decision to proceed.

54. The suitability obligation remains that of the Approved Person and cannot be substituted, avoided or transferred to the client even by obtaining an executed acknowledgment that they are aware of the negative material factors or risks associated with a particular investment strategy.

(See *Daubney Re* at para 210; *Lamoureux Re* at para 19-20) *Gareau (Re)* 2011 LNIROC 53, Hearing Panel of the Saskatchewan District Council, Decisions and Reasons dated September 26, 2011, at paras. 32-3, *Bilinski (Re)* (supra) at para 334.

## **B. Position of the parties**

55. The position of the MFDA is that the Respondent breached Rule 2.1.1 by misrepresenting, failing to fully and adequately explain or omitting to explain risks and benefits of pursuing the Gold Strategy and failing to ensure the recommendations were suitable for the clients and in keeping with their investment objectives.

56. The MFDA contends that notwithstanding proof of disclosure of his Gold Strategy to his employers and that clients executed a Form to protect his employers in the event of client losses, an Approved Person remains obligated to establish that he provided meaningful disclosure to the clients, including a realistic and objective assessment of the circumstances of the investment and the investor and to establish that the client was fully informed of the risks of adopting the Gold Strategy.

57. The position of the Respondent, as gleaned from his statements entered into evidence, appears to be that since the mutual fund dealers that he was registered with, including the compliance officers, endorsed his application of the Gold Strategy on a blanket basis, any misconduct resulting from his activity should be laid at the doorstep of the registered firms.

## **C. Evidence submitted**

58. The Respondent told the investigator that he believed the Gold Strategy presented a lower risk than investing in traditional money market and bond funds. Under questioning, he admitted there was a discrepancy between his interpretation of risk and the traditional view of what would constitute a low risk investment strategy.

59. The Respondent received an inquiry from a compliance officer at HollisWealth in April 2008 and explained his belief that the financial system was heading into a period of hyperinflation, and thus traditional low risk investments may no longer actually be low risk and the traditional interpretation of the risk may not apply.

60. The Respondent explained (Transcript at pp 21-6), that there were continued questions from compliance personnel about suitability of his trades. As an example, one of his rejected KYC forms revealed that the client expressed a desire to keep her investment options open, but the client was aged 78, had a limited annual income of \$32,000 and the accounts made up 95% of her assets. As a result, he requested a meeting with responsible senior members of HollisWealth.

61. It appeared that the Respondent demanded the meeting after HollisWealth management stipulated to him that overall risk profit for a client of up to 30% of high risk for all the clients' holdings would be acceptable as long as it could be demonstrated the client could tolerate this level of risk. (Transcript p 24) The tenor of his presentation to his employer was that if it were not prepared to allow him to apply his Gold Strategy to clients, he would move his clients to another investment dealer.

62. In response to questions in the interview as to whether he explained the nature of the risk, concentration and the differences between the Gold Strategy and traditional diversification strategies, the Respondent gave the same explanation to his clients as he gave to senior personnel at HollisWealth at his meeting. (Transcript p 35) He emphasized to clients that it was best "to keep their options open so that it was not necessary to sell as this would cause problems with volatility". (Transcript pp 19-20), The Respondent offered as further defence of his conduct that he advised clients not to put all of their investments with him.

63. He described the position of HollisWealth as "basically put (ting) a gun to his head". He then asked his clients if they want to be forced out of their Gold Strategy positions, as that is what would happen, or whether they wanted to move to a different investment dealer. (Transcript p 38)

64. Just before November 2010, HollisWealth stipulated to the Respondent that in any case where he recommended the Gold Strategy, he must have clients execute the Form that explained the Gold Strategy was higher risk investments than balanced strategies. The Form also purported to limit the liability of HollisWealth to the clients in the event of loss.

65. The Respondent admitted that following compliance inquiries from HollisWealth, he did not alter his practice of recording nearly uniform KYC information for his clients. He did implement the HollisWealth directive regarding execution of the Form.

66. In May 2014, at about the time his registration was transferred to Sterling, Sterling imposed the same condition on the Respondent, namely, that he ensures his clients execute the Form wherever the Gold Strategy was applied.

67. The Respondent said that after transfer of his registration to Sterling in May 2014, he modified his recording of KYC information from 100% aggressive growth and 100% percent high risk to 100% growth and 100% high risk. He had his client execute the Form prepared by Sterling.

