



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: August 17, 2020 by electronic hearing in Calgary, Alberta

Decision: August 17, 2020

Reasons for Decision: November 30, 2020

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh
Adam Dudley
Charlene Snell

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld
Justin Dunphy

) Enforcement Counsel for the Mutual Fund
) Dealers Association of Canada

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)

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Janice Wright

) Counsel for the Respondent

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Mark Kent

) Ultimate Designated Person, Acting Chief
) Compliance Officer of the Respondent

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I. INTRODUCTION

1. On July 21, 2020, Portfolio Strategies Corporation ("the Respondent") entered into a Settlement Agreement with Staff of the Mutual Fund Dealers Association of Canada ("the MFDA") pursuant to which the Respondent agreed to be disciplined under section 24.4 of MFDA By-law No. 1 ("the Settlement Agreement").
2. On August 5, 2020, the MFDA issued a Notice of Settlement Hearing advising that a hearing was to be held before a Hearing Panel of the Prairie Regional Council of the MFDA ("the Panel") to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, the Hearing Panel should accept the Settlement Agreement.
3. The settlement hearing took place on August 17, 2020. All participants, including the members of the Hearing Panel and counsel for both parties participated by video conference; the hearing having taken place during the time of the COVID-19 pandemic.
4. We note that the Respondent's President, CEO and UDP, Mr. Mark Kent, attended and participated in the hearing. At the time of the hearing, Mr. Kent was also serving as the Respondent's Chief Compliance Officer.
5. At the conclusion of the hearing, the Hearing Panel accepted the Settlement Agreement and issued an Order to that effect. These are the Reasons for our decision.

II. CONTRAVENTIONS

6. In the Settlement Agreement, the Respondent admitted to the following violations of By-laws, Rules or Policies of the MFDA:

#1 prior to July 18, 2017, the Respondent did not adequately supervise and prior to July 15, 2018, the Respondent did not establish, implement and maintain adequate supervisory policies and procedures with respect to, the reasonability of KYC information and the suitability of trades including consistency with KYC information, concentration in sector mutual funds and exempt market securities and the sale of DSC Mutual Funds to clients, contrary to MFDA Rules 2.5.1, 2.2.1, 5.1 and MFDA Policy No. 2;

- #2 prior to December 2017, the Respondent failed to maintain a branch review program that ensured that an on-site compliance review of all of its branches and sub-branches was conducted at least once every three years, in accordance with the requirements set out in MFDA Rule 2.5.1 and MFDA Policy No. 5; and
- #3 between March 31, 2015 and July 31, 2016, the Respondent did not maintain evidence of any nominee name reconciliations that were completed, contrary to MFDA Rules 2.9 and 5 and MFDA Policy No. 4.

III. TERMS OF SETTLEMENT

7. Staff and the Respondent agreed on the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$100,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1, payable as follows:
 - i) \$50,000 shall be paid on the date that the Settlement Agreement is accepted; and
 - ii) \$50,000 shall be paid within 90 days of the date that the Settlement Agreement is accepted;
 - b) the Respondent shall pay costs in the amount of \$10,000, pursuant to s. 24.2 of MFDA By-law No. 1, payable on the date that the Settlement Agreement is accepted;
 - c) 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, 2.5.1, 2.9, and 5, and MFDA Policy Nos. 2, 4 and 5; and
 - d) A senior officer of the Respondent will attend in person by videoconference, on the date set for the Settlement Hearing.

IV. AGREED FACTS

8. The agreed facts are set out at paragraphs 6 through 55 inclusive of the Settlement Agreement and are reproduced below:

6. The Respondent is registered as a mutual fund dealer and exempt market dealer in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and the Northwest Territories.

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"). As of the date of this Settlement Agreement, in addition to its Head Office location, the Respondent maintains 11 branches and 188 sub-branches. The Respondent sponsors the registration of 290 Approved Persons.

(As of April 30, 2020)

OVERVIEW

9. This case concerns sales and financial compliance deficiencies that are described below and were identified by Staff during compliance examinations at the offices of the Respondent between 2012 and 2018. Some of the contraventions resulted in part from deficiencies in the policies and procedures of the Respondent. Contrary to applicable MFDA Rules and Policies, the Respondent did not adequately fulfill its regulatory obligations to conduct and maintain evidence of: (1) trade and account supervision; (2) branch reviews; and (3) evidence of reconciliations of its securities held for clients in nominee name. Some of the compliance deficiencies are repeat deficiencies.

