



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

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

**Re: Portfolio Strategies Corporation**

Heard: January 19, 2013 in Calgary, Alberta  
Reasons for Decision: February 13, 2013

**REASONS FOR DECISION**

Hearing Panel of the Prairie Regional Council:

Alan V. M. Beattie, Q.C.	)	Chair
Elaine Bradley	)	Industry Representative
Howard R. Mix	)	Industry Representative

Appearances:

David Halasz	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
Thomas Manson, Q.C.	)	Counsel for Portfolio Strategies Corporation
Kenneth Parker	)	Manager
David Rupert	)	Vice-President, Business Development

## **INTRODUCTION**

1. This Hearing Panel (“the Panel”) was convened pursuant to a Notice of Settlement Hearing dated January 7, 2013 to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement (the “Settlement Agreement”) entered into between staff of the MFDA and Portfolio Strategies Corporation (the “Respondent”).
2. At the commencement of the Hearing, the Panel granted a motion by Staff Enforcement Counsel to move the proceedings “in camera”. Upon acceptance by the Panel of the Settlement Agreement the “in camera” is be lifted.
3. The Panel members had, prior to the Hearing, reviewed the Settlement Agreement. (All quoted passages herein from the Settlement Agreement and the Submissions of Staff contain the paragraph numbers from those documents.)

## **SETTLEMENT AGREEMENT**

4. The Settlement Agreement includes the following:

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent was registered as a mutual fund dealer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, and Ontario.
7. The Respondent has been a Member of the MFDA since February 8, 2002.

#### **Corporate Structure**

8. The Respondent’s head office is located at 1850 - 14 Street S.W., Calgary, Alberta (the “Head Office”). At the time of the 2009 Examination conducted by MFDA Staff described below, the Respondent maintained 21 branches and 125 sub-branches.

#### **Failure to Conduct Adequate Trade Supervision**

9. Commencing on May 19, 2009, MFDA Compliance Staff conducted a compliance examination of the Respondent in order to assess the Respondent's compliance with MFDA by-laws, Rules and Policies during the period December 1, 2006 to April 2009 (the "2009 Examination").

10. The Respondent's Head Office and the following four of the Respondent's branches were examined during the 2009 Examination: (1) 331 - 3750 46 Avenue S.E., Calgary, Alberta; (2) 1836 Angus Street, Regina, Saskatchewan; (3) 211 80 Acadia Avenue, Markham, Ontario; and (4) Suite 560 5900 No. 3 Road, Richmond, British Columbia (collectively, the "Branches").

11. The results of the 2009 Examination were summarized and delivered to the Respondent in a report dated September 22, 2009 (the "2009 Report").

12. The 2009 Report identified a number of compliance deficiencies in respect of supervision of trades by its Approved Persons.

#### *Inadequate Head Office Supervision of Trades*

13. During the 2009 Examination, MFDA Compliance Staff identified that the Respondent's Head Office trade supervision was deficient in that the Respondent's Head Office Compliance Staff:

- (a) failed to maintain evidence of the review of some trades;
- (b) failed to review some trades in a timely manner;
- (c) failed to maintain a complete record of queries made, responses received from Approved Persons, and resolutions achieved as a result of supervisory queries of some trades; and
- (d) reviewed trades based on potentially inaccurate information, as Know Your Client ("KYC") information contained on the Respondent's back office system did not correspond in some instances to the KYC information contained in clients' files.

#### *Leveraging*

14. During the 2009 Examination, MFDA Compliance Staff identified the failure of the Respondent to establish, implement and maintain adequate written policies and procedures (the "Procedures") to supervise leveraging recommendations. The Respondent also failed to maintain records of queries made, responses received from Approved Persons, and resolutions achieved as a result of supervisory queries of leveraged trades.

15. As a result of the deficiencies outlined paragraph 14 above, some leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision. Those leveraging recommendations

have not been subject to full supervisory scrutiny in accordance with the Respondent's current policies and procedures.