68. The Respondent stated (Transcript at p 34) that he disagreed with the wording as to the risk stated in the Form, which he considered was correct only when the financial system was not “broken”.

69. The letter to Enforcement Counsel dated May 29, 2017 from legal counsel then representing the Respondent stated that the Respondent did not believe that the process was properly focused on him as he took his instructions from the investment dealers through whom he was registered, the allegations were without merit, and that the process was more properly directed towards the dealers.

70. The West affidavit established that disciplinary actions launched against Sterling and HollisWealth alleged misconduct in employing the Form to protect them from consequences of the Respondent's Gold Strategy.

71. The West affidavit attached copies of MFDA decisions approving settlement agreements with MFDA and Sterling and HollisWealth dated June 27, 2016 and March 27, 2017, respectively.

72. In the settlement agreements, both Sterling and HollisWealth admitted failure to adequately supervise the Respondent and SW to ensure accurate KYC information was recorded for each client and trade orders accepted for such clients were suitable.

73. HollisWealth further admitted that contrary to MFDA Rules 2.2.1, 2.1.2 and 2.1.1, it created and arranged for the Respondent and SW to have the clients sign the Form.

74. HollisWealth was ordered to pay a fine of \$130,000, costs of \$20,000, and in future to comply with MFDA Rules 2.1.1, 2.1.2, 2.2.1, 2.5.1, and MFDA Policy No. 2. Sterling Mutuals was ordered to pay, inter alia, a fine of \$75,000, and costs of \$20,000.

#### **D. Facts found**

75. This Hearing Panel finds that:

- a) The Respondent, after inquiry from a compliance officer at HollisWealth, disclosed his rationale for applying his Gold Strategy, i.e. that he believed the traditional interpretation of the risk might not apply.
- b) There was no evidence that the Respondent explained the negative aspects of applying the Gold Strategy to the individual client's circumstances.
- c) As a result of continued questions from HollisWealth compliance personnel about suitability of his trades, such as applying the Gold Strategy to almost the entirety

of assets of elderly persons with limited annual incomes, the Respondent requested a meeting with responsible senior members of HollisWealth.

- d) The Respondent demanded the meeting after HollisWealth management stipulated to him that overall risk profit for a client of up to 30% of high risk for all the clients' holdings would be acceptable as long as it could be demonstrated the client could tolerate this level of risk. (Transcript p 24)
- e) The tenor of his presentation to his employer at the meeting was that if it were not prepared to allow him to apply his Gold Strategy to clients, the Respondent would move the clients to another investment dealer.
- f) In response to questions in the interview as to whether he explained to clients the nature of the risk, concentration and the differences between the Gold Strategy and traditional diversification strategies, the Respondent said he considered the position of HollisWealth was "basically put (ting) a gun to his head". (Transcript p 38)
- g) The Respondent said he emphasized to the clients that "it was best to keep their options open". He claimed also that he advised clients not to put all of their investments with him. He then asked his clients if they wanted to be forced out of their positions, as that is what would happen, or whether they wanted to move to a different investment dealer.
- h) By virtue of his own admissions in the interview (Transcript at p 19), that he marked the KYC forms for his clients as 100% high risk and 100% aggressive growth, not because they described the client, but to keep their investment options open, the Respondent misrepresented the risk and growth profiles of the clients to effect his Gold Strategy."
- i) The fact that the Respondent continued to try to persuade even those clients who declined to follow his Gold Strategy demonstrates that the Respondent intentionally failed to perform the KYC and Suitability obligations of an Approved Person.
- j) Just before November 2010, HollisWealth stipulated that in any case where he recommended the Gold Strategy, the Respondent must have clients execute the Form that explained the Gold Strategy was higher risk investments than balanced

strategies. The Form also purported to limit the liability of HollisWealth to the clients in the event of loss.