BACKGROUND

The 2012 and 2014 Sales Compliance Examinations

10. In 2012 and in 2014, MFDA Compliance Staff ("MFDA Compliance") conducted sales compliance examinations in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA.

11. MFDA Compliance conducted the sales compliance examinations at the Respondent's Head Office, and at a sample of branches and sub-branches, on the following dates:

- a) commencing May 14, 2012, covering the review period of May 1, 2009 to March 31, 2012 (the "2012 Sales Compliance Examination"); and
- b) commencing May 26, 2014, covering the period between April 1, 2012 and March 31, 2014 (the "2014 Targeted Sales Compliance Examination").

12. During the 2012 Sales Compliance Examination and 2014 Targeted Sales Compliance Examination, MFDA Compliance identified multiple compliance deficiencies in the operations of the Respondent, including the following:

- a) the Respondent did not establish adequate processes for trade and account supervision, including documenting or maintaining adequate evidence of supervisory queries, and
- b) the Respondent did not adequately conduct branch and sub-branch reviews as required by MFDA Policy No. 5.

13. After completing the 2012 Sales Compliance Examinations and after completing the 2014 Targeted Sales Compliance Examination, the compliance deficiencies that were identified by

Compliance during the examinations were summarized in written reports that were delivered to the Respondent.¹

The 2016 -2018 Sales and Financial Compliance Examinations

14. Between 2016 and 2018, MFDA Compliance conducted two more sales compliance examinations and financial compliance examinations were conducted annually in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA.

15. MFDA Compliance conducted the 2016 and 2018 sales compliance examinations at the Respondent's Head Office, and at a sample of branches and sub-branches, on the following dates:

- a) commencing September 19, 2016, covering the review period of April 1, 2012 to July 31, 2016 (the "2016 Sales Compliance Examination"); and
- b) commencing September 17, 2018, covering the review period of August 1, 2016 to July 31, 2018, except with respect to the Respondent's branch review program, which covered the review period of August 31, 2015 to August 31, 2018 (the "2018 Sales Compliance Examination").

16. The financial compliance examinations were conducted on the following dates:

- a) commencing September 19, 2016, covering the month ended July 31, 2016 (the "2016 Financial Compliance Examination"); and
- b) commencing September 11, 2017, covering the month ended July 31, 2017 (the "2017 Financial Compliance Examination").

17. After completing the 2016 and 2018 Sales Compliance Examinations and the 2016 and 2017 Financial Compliance Examinations, compliance deficiencies that were identified by MFDA Compliance were summarized in written reports that were delivered to the Respondent.

18. The 2016 Sales Compliance Examination report which commenced on September 19, 2016 was delivered to the Respondent on March 22, 2017. The 2018 Sales Compliance Examination report which commenced on September 17, 2018 was delivered to the Respondent on February 20, 2019. The 2016 Financial Compliance Examination report which commenced on September 19, 2016 was provided to the Respondent on March 22, 2017 and the 2017 Financial Compliance Examination report which commenced on September 11, 2017 was provided to the Respondent on February 6, 2018.

19. During the 2016 and 2018 Sales Compliance Examinations and during the 2016 and 2017 Financial Compliance Examinations, MFDA Compliance identified certain compliance deficiencies that were described in the reports, including those that are described below. Some of the compliance deficiencies that were identified during the 2016 and 2018 Sales Compliance Examinations had previously been identified by MFDA Compliance in 2012 and/or in 2014.

Staffing Changes

20. The Respondent's former Chief Compliance Officer ("CCO") and Chief Financial Officer was first hired in 2008. Prior to joining the Respondent, the Respondent's former CCO worked in the securities industry for approximately 20 years including senior positions with a provincial securities regulator and as CCO of a different Member.

¹ (For the 2012 Sales Compliance Examination: in reports dated October 9, 2012.
For the 2014 Targeted Sales Compliance Examination: in reports dated September 10, 2014)

21. The CCO acted in that capacity during the period of time which gave rise to the compliance deficiencies described in this Settlement Agreement.