### **Additional Factors**

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

### **Correcting Deficiencies in Policies and Procedures**

17. The Respondent has revised and represents that it will continue to revise its policies and procedures with regard to supervision of trades and leveraging, and has provided a copy of those policies and procedures to MFDA Staff. The Respondent asserts that it has implemented, and will continue to implement those revised policies and procedures. The Respondent (hereby) undertakes to comply with those policies and procedures in the future.

### **Addressing Historical Leveraging**

18. The Respondent has developed a plan, which has been reviewed by MFDA Staff, to address existing leveraged accounts (the "Leverage Review Action Plan"). The Respondent asserts that it will fully carry out the terms of the Leverage Review Action Plan to the satisfaction of MFDA Staff. The Respondent may be subject to further disciplinary action should it fail to adequately implement the Leveraged Review Action Plan.

## **V. CONTRAVENTIONS**

19. By engaging in the conduct described above, the Respondent admits that between December 1, 2006 and April 2009;

- (a) the Respondent's Head Office Compliance Staff failed to adequately supervise some trades, contrary to MFDA Rules 2.2.1, 2.5, and MFDA Policy No. 2; and
- (b) the Respondent failed to establish adequate policies and procedures to supervise leveraging recommendations, and also failed to maintain, in respect of some leveraged trades, adequate records of trade supervision, including records of trades reviewed, inquiries made, responses received and resolutions achieved, contrary to MFDA Rules 2.2.1, 2.5, 2.10 and MFDA Policy No. 2.

## **VI. TERMS OF SETTLEMENT**

20. The Respondent agrees to the following terms of settlement:

- (a) the Respondent shall pay a fine in the amount of \$35,000 upon the acceptance of this Settlement Agreement;

- (b) 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 2.10, and MFDA Policy No. 2;
- (c) the Respondent shall pay the costs of this proceeding in the amount of \$5,000 upon the acceptance of this Settlement Agreement; and
- (d) a senior officer of the Respondent will attend the settlement hearing in person.

## **VII. STAFF COMMITMENT**

21. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below (*“Failure to Honour Settlement Agreement”*). Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling, or preclude Staff from investigating and initiating proceedings in respect of, any continuing regulatory obligations, including, for greater certainty, any obligations regarding the handling of client complaints arising out of the facts and contraventions set out in Parts IV and V.

\* \* \* \*

## **II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

## **SUBMISSIONS OF STAFF OF THE MFDA**

5. Staff Enforcement Counsel submitted written Submissions and a Book of Authorities. He referred to the facts as set out in the Agreed Facts (above) and to the admissions by the Respondent to the allegations of misconduct as also set out in the Settlement Agreement. The Submissions follow:

## **Law**

### ***Applicable Provisions***

2. Listed below are the sections of the MFDA By-law, Rules, and Rules of Procedure that are applicable to this matter, copies of which have been included in Staff's Book of Authorities:

MFDA Rule 2.2.1	Client Accounts - "Know-Your-Client"
MFDA Rule 2.5	Minimum Standards of Supervision
MFDA Rule 2.10	Policies and Procedures Manual
MFDA Rule No.2	Minimum Standards of Account Supervision
Section 24.1.2 of MFDA	Power of Hearing Panels to Discipline
By-law No. 1 (the "By-law")	
Section 24.2 of the By-law	Costs
Section 24.4 of the By-law	Settlement Agreements
Rules 14 and 15 of the	Settlement Agreements and Settlement Hearings
MFDA Rules of Procedure	

### **Overview of the Settlement Agreement**

3. (Sets out the "Contraventions" which are set out above at p. 4)

4. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent has agreed at Part VI (paragraph 20) of the Settlement Agreement to:

(Sets out the "Terms of Settlement" which are set out above at pp. 4, 5)

5. For the reasons set out herein, MFDA Staff submits that it is in the public interest for the Hearing Panel to accept this Settlement Agreement as it is reasonable and proportionate having regard to the nature and extent of the Respondent's admitted contraventions and all the circumstances.

