



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

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

Re: Funds Direct Canada Inc.

Heard: December 20, 2022 by electronic hearing in Regina, Saskatchewan

Decision: December 20, 2022

Reasons for Decision: June 29, 2023

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Richard R. Sydenham
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
)	
David Foster)	CEO and CCO of the Respondent
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I. INTRODUCTION

1. On November 17, 2022, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to Section 24.4 of MFDA By-Law No. 1 in respect of Funds Direct Canada Inc. (the “Respondent”).
2. On November 22, 2022, the Respondent and MFDA Staff (“Staff”) entered into a settlement agreement pursuant to which the Respondent agreed to a proposed settlement of matters for which it could be disciplined on the exercise of the discretion of the Hearing Panel pursuant to Section 24.4 of MFDA By-Law No. 1 (the “Settlement Agreement”).
3. On December 20, 2022, a settlement hearing (the “Hearing”) was held electronically by videoconference before a Hearing Panel of the MFDA Prairie Regional Council (the “Panel”).
4. A senior officer of the Respondent attended the Hearing.
5. At the outset of the Hearing, the Panel granted Staff’s request for an Order that the Hearing be held in the absence of the public, pursuant to MFDA Rule of Procedure 15.2(2) and Section 20.5 of MFDA By-Law No. 1.
6. At the conclusion of the Hearing, the Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Panel’s Reasons for that decision.

II. CONTRAVENTIONS

7. In the Settlement Agreement, the Respondent admitted to having committed the following violations of the MFDA’s By-Laws, Rules or Policies:
 - a) between October 1, 2019 and September 30, 2020, the Respondent failed to conduct or maintain evidence of tier-one trade supervision, contrary to MFDA Rules 2.2.1(c), 2.5 and MFDA Policy No. 2;¹

¹ On December 31, 2021, MFDA Rule 2.2.1 and MFDA Policy No. 2 were amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in the Settlement Agreement pre-dated the amendment to this Rule and Policy, all contraventions set out in the Settlement Agreement that make reference to that Rule and Policy concern the version of the Rule that was in effect between February 22, 2013 and December 31, 2021 and the version of the Policy that was in effect between January 19, 2017 and December 31, 2021.

- b) between October 1, 2019 and September 30, 2020, the Respondent failed to ensure that tier-one trade supervision was conducted on a timely basis, contrary to MFDA Rules 2.2.1(c), 2.5 and MFDA Policy No. 2; and
- c) between March 11, 2019 and December 2, 2020, the Respondent failed to adequately resolve supervisory queries, and resolve queries on a timely basis, contrary to MFDA Rules 2.2.1(c), 2.5 and MFDA Policy No. 2.

(the “Contraventions”)

III. TERMS OF SETTLEMENT

- 8. Staff and the Respondent agreed to the following terms of settlement:
 - a) The Respondent shall pay a fine in the amount of \$30,000, pursuant to s. 24.1.2.(b) of MFDA By-law No. 1;
 - b) The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) The payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff as follows:
 - i. \$5,000 (costs) in certified funds upon acceptance of the Settlement Agreement;
 - ii. \$10,000 (fine) payable on or before the last business day of the first month following the acceptance of the Settlement Agreement;
 - iii. \$10,000 (fine) payable on or before the last business day of the second month following the acceptance of the Settlement Agreement;
 - iv. \$10,000 (fine) payable on or before the last business day of the third month following the acceptance of the Settlement Agreement;
 - d) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.5, and MFDA Policy No. 2; and
 - e) A senior officer of the Respondent will attend in person via videoconference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

9. The facts which Staff and the Respondent agreed upon to form the basis of the Settlement Agreement are set out at paragraphs 7 – 31 inclusive of that agreement and are reproduced below:

Registration History

7. The Respondent is registered as a mutual fund dealer in the Province of Saskatchewan.
8. The Respondent is a small mutual fund dealer with 9 approved persons (including two licensed assistants).
9. The Respondent has been a Member of the MFDA since April 12, 2002.