22. On June 20, 2017, the Member terminated both its CCO and its Vice President of Operations.

23. On June 22, 2017, the Respondent hired a new CCO who started work on July 18, 2017. On August 2, 2017, this Approved Person was registered as CCO of the Respondent.

24. Since the Respondent's new CCO was hired, she has worked cooperatively with MFDA Compliance to address the Respondent's compliance deficiencies.

CONTRAVENTION #1 – Inadequate Trade and Account Supervision

A. Trade & Account Supervision And Policies & Procedures

25. Prior to July 18, 2017, the Respondent did not adequately supervise, and prior to July 15, 2018, the Respondent did not establish, implement and maintain adequate policies and procedures to ensure that supervisory staff of the Respondent responsible for trade and account supervision were:

- a) ensuring that client accounts held and trades processed were suitable by:
 - i. querying trade and account holdings that were potentially unsuitable;
 - ii. creating and maintaining evidence of supervisory queries that were made; and
 - iii. adequately following up on and resolving supervisory queries that were made;
- b) ensuring that Approved Persons were accurately documenting certain Know-Your-Client ("KYC") information by:
 - i. querying KYC information that was potentially unreasonable or potentially inconsistent with other information on record for the client or the account; and
 - ii. querying situations in which two Approved Persons may have been recording uniform KYC information for client accounts that they serviced;
 - iii. taking into account KYC information on record for the account when determining whether trades or client account holdings should be queried to ensure suitability; and
 - iv. assessing whether client purchases of mutual funds that would potentially be subject to deferred sales charge ("DSC") fees upon redemption ("DSC Mutual Funds") were suitable having regard to the client's age and time horizon.

B. Concentration in Sector Mutual Funds and Exempt Market Securities

26. Prior to July 15, 2018, the Respondent did not:

- a) establish and implement policies and procedures to ensure that appropriate supervisory action was taken in cases where:
 - i. client account holdings were heavily concentrated in sector mutual funds or exempt market securities; or
 - ii. trades were submitted for processing that could result in heavy concentration of the client's account in sector mutual funds or exempt market securities;
- b) prior July 18, 2017, the Respondent did not:
 - i. query trades that could result in heavy concentration of a client's account in sector mutual funds or exempt market securities; or

- ii. take reasonable supervisory action to address two cases in which a high proportion of the client accounts serviced by Approved Persons DT and VS were heavily concentrated in precious metals sector mutual funds.

27. By failing to adequately query Approved Persons who submitted trade orders that would significantly concentrate a client's holdings in a particular sector mutual fund or exempt market security, supervisory Staff of the Respondent did not adequately ensure that such trade orders were suitable.

Accounts Serviced By DT

28. DT was an Approved Person of the Respondent who conducted business from a sub-branch located in Edmonton, Alberta. On November 18, 2014, a branch review was conducted at DT's sub-branch. During the branch review, the Respondent recognized and noted in its branch review report that a high proportion of DT's client accounts were heavily invested in precious metals sector mutual funds and raised the issue with DT, however, following the 2014 branch review of DT's sub-branch, supervisory staff of the Respondent did not take adequate steps to address the concentration concerns that had been identified.

29. At the time of the 2016 Sales Compliance Examination, MFDA Compliance observed that 98% of the assets under administration serviced by DT were invested in precious metals sector mutual funds. Following the 2016 Sales Compliance Examination, the Respondent did not:

- a) implement a policy concerning the suitability of accounts that were heavily concentrated in sector mutual funds; and
- b) adequately address the suitability concerns raised by the fact that a large number of DT's client accounts were highly concentrated in precious metals sector mutual funds.

These were identified as compliance deficiencies in the 2016 Sales Compliance Examination Report (the "2016 Suitability of Concentration Deficiencies").

30. On May 2, 2018, the Respondent terminated DT's registration with the Respondent.

31. Following the termination of DT, the Respondent instructed Approved Persons who took over responsibility for servicing client accounts that had previously been serviced by DT to review KYC information with clients and encourage rebalancing of client portfolios.

32. Staff has been informed by the Respondent that between May and July, 2018, the Respondent contacted clients that had previously been serviced by DT to ensure that client KYC information was updated and accounts were rebalanced.