### **General principles regarding acceptance of settlements**

6. Hearing Panels have acknowledged that there is a difference between the role of a Hearing Panel at a contested hearing versus its role at a settlement hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc.*, quoting the reasoning in the I.D.A. matter of *Milewski*:

*"We also note that 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.”*

*Sterling Mutuals Inc. (Re)* [“*Sterling*”], [2008] MFDA Central Regional Council, Decision and Reasons dated August 21, 2008 at pg. 9, MFDA File No. 200820.

*Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

7. Courts have acknowledged that settlements advance the objective of protecting the public by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

*British Columbia Securities Commission v. Seifert*, [2007] B.C.J. No. 2186 at paras. 44-45.

8. MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- (a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- (d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future; and
- (e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

*Professional Investments (Kingston) Ing. (Re)* [“*PI (Kingston)*”] [2009] MFDA Central Regional Council, Reasons for Decision dated March 24, 2009 at p. 9, MFDA File No. 200836.

*Sterling, Supra* at pp. 8 and 9.

### **General principles regarding the appropriateness of the penalty**

9. The primary goal of securities regulation is the protection of the investor.

*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 per Iacobucci J. at paras. 59 and 68.

10. Factors that Hearing Panels frequently consider when determining whether a proposed penalty is appropriate include the following:

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

*Headley (Re)*, [2006] MFDA Ontario Regional Council, Decision and Reasons dated February 21, 2006 at pp. 25 to 26, MFDA File No. 200509.

11. Additionally, Hearing Panels may take into account the MFDA Penalty Guidelines when determining appropriate penalties in MFDA disciplinary proceedings. As stated in the introduction of the Penalty Guidelines:

*Range Is Guideline Only*

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion

can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

*MFDA Penalty Guidelines at page 1.*

12. The MFDA Penalty Guidelines (pp. 16, 20-22) recommend considering the following penalties in respect of the contraventions in the Settlement Agreement:

a. Supervision: minimum fine of \$25,000; condition that the Member demonstrate that its supervisory practices meet MFDA standards; additional monthly fine until the MFDA is satisfied; appointment of a monitor to oversee and report on Member's activities; terms and conditions on Member; and suspension or termination in egregious cases.

b. Policies and Procedures: minimum fine of \$25,000; and suspension or termination in egregious cases.

c. Suitability and Know Your Client: minimum fine of \$10,000, period of increased supervision, suspension or termination in egregious cases.

### **Application of factors and principles to the present case**

#### *Nature of the contraventions*

13. 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.

14. MFDA Rules 2.2.1 and 2.5 and MFDA Policy No. 2 set out the obligations of MFDA Members to conduct regular supervision of trades to ensure that each order accepted for clients is suitable for the client, in keeping with the client's investment objectives and within the bounds of good business practice. MFDA Rule 2.5.4 (now renumbered 2.5.7) and MFDA Policy No. 2 also emphasize the importance of preparing and maintaining proper records of action taken in furtherance of this fundamental obligation.

15. Trade supervision, including supervision of leveraging recommendations, is critical to the process of ensuring that, among other things, all trade order accepted and recommendations made for clients are suitable. An essential element of trade supervision is the maintenance of adequate records by the Member, including records of trades reviewed, inquiries made, responses received and resolutions achieved. Proper record keeping is a key element in the overall supervision structure at the Member as it provides the basis for the supervision conducted by the Member's compliance staff (including complaint handling and reasonable supervisory investigations), and regulatory oversight by the MFDA.

*Queensbury Strategies Inc. (Re)* ["Queensbury"], [2011] MFDA Central Regional Council, Reasons for Decision dated September 1, 2011 at para. 12, MFDA File No. 201033.

16. In April 2008, the MFDA issued Member Regulation Notice - MR-0069 - entitled Suitability Guidelines (“MR-0069”) to provide guidance to Members and Approved Persons about how to ensure the suitability of all investment advice provided to clients and trade orders accepted from clients. Among other things, MR-0069 stresses the importance of implementing an appropriate and effective trade and account supervision process, including ensuring that:

- (a) a Member’s criteria for review at both branch and head office levels, inquiry and escalation, supervisory documents and resolution options are documented and clearly communicated to all levels within the Member;
- (b) Approved Persons know the criteria the Member uses in assessing suitability;
- (c) Branch Managers are trained on their obligations to maintain evidence of their supervisory review; and
- (d) head office staff responsible for performing trade supervision and branch reviews are also trained on the supervision criteria, documentation standards, timelines for inquiry and resolution, and the escalation and disciplinary process.