- k) Following compliance inquiries from HollisWealth, the Respondent did not alter his practice of recording nearly uniform KYC information for his clients but implemented the HollisWealth directive regarding execution of the Form.
- l) In May 2014, after he transferred his registration to Sterling, Sterling required that the Respondent have his clients execute the Form wherever the Gold Strategy was applied.
- m) The Respondent, after transfer to Sterling in May 2014, modified his recording of KYC information from 100% aggressive growth and 100% percent high risk to 100% growth and 100% high risk and had his clients execute the Form stipulated by Sterling.
- n) However, the Respondent disagreed with the wording in the Form as to the description of the risk stated by the employer.
- o) Disciplinary actions launched against Sterling and HollisWealth alleged misconduct in employing the Form to protect them from consequences of the Respondent's Gold Strategy.
- p) The MFDA entered into settlement agreements with Sterling and HollisWealth dated June 27, 2016 and March 27, 2017, respectively. Each admitted failure to adequately supervise the Respondent and SW to ensure accurate KYC information was recorded for each client, and that trade orders accepted for such clients were suitable.
- q) HollisWealth further admitted that contrary to MFDA Rules 2.2.1, 2.1.2 and 2.1.1, it created and arranged for the Respondent and SW to have the clients sign the Form.

76. HollisWealth was ordered to pay a fine of \$130,000, costs of \$20,000, and in future to comply with MFDA Rules 2.1.1, 2.1.2, 2.2.1, 2.5.1, and MFDA Policy No. 2. Sterling Mutuals was ordered to pay inter alia, a fine of \$75,000, and costs of \$20,000.

## **E. Analysis**

77. While the Respondent claims he took his instructions from the investment dealers by whom he was employed, the facts found by this Hearing Panel demonstrate that it was the Respondent alone who devised the Gold Strategy.

78. The facts found demonstrate that the Respondent acted alone in circumventing the obligations of an Approved Person under MFDA Rules 2.2.1 and 2.1.1 and 2.5.5 in order to secure an agreement from his clients to adopt his Gold Strategy.

79. The compliance officers at HollisWealth in the first instance had complied with their obligations under MFDA Rules 2.1.1, 2.1.2, 2.2.1, and 2.5.1 by reviewing trades of the Respondent, and questioning him as regards certain instances that did not appear in compliance with his obligations as an Approved Person.

80. However it was the Respondent, acting alone, who took the decision to challenge the commitment of senior officers of his registered mutual fund dealers to comply with the MFDA rules applicable to Approved Persons and Members.

81. It is evident from the interview that it was the Respondent who confronted the senior officers of his employer with the options of allowing him to continue to apply the Gold Strategy without regard to his obligations under the MFDA Rules or transferring the clients to another investment dealer.

82. Unfortunately, those senior officers, faced with two undesirable options, failed to recognize and strictly comply with Member obligations under the MFDA Rules. Instead, they wrongly endeavored to carve out a compromise position, which would allow the Respondent to continue to apply the Gold Strategy so long as he secured from each client a signed form that communicated to the client that there were risks of losses in following the Gold Strategy, and that the registered mutual fund dealers would deny liability for such losses.

83. Even after securing a compromise position, the Respondent characterized the employer's requirement to have the Form executed by clients before applying the Gold Strategy as "holding a gun to his head" and continued to convey to clients his disagreement with the substance of the risk warning in the Form.

84. The Respondent knew or should have known from the questioning by the compliance officials of HollisWealth that his trading practices were running contrary to the MFDA Rules.

85. The Respondent knew or should have known from the fact that his employer insisted on the execution of a Form purporting to warn that the employer considered the Gold Strategy to present risks of loss to the client, the registered mutual fund dealers considered his trading practices were contrary to the MFDA Rules.

86. While it is regrettable that HollisWealth failed to endorse the directions issued by its own compliance officers which would obligate the Respondent to comply with the MFDA Rules, this failure did not excuse the Respondent from recognizing and complying with his own obligations as an Approved Person.

87. Both HollisWealth and Sterling later entered into Settlement Agreements with MFDA in which they admitted their wrongdoing and agreed to accept the penalties imposed upon them. It is clear that both registered mutual fund dealers realized, if only after the fact, that their actions constituted misconduct.

88. From the foregoing, it is clear that the disciplinary process has been also directed towards the dealers and the dealers have cooperated with the investigators, acknowledged their misconduct, and saved the time and expense of a full hearing into the allegations.

89. By contrast, all of the evidence indicates that the Respondent was determined to apply his Gold Strategy to as many clients as possible, and to use all means available to him to do so, including taking his clients elsewhere if he was impeded from achieving his aim.