Accounts Serviced By VS

33. VS and DG were Approved Persons at a different mutual fund dealer. VS and DG shared a representative code, and VS assisted DG in servicing his clients.

34. In February 2016, a few months before VS transferred her registration to the Respondent, Staff commenced an investigation into the conduct of VS and her former colleague DG as many client accounts that were serviced by VS and DG were heavily concentrated in precious metals sector mutual funds and may not have been suitable.

35. In May 2016, DG ceased to be an Approved Person and VS took over responsibility for servicing the accounts of his former clients.

36. In June 2016, VS transferred her registration from a different mutual fund dealer and became an Approved Person of the Respondent who operated a sub-branch office of the Respondent in Campbell River, British Columbia.

37. After VS became an Approved Person of the Respondent in June 2016, Staff made requests to the Respondent verbally and in writing to take steps to investigate and if appropriate, to address the concentration and suitability concerns arising from the fact that a high proportion of the client accounts serviced by VS were concentrated in precious metals sector mutual funds.

38. Following the 2016 Sales Compliance Examination, the Respondent agreed to take steps to address the suitability concerns associated with the client accounts serviced by VS that were heavily concentrated in precious metals sector mutual funds. However, prior to August 2017, satisfactory supervisory action had not been taken.

39. Between August 2017 and March 2018, at the direction of the Respondent, VS contacted the clients that she was responsible for servicing to review and update the KYC information of the clients and in appropriate cases, to recommend rebalancing of their portfolios.

40. Effective June 30, 2018, the Respondent accepted the voluntary resignation of VS as an Approved Person of the Respondent.

C. The Sale of Mutual Funds Subject to DSC Fees

41. Prior to January 9, 2017, the Respondent did not maintain adequate policies and procedures to ensure that DSC Mutual Funds were suitable for the clients to whom they were sold. In particular, the Respondent's policies and procedures did not include consideration of the client's age and time horizon as factors relevant to the supervision of trades of DSC Mutual Funds.

42. Commencing on January 9, 2017, the Respondent implemented revised policies and procedures concerning the suitability of DSC Mutual Fund trades.

CONTRAVENTION #2 - Branch Review Program

43. Prior to December 2017, the Respondent did not implement a Branch Review program compliant with the requirements set out in MFDA Policy No. 5. This was a repeat compliance deficiency.

44. At the time of the 2012 Sales Compliance Examination, PSC had 14 branches and 124 sub-branches. MFDA Compliance determined that at least 12 branches and 85 sub-branches had never been subject to a branch review. There were no branch review reports or other evidence that 2 branches had been reviewed. The Respondent's failure to establish and implement a branch review program compliant with MFDA Policy No. 5 was identified as a compliance deficiency in the 2012 Compliance Examination Report.

45. Following the 2012 Sales Compliance Examination, an action plan was submitted to MFDA Compliance that included a schedule that was prepared to ensure that all of the Respondent's branches and sub-branches would be reviewed within a 3 year period.

46. After the Respondent agreed to address the deficiencies in its branch review program that had been identified during the 2012 Sales Compliance Examination:

a) At the time of the 2014 Targeted Sales Compliance Examination, the Respondent carried on business from 16 branches and 173 sub-branches. MFDA Compliance determined that:

i. 1 branch and 34 sub-branches had never been subject to a branch review; and

- ii. 13 additional sub-branches that had previously been subject to a branch review had not been reviewed during the 3 years preceding that compliance examination.
- b) At the time of the 2016 Sales Compliance Examination for the review period of April 1, 2012 to July 31, 2016, the Respondent had 10 branch and 203 sub-branch locations and MFDA Compliance determined that:
- i. 33 sub-branches had never been subject to a branch review; and
 - ii. 3 branches and 43 sub-branches that had previously been subject to a branch review had not been subject to a subsequent review during the 3 year period preceding that compliance examination; and
- c) At the time of the 2018 Sales Compliance Examination for the review period of August 31, 2015 to August 31, 2018, out of 11 branch and 211 sub-branch locations, there was no evidence that 3 branch and 52 sub-branch locations had been reviewed during the 3 year period preceding that compliance examination.

47. After deficiencies with the Respondent's branch review program were identified during the 2012 Sales Compliance Examination, the Respondent did not adhere to the branch review schedule that had been submitted to MFDA Compliance to address this deficiency and the Respondent did not implement a branch review program that was compliant with MFDA Policy No. 5.