*Member Regulation Notice MR-0069 - Suitability Guidelines  
(issued April 14, 2008).*

17. With respect to leveraging in particular, MR-0069 stresses that:

- (a) the use of leverage must be assessed on a client-by-client basis, having regard to the client’s age, financial circumstances, investment objectives, risk tolerance, time horizon, the manner in which they intend to secure and repay their loan and any other factors that are known at the time or are reasonably ascertainable and may be relevant in the circumstances.
- (b) Members must have policies and procedures with respect to leveraging, including criteria that would indicate when it is an unsuitable strategy, and the approval process;
- (c) Staff also recommends preapproval of leverage recommendations by supervisory staff;
- (d) none of the criteria, on their own, are necessarily indicative of an unsuitable leveraging recommendation but should be considered a “red flag” prompting a suitability assessment; and
- (e) where an inconsistency with one of the criteria is identified, further due diligence is required to assess the suitability of the leverage recommendation.

18. Staff identified compliance deficiencies during a compliance examination conducted of the Respondent covering the period December 1, 2006 and April 2009 in respect of:

- (a) the failure of the Respondent's Head Office to adequately supervise some trades;
- (b) the failure of the Respondent to establish adequate policies and procedures to supervise leveraging recommendations; and
- (c) the failure of the Respondent to maintain in respect of some leveraged trades, records of trades reviewed, inquiries made, responses received, and resolutions achieved.

19. As a result of the deficiencies relating to leveraging, some leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision, and have not been subject to full supervisory scrutiny in accordance with the Respondent's current policies and procedures.

20. The compliance examination process is designed to assess the adequacy of the policies and procedures established, implemented, and maintained by the Member to comply with its regulatory obligations. In circumstances where compliance deficiencies are identified by Staff during the compliance examination process, Staff requires the Member, in consultation with Staff, to identify the remedial measures it proposes to take to address the deficiencies and thereafter it is expected that the Member will implement the remedial measures and resolve the deficiencies.

21. Where Staff determines that the deficiencies are serious - either in nature, extent or both - the deficiencies are referred to MFDA Enforcement for further review and where necessary (as in this case) disciplinary action.

***The Respondent's recognition of the seriousness of the contraventions***

22. The Respondent has cooperated with Staff's investigation of the issues that form the subject matter of this agreement.

23. The Respondent admitted to the contraventions in the Settlement Agreement and thereby accepted responsibility and avoided the need for a potentially lengthy investigation and hearing that would have entailed additional time and expense to the MFDA to bring about the resolution of this matter.

***Steps taken since the discovery of the problem***

24. During the course of the investigation and resolution of this proceeding, the Respondent has revised its policies and procedures with regard to supervision of leveraging, and has represented that it has implemented those policies. The Respondent has undertaken to comply with the revised policies and procedures in the future.

25. With respect to the Respondent addressing existing leveraged accounts, the Respondent has developed a plan (the "Leverage Review Action Plan"), which has been reviewed by Staff. The Respondent represents that it will fully carry out the terms of the Leverage Review Action Plan to the satisfaction of Staff, failing which the Respondent may be subject to further disciplinary action.

***The Respondent's past disciplinary record***

26. In 2008, the Respondent was the subject of a previous MFDA settlement hearing. In that matter, the Respondent admitted to having failed to create and maintain adequate records of a call from a former client about a former Approved Person in 2004; and having failed to conduct a reasonable supervisory investigation of the former Approved Person's conduct in response to the client complaint during the period November 2004 to 2006. Under the terms of the settlement, the Respondent agreed to accept a reprimand and pay a fine of \$5,000.

*Portfolio Strategies Corporation*, [2008] MFDA Prairie Regional Council, Reasons and Decision dated August 6, 2008 at p. 14, MFDA File No. 200807.