Corporate Structure

10. The Respondent's head office is located in Regina, Saskatchewan (the "Head Office"). The Respondent currently has 6 sub-branch locations.

The 2018 Sales Compliance Examination

11. MFDA Compliance Staff conducted a sales compliance examination of the Respondent's Head Office and two sub-branch locations for the period of October 1, 2014 to September 30, 2018 (the "2018 Examination"). The 2018 Examination identified compliance deficiencies in the operations of the Respondent, including failing to adequately resolve queries, and failing to resolve queries on a timely basis, as described in this Settlement Agreement.

12. The results of the 2018 Examination were summarized and delivered to the Respondent in a report dated March 19, 2019.

The 2020 Sales Compliance Examination

13. Commencing on November 23, 2020, MFDA Compliance Staff conducted a sales compliance examination (the "2020 Examination") at the Head Office and at three sub-branch locations of the Respondent in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period of October 1, 2018 to September 30, 2020.

14. The results of the 2020 Examination were summarized and delivered to the Respondent in a report dated March 26, 2021 (the "2020 Report").

15. As described in greater detail below, the 2020 Report identified compliance deficiencies, including the deficiencies described in this Settlement Agreement.

Tier-One Trade Supervision

16. At all material times, the Member was required to conduct daily trade reviews in accordance with MFDA Policy No. 2.²

17. During the 2020 Examination, MFDA Compliance Staff identified deficiencies in the tier-one trade supervision that was conducted by the Respondent.

² Specifically, MFDA Policy No. 2 requires Members conducting tier-one supervision to review all initial trades, redemptions over \$10,000, trades over \$2,500 in moderate-high or high risk investments, trades over \$5,000 in moderate or medium risk investments, and trades over \$10,000 in all other investments, among other specified requirements. MFDA Policy No. 2 also states that daily reviews should be completed within one business day unless precluded by unusual circumstances.

18. In particular, for the period of October 1, 2019 to September 30, 2020, MFDA Compliance Staff conducted a complete analysis of 1,563 trades conducted by the Respondent requiring a tier-one trade review in accordance with MFDA Policy No. 2. Among those trades:

- a) 640 trades had no evidence that the Respondent had conducted a tier-one trade review; and
- b) 892 trades requiring a tier-one trade reviews were not conducted on a timely basis.

19. In respect of the 892 of trades where tier-one trade reviews were not concluded on a timely basis:

- a) 328 trades were reviewed and approved from a range of T+2 to up to T+10 days;
- b) 272 trades were reviewed and approved from a range of T+11 to up to T+30 days;
- c) 239 trades were reviewed and approved from a range of T+31 to up to T+60 days; and
- d) 61 trades were reviewed and approved at a range of T+61 days and greater.

20. Of the 1563 trades requiring a tier-one trade review as identified by MFDA Compliance Staff in paragraph 18, above, 1511 trades involved mutual funds with a risk rating of low to medium, and none of the trades involved exempt market products or the use of leverage.

21. By failing to maintain evidence of tier-one trade supervision, as well as failing to conduct tier-one trade supervision on a timely basis, the Respondent failed to ensure that each order accepted and each recommendation made for client accounts were suitable for the clients based on the essential facts relative to the client and any investments within the accounts.

Supervisory Queries

22. During the 2020 Examination, MFDA Compliance Staff identified instances where the Respondent's trade and account supervision was deficient where it was conducting supervisory queries of clients with investments that appeared to be inconsistent with the clients' Know-Your-Client information.

23. MFDA Compliance Staff reviewed a sample of 20 supervisory queries conducted by the Respondent, and identified deficiencies in 17 of those queries. In particular, MFDA Compliance Staff identified the following deficiencies in the Respondent's supervisory query process:

- a) 9 queries reviewed demonstrated instances where the Respondent failed to resolve supervisory queries either adequately or at all; and
- b) 8 queries reviewed demonstrated instances where the Respondent failed to resolve the query in a timely manner.

24. The failure to adequately resolve supervisory queries, as well as failing to resolve queries on a timely basis, is a repeat deficiency which was originally identified by MFDA Compliance Staff in the 2018 Examination.