48. On December 2017, the Respondent implemented a new proper branch review program and dedicated audit staff were hired. The Respondent states that the Respondent's branch review program is now up to date.

CONTRAVENTION #3 - Nominee Name Reconciliations

49. On March 31, 2015, the Respondent became a Level 4 Mutual Fund Dealer and accordingly was thereafter permitted to hold client securities in the name of the dealer on behalf of clients (nominee name accounts). As a Level 4 Mutual Fund Dealer, the Respondent was required to maintain evidence of monthly reconciliations of its nominee name holdings.

50. During the 2016 and 2017 Financial Compliance Examinations, MFDA Financial Compliance Staff concluded that the Respondent did not, prior to July 2016, retain evidence of any nominee name mutual fund asset reconciliation process that had been implemented.

51. Since July 31, 2017, the Respondent has taken steps to improve its internal controls and reconciliation procedures in order to ensure that records of the monthly reconciliations are maintained in compliance with MFDA Rules 2.9 and 5 and MFDA Policy No. 4.

The Respondent's Previous MFDA Disciplinary Proceedings

52. The Respondent was the subject of two prior settlement hearings held before a Hearing Panel of the MFDA, File No. 200807 and File No. 201122.

Additional Factors

53. On July 15, 2018, the Respondent implemented a revised version of the Respondent's policies and procedures in order to address its compliance deficiencies.

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

55. In addition to its efforts to address its compliance deficiencies, the Respondent has cooperated with Staff's investigation and cooperated in the resolution of the subject matter of this Settlement Agreement.

V. ANALYSIS

Role of the Panel

9. When considering a Settlement Agreement, a Hearing Panel has two options: either to accept or reject the agreement.

MFDA By-law No. 1, s.24.4.3

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

11. As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*, [1999] IDACD No.17:

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

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

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

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

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

“Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because

the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.”

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

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

15. In these proceedings, the Panel notes that the parties were represented by capable, experienced counsel - both of whom submitted that the Settlement Agreement in question was reached as a result of "meticulous and significant" negotiations.

Factors Concerning Acceptance of a Settlement Agreement

16. The Panel agrees with Staff's submission that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the MFDA By-laws, Rules or Policies or provincial securities legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct in all of the circumstances.

Appropriateness of the Proposed Penalty

17. 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

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

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

19. 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

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

MFDA Sanction Guidelines

21. On November 15, 2018, the MFDA issued Sanction 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.

22. The Sanction Guidelines, as their name suggests, are not mandatory; rather they are intended to provide guidance to a Hearing Panel. They acknowledge, under the heading “Purpose of the Sanction Guidelines”:

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

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

Excerpts from the *MFDA Sanction Guidelines*

23. In cases involving the type of misconduct that has occurred in the present case, the following factors which are set out in the Sanction Guidelines are particularly relevant to the Hearing Panel's decision:

- a) general and specific deterrence;
- b) public confidence;
- c) seriousness of the allegations proved against the Respondent;
- d) the Respondent's recognition of the seriousness of the misconduct;
- e) the Respondent's past conduct, including prior sanctions; and

- f) corrective measures implemented by the Respondent after the misconduct.

Excerpts from the *MFDA Sanction Guidelines*

Application in the Present Case

24. In approving the Settlement Agreement, the Panel has considered all of the factors cited in the above referenced cases and Guidelines as follows.

- (i) Seriousness of the Allegations

Contravention #1 - Inadequate Trade and Account Supervision

Trade & Account Supervision and Policies & Procedures

25. The Respondent's misconduct in this matter was serious.

26. Members are responsible for establishing, implementing and maintaining policies and procedures to ensure they conduct their business in accordance with the By-laws, Rules and Policies of the MFDA and with applicable securities legislation. This requirement is an essential element of investor protection.

MFDA Rule 2.5.1

27. The misconduct admitted to in Contravention #1 concerns the Member's failure to implement adequate supervisory policies and procedures or to otherwise ensure that adequate trade and account supervision was conducted, in particular regarding the monitoring and assessment of:

- a) the reasonability of KYC information in account records of its clients; and
- b) the suitability of trades and client account composition bearing in mind:
 - i) the consistency of KYC information on record with particular trades or the composition of the client's account;
 - ii) the concentration of client accounts in sector mutual funds and exempt market securities; and
 - iii) whether DSC Mutual Funds were suitable for the clients to whom such funds were sold.