***Previous decisions made in similar cases***

27. It is submitted that the penalties agreed upon in the Settlement Agreement are consistent with the range of penalties imposed in similar cases:

*Professional Investments (Kingston) Inc.* [2009] MFDA Central Regional Council Reasons for Decision dated March 24, 2009 File No. 200836.

Summary: • Failed to establish, implement, and maintain a two tier compliance structure to properly supervise account activity (suitability, excessive trading); • Failed to maintain adequate records of supervision.

Penalties: \$10,000 fine, \$2,500 costs, Independent Monitor appointed.

*Partners in Planning Financial Services Ltd.* [2010] MFDA Prairie Regional Council, Reasons for Decision dated December 10, 2010, MFDA File No. 201032.

Summary: • Inadequate policies and procedures to supervise leveraging; • Inadequate records of supervision of leveraging.

Penalties: \$20,000 fine, \$2,500 costs, Independent Monitor appointed.

*Info Financial Consulting Group Inc.* [2011] MFDA Central Regional Council, Reasons for Decision dated December 7, 2011, MFDA File No. 201028.

Summary: • Inadequate policies and procedures to supervise leveraging; • Inadequate records of supervision of leveraging.

Penalties: \$25,000 fine, \$2,500 costs.

*Sentinel Financial Management Corp.* [2011] MFDA Prairie Regional Council, Reasons for Decision dated August 25, 2011, MFDA File No. 201034.

Summary: • Inadequate two-tier trade supervision (failure to assure suitability; failure to ensure sales of exempt securities and handing of Respondent's business was in accordance with regulatory requirements); • Inadequate records of trade supervision.

Penalties: \$35,000 fine, \$2,500 costs.

*Queensbury Strategies Inc.* [2011] MFDA Central Regional Council, Reasons for Decision dated September 1, 2011, MFDA File No. 201033.

Summary: • Inadequate head office and branch trade supervision; Inadequate back office system controls; • Inadequate supervision of an Approved Person who engaged in outside business activities.

Penalties: \$35,000 fine, \$5,000 costs.

*W.H. Stuart Mutuals Ltd.* [2012] MFDA Central Regional Council, Reasons for Decision dated January 30, 2012, MFDA File No. 201035.

Summary: • Failed to establish policies to ensure branch managers and compliance staff maintain adequate records of trade supervision; • Member breached early warning restrictions.

Penalties: \$45,000 fine, \$2,500 costs.

*Monarch Wealth Corporation* [2012] MFDA Central Regional Council, Reasons for Decision dated February 6, 2012, MFDA File No. 201019.

Summary: • Insufficient policies and procedures to supervise leveraging; • Insufficient records of supervision of leveraging; • Failed to maintain adequate risk adjusted capital.

Penalties: \$60,000 fine, \$2,500 costs.

*Investia Financial Services Inc. & Fund EX Investments Inc.* [2012] MFDA Central Regional Council, Reasons for Decision dated March 26, 2012, MFDA File No. 201031.

Summary: • Failed to establish and maintain adequate controls and books and records pertaining to leveraged accounts; • Failed to establish policies and procedures to detect excessive trading; • Failed to ensure supervisory staff adhered to policies and procedures for supervision of trading at

branch level and supervision of new accounts; • Failed to adequately supervise outside business activity of two Approved Persons and the referral arrangements of three Approved Persons.

Penalties: \$100,000 fine, \$15,000 costs.

28. In some compliance deficiency cases, the appointment of an independent monitor at the Member's expense is necessary to assist a Member to remedy its compliance deficiencies or to conduct testing to confirm that corrective measures have been effectively implemented.

29. In other cases, such as this one, Staff is satisfied that the deficiencies are of such a nature and that the Member has taken and will continue to take necessary remedial measures that an independent monitor is not required; or the Member has the resources and expertise to address the compliance deficiencies that the assistance of an independent monitor is not required.

30. The Respondent has revised its policies and procedures with regard to supervision of leveraging. Staff is satisfied that it is not necessary that the Respondent retain an independent monitor to address the compliance deficiencies. The Respondent has developed and agreed to implement a Leverage Review Action Plan in order to address the deficiencies.