25. By failing to adequately resolve supervisory queries, and by failing to resolve supervisory queries on a timely basis, the Respondent contravened its supervisory obligations.

Additional Factors

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

27. There is no evidence of client complaints resulting from the Respondent's conduct in this matter.

28. Commencing in August 2021, the Respondent has appointed a new Branch Manager, who is trained to perform trade reviews, to conduct tier-one trade supervision, supervisory queries, and follow-up as required.

29. The Respondent represents that, since it received the 2020 Report, it has implemented changes to its trade and account supervision practices to ensure compliance with MFDA rules and policies. MFDA Compliance Staff will be conducting follow-up examinations of the Respondent to determine whether its compliance deficiencies have been corrected.

30. The Respondent has cooperated with MFDA Staff's investigation of the issues that form the subject matter of this Settlement Agreement.

31. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a contested hearing of the allegations.

V. ANALYSIS

Role of the Panel

10. The role a Hearing Panel performs at a settlement hearing is fundamentally different from the role it performs at a contested hearing.

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

MFDA By-law No. 1, s. 24.4.3

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

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

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at para. 37

13. Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected is because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations.

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

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

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

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

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

Factors Concerning Acceptance of a Settlement Agreement

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

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557, at paras. 59 & 68

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

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

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

- a) that it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) that the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) that the agreement addresses the issues of both specific and general deterrence;
- d) that the agreement is likely to prevent the type of conduct set out in the facts;
- e) that the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) that the agreement will foster confidence in the integrity of the MFDA; and

- g) that the agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at para. 36

19. Finally, consistent with the Panel's decision in *Sterling Mutuals Inc. (Re)*, cited above, Hearing panels have consistently held that a Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

Jacobson (Re), [2007] Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Reasons for Decision dated July 13, 2007 at para. 68

Appropriateness of the Proposed Penalty

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

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

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

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

- a) the seriousness of the allegations proved against the respondent;
- b) the respondent's experience in the capital markets;
- c) the level of the respondent's activity in the capital markets;
- d) the harm suffered by investors as a result of the respondent's activities;
- e) the benefits received by the respondent as a result of the improper activity;
- f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;

- g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- h) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
- j) previous decisions made in similar circumstances.

Breckenridge (Re), supra at para. 77

MFDA Sanction Guidelines

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

23. The Guidelines, as their name suggests, are not mandatory. Under the heading "Purpose of the Sanction Guidelines", it says:

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

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

MFDA Sanction Guidelines, p.1

24. In its written brief, Staff submitted that the following factors set out in the Guidelines are relevant to the Panel's decision in this case:

- a) general and specific deterrence;
- b) public confidence;
- c) seriousness of the allegations proved against the Respondent;

- d) the Respondent's recognition of the seriousness of the misconduct; and
- e) previous decisions made in similar circumstances.

MFDA Sanction Guidelines

Application of the Factors Listed Above in the Present Case

Seriousness of the Misconduct

25. MFDA Rules 2.2.1, 2.5.1 and MFDA Policy No. 2 set out the obligations which are imposed on MFDA Members to conduct regular supervision of trades to ensure that each order accepted for clients and each recommendation made is suitable for the client, in keeping with the client's investment objectives and within the bounds of good business practice. MFDA Policy No. 2 also emphasizes the importance of preparing and maintaining proper records of action taken in furtherance of this fundamental obligation.

Portfolio Strategies Corp. (Re), MFDA File No. 201122, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated February 13, 2013, at para. 14

26. As an essential element of investor protection, MFDA By-Laws, Rules and Policies require Members to establish, implement and maintain policies, procedures and supervisory practices to ensure that the Member's handling of business is consistent with all applicable regulatory requirements.

MFDA Rule 2.5.1

Portfolio Strategies Corp. (Re), *supra*, at para. 13

27. Proper recordkeeping is a key element in the overall supervision structure of a Member as it provides the basis for the supervision conducted by the Member's compliance staff and regulatory oversight by the MFDA.