28. Members' obligations to conduct regular supervision of trades to ensure that each order accepted for a client is suitable for that client, having regard to the client's investment objectives and is within the bounds of good business practice, are clearly prescribed by MFDA Rule 2.2.1 and MFDA Policy No. 2.

29. MFDA Rule 2.2.1, the "Know-Your-Client " Rule, requires that:

2.2.1 “Know-Your-Client”

Each Member and Approved Person shall use due diligence:

- a) to learn 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;
- c) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;
- d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction, including a transaction involving the use of borrowed funds, proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;
- e) to ensure that the suitability of the investments within each client’s account is assessed:
 - i. whenever the client transfers assets into an account at the Member;
 - ii. whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
 - iii. by the Approved Person where there has been a change in the Approved Person responsible for the client’s account at the Member;
 - iv. and, where investments in a client’s account are determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address any inconsistencies between investments in the account and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations;
- f) to ensure that the suitability of the use of borrowing to invest is assessed:

- i. whenever the client transfers assets purchased using borrowed funds into an account at the Member;
- ii. whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
- iii. by the Approved Person where there has been a change in the Approved Person responsible for the client's account at the Member;

and, where the use of borrowing to invest by the client is determined to be unsuitable, the Member or Approved Person so advises the client and makes recommendations to address the inconsistency between the use of borrowed funds and the essential facts relative to the client and the Member or Approved Person maintains evidence of such advice and recommendations.

30. MFDA Policy No. 2 provides that:

Effective self-regulation begins with the Member establishing and maintaining a supervisor environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals.

31. Maintaining account supervision procedures ensures, among other things, of course, that all trade orders which are accepted and all recommendations which are made for clients, are suitable.

32. The seriousness of the type of misconduct which forms part of the subject of these proceedings was discussed by a Hearing Panel in a 2013 decision regarding this same Respondent: *Portfolio Strategies Corp (Re)*, 2013 LNCMFDA 5.

33. The Hearing Panel in that decision confirmed:

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. ...

15. Trade supervision ... 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.

Portfolio Strategies Corp. (Re), supra, at p.8

34. The Panel agrees with Staff's submission that the mere presence of criteria that warrant a query does not mean that a potential trade or account portfolio is in fact unsuitable. There may well be a legitimate explanation that would resolve the concerns that give rise to a query, however, questions must still to be asked so as to ensure the suitability of the trade or portfolio that is being examined during the inquiry process.

35. The investor protection that the supervision process is intended to advance is undermined if a Member and its compliance staff simply "assume" that there is a legitimate explanation for a potential suitability concern without making inquiries about the particular circumstances and documenting their conclusion.

36. In this regard, in April 2008, the MFDA issued Staff Notice 0069 entitled "Suitability" to provide guidance to Members and Approved Persons about how to ensure that the investment advice provided to and trade orders accepted from, clients, is suitable.

MFDA Notice #MSN-0069 dated April 14, 2008 (updated February 22, 2013)

37. Among other things, MSN-0069 emphasizes the importance of:

- a) conducting trade inquiries where there are discrepancies between the client's KYC information and the investment in question;
- b) maintaining the evidence of supervisory reviews, including inquiries made, responses received, and approvals given;
- c) reviewing clients' KYC information for reasonableness and consistency; and
- d) ensuring that the duration of the client's time horizon is consistent with the length of the DSC schedule if the client purchases DSC Mutual Funds.

Concentration in Sector Mutual Funds and Exempt Market Securities

38. The Respondent has admitted that prior to July 15, 2018 it did not:
- a) establish and implement policies and procedures to ensure that appropriate supervisory action was taken in cases where:
 - i) client account holdings were heavily concentrated in sector mutual funds or exempt market securities; or
 - ii) trades were submitted for processing that could result in heavy concentration of the client's account in sector mutual funds or exempt market securities; and
 - b) prior to July 18, 2017, it did not:
 - i) query trades that could result in heavy concentration of a client's account in sector mutual funds or exempt market securities; or
 - ii) take reasonable supervisory action to address two cases in which a high proportion of the client accounts serviced by Approved Persons D.T. and V.S were heavily concentrated in precious metals sector mutual funds.