## **F. Conclusion**

90. Accordingly, in these circumstances, the contentions that the Respondent took his instructions from the investment dealers by whom he was employed and that the (disciplinary) process was more properly directed towards the dealers are entirely without merit.

91. This is not a case in which an Approved Person, recognizing and desirous of performing the important obligation to accurately evaluate his client's true financial circumstances and provide a fair and balanced explanation of the risks and benefits of an investment strategy that properly matched those circumstances, but being thwarted by a Member overriding his attempt to comply with the MFDA Rules.

92. The evidence instead establishes that the Respondent recognized an opportunity to reap all the benefits of a personally designed investment strategy by circumventing his obligations to his clients, and when he could not secure agreement from clients and employers, resorted to more coercive behaviors to achieve his desired aim.

93. Although this is a case of failure to comply with MFDA rules up to the highest levels of Members, such extensive failures by no means exonerate the Respondent from performing his obligations as an Approved Person, who in this instance was the sole author of the disciplinary proceedings in which he found himself.

94. In conclusion, this Hearing Panel finds that the Respondent's disclosure to his employers of his intention to recommend the Gold Strategy to clients did not excuse his departure from compliance with the MFDA Rules 2.2.1 and 2.1.1 and 2.5.5.

## **V. Allegation (d)**

### **A. Law Applicable**

95. MFDA Rule 2.5.5 (f) requires a branch manager to supervise the activities of the Member at a branch or sub-branch that are directed toward ensuring compliance with the By-laws , Rules and Policies and with applicable securities legislation by the Member and its Approved Persons. It further requires that the branch manager supervise the opening of new accounts and trading activity at the branch office.

96. A higher standard of conduct is expected of branch managers especially as regards supervision of client accounts. The branch manager is expected, in addition to its regular duties, to serve as the eyes and ears of the Member, and to proactively follow up on information suggesting regulatory obligations of the Member's policies and procedures are being contravened or the interests of clients are not being protected. (See *Cunningham (Re)*, MFDA File No. 200906, Hearing Panel of the Central Regional Council, Decision and Reasons dated February 14, 2010, at para 14.)

### **B. Position of the parties**

97. The position of the MFDA is that the admission by the Respondent that under his supervision SW also applied the Gold Strategy to her clients constituted a failure to adequately supervise her activities contrary to MFDA Rule 2.5.5.

98. The position of the Respondent would appear to be that SW was justified in applying the Gold Strategy to her clients, as she similarly believed the financial system was broken.

### **C. Evidence**

99. The West affidavit deposed that between 1998 and December 2015, the Respondent acted as branch manager, supervising SW, an Approved Person. He reviewed KYC Forms, trades submitted by SW, and signed off on trade tickets she submitted.

100. In his interview the Respondent stated that he and SW shared a common perspective as to the instability of the Canadian and American financial systems.

101. The Respondent stated he was aware SW was concentrating her clients' holdings in the precious metals sector funds, was recording nearly all her clients KYC information as having 100% high risk and 100% aggressive growth, and the results of such near uniform recording of KYC information prevented trades from being reviewed for suitability. (p 9 Transcript)

102. The Respondent agreed that if SW had almost all of her clients in the category of 100% high risk and 100% aggressive growth, a trade could never be deemed to be unsuitable. (p 14 Transcript)

103. The Respondent was aware that SW was also applying his practice of recording information on their KYC forms to her clients not in a way that described the client. His brief explanation in the interview for this practice was that the information was recorded in this way to allow clients to "keep their options open".

104. The Respondent, from his interview, displayed that he knew that SW was not, as he was not, performing her KYC and suitability obligations as required by the MFDA Rules.

### **D. Facts found**

105. From the foregoing facts, it is evident that at no time before December 2015 did the Respondent recommend that SW cease application of the Gold strategy, prevent her from

recording near uniform KYC information for her clients, review any of her trades for suitability or fully explain to her clients the risk of investing in precious metals sector funds.

#### **E. Analysis**

106. While between 1998 and December 2015, the Respondent purported to act as branch manager, and supervise SW, an Approved Person, he did not fulfil his role as branch manager or provide proper supervision as required by the MFDA Rules.

107. In reviewing her KYC Forms and trades submitted by SW, the Respondent knew or should have known that she was not complying with her obligations of an Approved Person but was filling out KYC forms uniformly using an improper rationale to allow the clients to “keep their options open”. Nevertheless, he signed off on trade tickets she submitted.