Portfolio Strategies Corp. (Re), *supra*, at para. 15

Queensbury (Re), MFDA File No. 201033, Hearing Panel of the Central Regional Council, Reasons for Decision dated September 1, 2011, at para. 12

28. With respect to tier-one trade supervision in particular, Members are required to review the previous day's trading for unsuitable trades, leveraging, and any other unusual activity. This review must include, at a minimum:

- a) initial trades;
- b) trades in exempt securities (excluding guaranteed investment certificates);
- c) leveraging for accounts other than registered retirement savings plans or registered education savings plans;
- d) trades in accounts where the client is a Related Person, as defined by the Income Tax Act (Canada), of the registered salesperson and the registered salesperson has full or partial control or authority over the financial affairs of the client;
- e) redemptions over \$10,000;
- f) trades over \$2,500 in moderate-high or high risk investments;
- g) trades over \$5,000 in moderate or medium risk investments; and
- h) trades over \$10,000 in all other investments.

MFDA Policy No. 2, at p. 12

29. The misconduct admitted to in the Settlement Agreement reflects a range of deficiencies in aspects of the Respondent's supervisory practices. MFDA Hearing Panels have consistently found that similar deficiencies in such areas amount to regulatory misconduct, contrary to MFDA Rules and Policies.

Queensbury Strategies Inc. (Re), supra

Portfolio Strategies Corp. (Re), supra

Sentinel Financial Management Corp. (Re), MFDA File No. 201034, Hearing Panel of the Prairie Regional Council, Reasons for Decision dated August 25, 2011

Info Financial Consulting Group Inc. (Re), MFDA File No. 201028, Hearing Panel of the Central Regional Council, Reasons for Decision dated December 7, 2011

30. In this matter, the Contraventions primarily deal with the Member's failure to conduct or maintain evidence of tier-one trade supervision and to conduct tier-one trade supervision on a timely basis. There were also issues with respect to the adequacy of the Respondent's supervisory query process.

31. The Panel agrees with Staff's submission that this misconduct is serious and that where there is a failure to conduct proper tier-one trade supervision, or to supervise approved persons generally, the potential exists for significant client harm and/or losses to occur.

32. For all of the above reasons, therefore, the Panel finds that the admitted misconduct in this matter is conduct which amounts to a serious breach of MFDA Rules and Policies.

The Respondent's Past Conduct and Level of Activity in the Capital Markets

33. The Respondent is registered as a mutual fund dealer in the Province of Saskatchewan and has been a Member of the MFDA since April 12, 2002. It is a small dealer with 9 approved persons, including two licensed assistants. With respect to the conduct that is the subject of the Settlement Agreement, Staff identified that the majority of trades where there were tier-one review deficiencies involved low to medium risk mutual funds, with no exempt market products or use of leverage.

Settlement Agreement at para. 20

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

35. However, with respect to the Respondent's failure to resolve supervisory queries as identified in the 2020 Compliance Examination, Staff identified that this was a repeat deficiency from the 2018 Compliance Examination.

Settlement Agreement at paras. 24 and 26

The Respondent's Recognition of the Seriousness of its Misconduct

36. The Respondent has cooperated with Staff throughout the investigation.

37. It has recognized the seriousness of its misconduct and the importance of implementing and maintaining compliance procedures that meet the standards set out in the MFDA's Rules and Policies.

38. Starting in August 2021 the Respondent appointed a new branch manager who was trained to perform trade reviews and conduct tier-one supervision, supervisory queries and follow-up as required. The Respondent also represented to Staff that it has implemented changes to its trade and account supervision practices to ensure compliance with MFDA Rules and Policies.

Settlement Agreement at paras. 28 and 29

39. By entering into the Settlement Agreement the Respondent has accepted responsibility for its misconduct and has saved the MFDA the time, resources and expenses associated with conducting a contested disciplinary hearing.

40. Hearing Panels have considered that such savings are, themselves, in the public interest.

Ramjohn (Re), [2021], Hearing Panel of the Central Regional Council, MFDA
File No. 202067, Panel Decision dated October 22, 2021 at para. 26

Deterrence

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

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

42. The effect of general deterrence advances the goal of protecting investors. The penalty levied, therefore, should be sufficient to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry.