Settlement Agreement, at paras.26-40

39. Evaluation of concentration risk has long been recognized as an important element of trade supervision and assessment of account suitability.

40. As the Panel in *Biduk (Re)* stated, the:

“... Canadian investment industry has always recognized the inherent danger of an investor concentrating his/her holdings of securities in a given sector of the economy; let alone in the volatile securities of only one or two issuers in that given sector.

That principle recognizes the old saying '*Don't put all your eggs in one basket*'. Diversification is the key ...”

Biduk (Re), 2013 LNIROOC 19 at paras.86-87

41. In other words, investors should not have all of their financial assets concentrated in a single investment, especially, as Staff submitted, if it is a higher risk investment like an exempt product or a Sector Mutual Fund.

42. MSN-0069 provides that as part of a Member's supervisory obligations, it should consider the extent of concentration of a client's holdings. In particular, with respect to exempt market securities, the Notice says:

Members should also consider the concentration of investments in exempt securities when performing a suitability assessment. An appropriate concentration limit would depend on the exempt security being distributed. Staff has observed Members using a concentration limit range for exempt securities of 10-25% in relation to either the client's total investible assets or the client's total investments with the Member. If a Member assesses concentration limits by considering investments held in external accounts, the Member should have a reasonable process to determine that such information is current and accurate.

MSN-0069, supra at p.14

43. MFDA Hearing Panels have emphasized the importance of supervising client purchases for potential issues with respect to concentration:

13. Trade supervision, including supervision of purchases in exempt market securities and concentration of investment in client accounts, is critical to the process of ensuring that, among other things, all trade orders accepted and recommendations made for clients are suitable.

[...]

18. Further, an important element of trade supervision and assessment of account suitability is the evaluation of concentration risk. The importance of diversification of client portfolios has been commented on in past decisions of Canadian securities regulators. Establishing and maintaining adequate systems of supervision to ensure appropriate concentration in client accounts promotes investor protection. Biduk (Re), 2013 IIROC 19, Hearing Panel of the Quebec District, Decision dated April 23, 2013, at paras. 86 and 87.

[...]

20. MFDA Hearing Panels have found that a Member's failure to adequately supervise concentration risk, the conduct is contrary to MFDA Rules, including Rule 2.2.1. IPC Investment Corporation (Re), 2017 CanLII12327 (CA MFDAC) ("IPC"), Equity Associates Inc. (Re), 2018 CanLII 89313 (CA, MFDAC) ("Equity 2018").

21. A Member falls afoul of their supervisory obligations where it does not conduct adequate assessments of suitability. In the absence of supervisory intervention by a Member who is alert to concerns relating to, among other things, concentration of investments in clients' accounts, clients run the risk of being exposed to unsuitable investments.

FundEx Investments Inc. (Re), 2019 LNCMFDA 147 (MFDA File No. 2016110)

Sale of Mutual Funds Subject to DSC Fees

44. The misconduct admitted to in the Settlement Agreement also identifies that prior to January 9, 2017, the Respondent did not maintain adequate policies and procedures to ensure that DSC Mutual Funds were suitable for the clients to whom they were sold. In particular, the Respondent's policies and procedures did not include consideration of the client's age and time horizon as factors relevant to the supervision of trades of DSC Mutual Funds.

Settlement Agreement, at para.41

45. The recommendation and sale of DSC Mutual Funds to clients whose investment time horizon may not extend beyond the DSC schedule or whose age may potentially render such a recommendation unsuitable, engages the Member's obligation to establish, implement and maintain policies and procedures to appropriately supervise and assess the suitability of such trades under MFDA Rules 2.2.1 (the "Know-Your-Client" Rule) and 2.5.1 (Member's Responsibilities Regarding Standards of Supervision).

46. MSN-0069 points out that where a client's time horizon is less than the period of the DSC Mutual Fund redemption schedule, the investment may be unsuitable:

F. Time Horizon Suitability

The characteristics of a particular investment should be suitable given the client's stated time horizon. Mutual funds are generally considered medium to long term investments. A client's stated time horizon is most important when considering the fee structure of a mutual fund. Generally, it is considered unsuitable for a client to be put into a DSC fee fund and have a time horizon that is shorter than the DSC schedule. A time horizon suitability analysis of investments with liquidity restrictions should also be performed. If the stated time horizon is less than the liquidity restriction, the investment would not be suitable for the client.