108. The Respondent’s justification for his conduct was that SW shared his perspective as to the instability of the Canadian and American financial systems.

109. The Respondent stated he was aware SW was concentrating her clients’ holdings in the precious metals sector funds, was recording nearly all her clients KYC information as having 100% high risk and 100% aggressive growth, and the results of such near uniform recording of KYC information prevented trades from ever being deemed to be unsuitable.

110. Accordingly, the Respondent never recommended that SW cease application of the Gold Strategy, never prevented her from recording near uniform KYC information for her clients, never reviewed any of her trades for suitability or ensured she fully explained to her clients the risk of investing in precious metals sector funds.

111. The Respondent was in breach of his obligations as an Approved Person by deciding he could substitute the rationale for his Gold Strategy in place of performing his KYC and suitability obligations to his clients. Allowing Approved Person under his supervision as branch manager to model his conduct of abrogating duties to his clients embodied in MFDA rules is a

separate and more egregious breach. It should have been evident to this Respondent that, as an example clothed with the authority of a branch manager, he was lulling her and in turn, her clients, into a false sense of security that if he felt free to abandon his duties to his client, she might well also do so with impunity.

112. Given the failure at every level of these Approved Persons, one as the branch manager, and his employers, to recognize and perform their KYC and suitability obligations to their clients, it bears repeating that it is no answer to say that none of the intended customers lost any money. The credibility of the securities markets – is damaged, perhaps irrevocably, by the conduct of this Respondent, and those he managed to persuade to follow his example. (See *Gareau (Re)* (supra) at p. 9 and *Re Dime*, (1986) 9 OSCB 268.)

## **F. Conclusion**

113. In conclusion, this Hearing Panel finds that the belief of the Respondent that reliance on his devised Gold Strategy justified his conduct as branch manager in allowing SW to recommend the Gold Strategy to her clients was no excuse for his contravention of MFDA Rules 2.2.1 and 2.1.1 and 2.5.5.

## **VI. Penalty**

### **A. Applicable law**

114. The primary goal of securities regulation is the protection of the investor. In addition to the protection of the public, the goals of securities regulation include fostering public confidence in the capital markets of the securities industry. (*Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 S.C.R. 557 (“*Pezim*”) at paras. 59 and 68.

115. The role of a hearing panel when imposing sanctions in furtherance of the above stated goals is to protect the public interest by removing from the capital markets– wholly or partially, permanently or temporarily as the circumstances warrant – those whose conduct leads to the

conclusion that their future conduct may be detrimental to the integrity of those capital markets. (*Tonnies (Re)* MFDA File No. 200503) Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 27, 2005 (“*Tonnies*”) at paras. 10-12.

116. Some of the factors to be considered by hearing panel in determining the appropriate penalty include:

- a) the protection of the investing public;
- b) the integrity of the securities markets;
- c) the seriousness of the allegations proved against the respondent;
- d) the respondent’s experience and level of activity in the capital markets;
- e) whether they recognizes the seriousness of the improper activity;
- f) the risk to investors in the capital markets in the jurisdiction were the respondent to continue to operate in capital markets in the jurisdiction;
- g) 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;
- h) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets, and
- i) previous decisions made in similar circumstances.

(See *Tonnies*, (supra) at para. 46 and *Breckenridge (Re)*, File No. 200708 Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 (“*Breckenridge*”) at para 74.

117. Enforcement Counsel cited case authorities involving a similar conduct to the case at hand. In the case of *Lemay (Re)*, MFDA File No. 201634 Hearing Panel of the Pacific Regional Council, Decision and Reasons dated February 28 2017, the Respondent had recommended at least 142 clients concentrate all or a substantial portion of investment holdings in precious metals sector funds without conducting adequate due diligence to assess the suitability of his investment recommendations. He also recorded the clients had a high risk tolerance on account forms to

ensure the KYC information matched his investment recommendations and failed to fully explain the risks and benefits of investing in precious metals sector funds thereby failing to ensure the investments were suitable and in keeping with their investment objectives. The hearing panel imposed a permanent prohibition.