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

43. Proposed penalties must also act to specifically deter a respondent from engaging in similar activity by imposing upon them a sanction which is meaningful to them and which reflects the seriousness of the misconduct at issue.

44. In this matter, the Panel considered the submission which was made by both parties that a fine of \$30,000.00 is meaningful and proportionate to the size of the Member and recognizes the efforts the Respondent has taken to address the deficiencies raised in the 2020 Examination.

45. The Panel finds, therefore, that the proposed penalty will be sufficient to achieve the goals of both specific and general deterrence.

Previous Decisions made in Similar Circumstances

46. Staff provided the Panel with the following MFDA decisions in which Panels addressed matters with similar facts to the matter which is the subject of these proceedings, including with respect to the types of trades made and the size of the Respondent Member.

Case	Facts	Outcome
<p><i>Queensbury Strategies Inc. (Re) supra</i></p>	<ul style="list-style-type: none"> • The Respondent failed to conduct adequate Tier 1 and Tier 2 supervision, including, preparing trade blotters, signing and dating trade blotters to evidence trade supervision, and maintain records of queries made, responses received, and resolutions achieved. • The Respondent failed to have adequate back office system controls. • The Respondent failed to adequately supervise an approved person and conduct a reasonable supervisory investigation. <p>Other Factors:</p> <ul style="list-style-type: none"> • The Respondent’s failure to supervise and conduct a reasonable supervisory investigation involved an approved person who engaged in securities related business outside the Member 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • \$35,000 Fine • \$2,500 Costs
<p><i>Portfolio Strategies Corp. (Re), supra</i></p>	<ul style="list-style-type: none"> • The Respondent’s Head Office Compliance Staff failed to adequately supervise some trades. • The Respondent failed to establish adequate policies and procedures to supervise leveraging recommendations, and also failed to maintain, in trade supervision, including records of trades reviewed, inquiries made, responses received and resolutions achieved. <p>Other Factors:</p> <ul style="list-style-type: none"> • The Respondent had 21 branches and 125 sub-branches • The Respondent had a previous (minor) disciplinary history. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • \$35,000 Fine • \$5,000 Costs
<p><i>Sentinel Financial Management Corp. (Re), supra</i></p>	<ul style="list-style-type: none"> • Prior to July 2009, the Respondent failed to establish, implement and maintain adequate policies and procedures to fulfill its obligations to: <ul style="list-style-type: none"> • conduct proper two tier trade supervision on a daily basis; and • maintain adequate records of trade supervision undertaken including inquiries made, responses received and resolutions achieved following supervisory inquiries. <p>Other Factors:</p> <ul style="list-style-type: none"> • The two tier supervision deficiencies included failing to use a reasonable sample of trades for MFDA Policy No. 2 reviews, failing to maintain records, and failing to ensure that KYC information used on the Member’s back office system corresponded with KYC information in client files. • There were also deficiencies in the Member’s trade supervision of exempt products. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • \$35,000 Fine • \$2,500 Costs

47. In the Panel’s view, these decisions demonstrate that the proposed penalty set out in the Settlement Agreement falls within a reasonable range of appropriateness.

VI. CONCLUSION

48. Having reviewed the Settlement Agreement and considered Staff’s submissions both written and oral, as well as having heard from a representative of the Respondent, the Panel is satisfied that the proposed penalty which is set out in the Settlement Agreement falls within a reasonable range of appropriateness having regard to the nature and extent of the Respondent’s misconduct and all of the circumstances.

49. It is reasonable and proportionate and will deter the Respondent and other Members from failing to meet their supervisory obligations under MFDA Rules and Policies. Acceptance of this agreement advances the public interest and the MFDA’s objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

50. For all of the above reasons, therefore, the Panel accepts the Settlement Agreement.

DATED this 29th day of June, 2023.

“Sherri Walsh”

Sherri Walsh
Chair

“Richard R. Sydenham”

Richard R. Sydenham
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

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