31. With respect to the fine amount, the settlement proceedings referenced above include penalties with fines in the range of \$10,000 to \$100,000. The fine agreed to in the present case fits within the range of fines ordered in previous similar compliance deficiency cases as set out above. Staff submits that the proposed penalty is appropriate given the nature and seriousness of the deficiencies. Staff has also considered that the Respondent will incur increased resources and time spent in implementing the Leverage Review Action Plan.

## **Conclusion**

32. Having regard to all of the foregoing factors, Staff submits that the penalties proposed in this settlement agreement are reasonable and proportionate, and will:

- (a) deter the Respondent and other MFDA Members from breaching supervision obligations;
- (b) improve overall compliance by mutual fund industry participants; and
- (c) foster public confidence in the regulation of the mutual fund industry.

33. Accordingly, acceptance of this Settlement Agreement will advance the public interest and the objective of the MFDA to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

6. Staff Enforcement Counsel submitted a copy of the “Leverage Review Action Plan” referred to in paragraph 25 of the written Submissions, at p. 12 above, for review by the Panel. It is a comprehensive eight-page document which includes “Implementation of Corrective Action” such as sending letters to existing Member clients who have “red flags” identified (which are listed).

7. Staff Enforcement Counsel referred to the previous minor disciplinary record of the Respondent regarding a matter distinct from the present contraventions and reiterated the mitigating factors of the Respondent having initiated steps to address the deficiencies and the fact that the Respondent has cooperated with Staff and entered into the Settlement Agreement.

### **SUBMISSIONS OF THE RESPONDENT**

8. Counsel for the Respondent emphasized that the Respondent’s non-compliance, as is indicated by the language “some trades” in paragraph 13 of the Settlement Agreement, was limited. It was certainly not wholesale non-compliance. He emphasized that the Respondent has been cooperative and there has been effective, reasonably extensive, negotiation of the Settlement Agreement. Counsel submitted that several of the authorities relied upon by Staff involve more serious deficiencies and, based on the range of penalties in those cases, a penalty in the lower range is appropriate in this case. Counsel joined Staff Enforcement Counsel in seeking approval from the panel of the Settlement Agreement.

### **REASONS FOR DECISION**

9. In the Settlement Agreement the Respondent admits to the Contraventions set out at p. 4 above. The admitted misconduct by the Respondent was not as serious as the misconduct in some of the above cases.

10. Similarities and distinctions in the cases cited are set out in the Submissions of Staff Enforcement Counsel above and need not be repeated. Taking into account the minor unrelated previous discipline and, on the other hand, the mitigating factors referenced by both Counsel, we believe that the Contraventions in this case warrant penalties in the range of the *Partners in Planning* and *W.H. Stewart Mutuals* cases set out above and certainly not in the range of the last

three cases which involved more serious contraventions. We view the penalties agreed upon in the Settlement Agreement as falling within “a reasonable range of appropriateness” (*Professional Investments*, p. 12 above).

11. We agree, for the reasons stated by Staff Enforcement Counsel that, given the significant actions which have been taken by the Respondent in revising its policies and procedures and developing the Leverage Review Action Plan, that an independent monitor is not warranted.

12. We accept that costs of \$5,000 are a reasonable amount considering the reduced involvement and cost for the MFDA resulting from the Respondent’s cooperation.

13. We confirm our decision declared at the conclusion of the Hearing that the penalties agreed upon between the MFDA and Respondent are to be imposed. The Respondent shall:

- (a) pay a fine in the amount of \$35,000 upon the acceptance of this Settlement Agreement;
- (b) 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, and 2.5, and 2.10, and MFDA Policy No. 2;
- (c) pay the costs of this proceeding in the amount of \$5,000 upon the acceptance of this Settlement Agreement; and
- (d) have a senior officer attend the settlement hearing in person.

14. At the conclusion of the Hearing we signed an Order confirming the foregoing.

**DATED** this 13<sup>th</sup> day of February, 2013.

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

“Elaine Bradley”  
\_\_\_\_\_  
Elaine Bradley,  
Industry Representative

“Howard R. Mix”  
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Howard R. Mix,  
Industry Representative

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