118. In the case of *Ricci (Re)*, 2014 IIROC Hearing Panel of the Ontario District, Decision dated June 9, 2014 the Respondent routinely misrepresented the net worth of clients by having inflated their net worth to ensure his recommendation of a leverage strategy would be found suitable for the clients. The hearing panel cited the duration of the misconduct, the number of clients at issue, and the fact that the misconduct aimed to circumvent the compliance mechanisms of the Member because the Respondent believed he knew better than the Member with respect to whether a leveraged strategy was suitable. A fine of \$200,000 was imposed. A permanent prohibition was considered, but was not imposed in that case because of the Respondent's young age and the consideration he was entitled to an opportunity to re-enter the industry in future.

119. In the case of *Wellman (Re)* MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015, the Respondent recommended investments which led to over concentration of gold and metal securities in their portfolios which resulted in losses to the client. The Respondent admitted she failed to use due diligence to ensure the recommendations made for three clients were suitable. A fine of \$35,000 was imposed.

## **B. Analysis**

120. The misconduct of the Respondent occurred over a period in excess of seven years and affected nearly 700 clients.

121. The Respondent was not subject to any discipline proceedings by the MFDA during his registration from December 2001 to December 2015.

122. The Respondent neither expressed remorse for his actions nor demonstrated that he recognizes the seriousness of his misconduct.

123. Enforcement Counsel cited other case authorities to signal that the type of misconduct exhibited by the Respondent is becoming more prevalent within the securities industry. However this Hearing Panel needed to look no further than the ever expanding influence this Respondent wielded in this case over an extended period of time among a large number of clients, not one, but two, separate registered mutual fund dealers and an Approved Person under his supervision.

124. Approved Persons, who consider that their knowledge, insight or financial acumen is so superior that it supersedes their obligations to comply with MFDA rules, proceed at their peril. Such Approved Persons, who genuinely believe that changing global conditions are impacting the way in which they best serve their clients' investment needs, must keep constantly front of mind that they are not at liberty to override compliance with the MFDA rules in order to substitute their personal beliefs as to what is good for their clients.

125. Moreover, Approved Persons, who may be considering emulating the Respondent's conduct, and who abrogate their obligations to their clients in favor of some seemingly new and fashionable investment strategy, or for fear of losing clients to another dealer, may not use the excuse that others in or outside their place of business were engaging in the same practice.

126. The MFDA obligations of an Approved Person remain with that person, no matter what additional responsibilities may be granted to them. No Approved Person may offer the excuse that they failed to comply with their obligations under the MFDA Rules because they were following directions of their superiors or colleagues had relied on information of experts in the industry or were concerned about losing profits or commissions.

127. In this case, the Respondent demonstrated clearly that at the material times and presently, he takes no responsibility for his misconduct. Accordingly, he would likely remain ungovernable were he permitted to remain in the industry.

### C. Conclusion

128. For all the foregoing reasons, this Hearing Panel concludes that a permanent prohibition is the only appropriate sanction in this instance to bring home to the Respondent and any potentially like-minded Approved Persons that misconduct of this nature will not be countenanced.

129. The above-cited cases demonstrate the necessity of imposing sanctions sufficient to curtail the practice of improperly entering KYC information of clients to allow overconcentration certain securities in clients' portfolios to circumvent the compliance requirements of the Approved Person. However, in this case, this Hearing Panel concludes that a fine of \$75,000 is the appropriate amount of monetary penalty.

130. Finally, in light of application for costs of \$10,000, it was noted that the Respondent declined to attend the hearing to provide his submissions personally or by a representative, but instead conveyed via letter before the hearing that he did not think he should be the focus of these disciplinary proceedings. This position necessitated a full hearing on the merits. This Hearing Panel was satisfied in these circumstances that the amount of costs sought should be allowed.

131. In summary, this Hearing Panel imposes the following sanctions:

- a) The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$75,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- c) The Respondent shall pay costs attributable to conducting the investigation and hearing of this matter in the amount of \$10,000, pursuant to section 24.2 of MFDA By-law No. 1.

132. This Hearing Panel also ordered that if at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests 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.

133. This Panel thanks Enforcement Counsel for their assistance in the course of the hearing.

**DATED** this 6<sup>th</sup> day of December, 2017.

“Shelley L. Miller”

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Shelley L. Miller, QC  
Chair

“Nada Israeli”

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Nada Israeli  
Industry Representative

“James Samanta”

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James Samanta  
Industry Representative

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