MSN-0069, supra at p. 19

47. MFDA Hearing Panels have repeatedly stressed the importance of supervising the sale of DSC Mutual Funds to clients. See, for example:

- *Investors Group Financial Services Inc. (Re)*, 2019 LNCMFDA 116 (MFDA File No. 201927)
- *Sun Life Financial Investment Services Inc. (Re)*, 2018 LNCMFDA 3 (MFDA File No. 201775)

Contravention #2 Branch Reviews

48. With respect to Contravention #2, the Respondent has admitted that prior to December 2017, it did not maintain a Branch Review program which complied with the requirements set out in MFDA Policy No. 5.

Settlement Agreement, at paras.43-47

49. MFDA Policy No. 5 states:

Members are generally expected to perform an on-site review of their branches no less than once every three years. However, Members must review certain branches more frequently than once every three years if justified based on risk. Where, under unusual circumstances, a Member exceeds a three year branch review cycle, the Member must be able to justify the longer review cycle by demonstrating that the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances however, should a Member never perform an on-site review of a branch.

MFDA Policy No. 5, at p.4

50. Pursuant to Policy No. 5, a Member's Branch Review Program must:

- a) include an assessment of the supervisory procedures and practices in place at the branch, as well as the quality of execution of those procedures;
- b) address all significant aspects of the Member's policies and procedures manual and MFDA By-laws, Rules and Policies; and
- c) include interviews with branch supervisors and a selection of other Approved Persons along with substantive testing to verify the accuracy of information that is provided in the interviews. Substantive testing should involve reviewing client files, trade blotters, trust account records, advertising and marketing material and other relevant records.

MFDA Policy No. 5, at pp.1-2

51. A Member's branch and sub-branch review program is an important way of evaluating whether Approved Persons are aware of and complying with their regulatory obligations. If a Member is not visiting each of its business locations in compliance with Policy No. 5, there is an increased risk that if an Approved Person at a branch or sub-branch has engaged in conduct that is

inconsistent with regulatory requirements or with the Member's policies or procedures, such conduct will not be detected early enough to prevent serious problems from occurring, including risks of client harm.

52. MFDA Hearing Panels have consistently found Members in breach of both MFDA Policy No. 5 and Rule 2.5.1 where Members have not conducted branch and sub-branch reviews at all of their business locations, within the time periods specified in the Policy No. 5. See, for example:

Sentinel Financial Management Corp. (Re), 2018 LNCMFDA 184
De Thomas Wealth Management Corp. (Re), MFDA File No. 2018133, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 25, 2019
Peak Investment Services Inc., MFDA File No. 202038, Settlement Agreement dated July 30, 2020 accepted by an MFDA Hearing Panel on August 5, 2020

Contravention #3 - Nominee Name Reconciliations

53. The Respondent became a Level 4 Mutual Fund Dealer on March 31, 2015, and in that capacity was permitted to hold client securities in the name of the dealer (nominee name accounts).

54. With this responsibility, however, came a corresponding obligation on the Respondent to maintain evidence of monthly reconciliations of its nominee name accounts holdings so that it could show that it has accounted for all securities that it is holding in its own name on behalf of clients and that any shortfall does not detrimentally affect its capital position.

MFDA Policy No. 4
MFDA Rule 2.9

55. MFDA Rule 2.9 says that:

Every Member shall establish and maintain adequate internal controls as prescribed by the Corporation from time to time.

56. MFDA Policy No. 4 entitled "Internal Control Policy Statements" contains a statement that prescribes requirements for and provides guidance on compliance with MFDA Rule 2.9.

57. Among other things, MFDA Policy No. 4 under the section entitled "Trading – Nominee Name Accounts" requires that:

...

2. At least monthly the information system produces a report (e.g. client positions) of securities owned by clients but registered in the name of or held by the Member that requires segregation and a reconciliation with third party information (e.g. monthly statements from the fund company) is performed to identify deficiencies.

...

4. There is supervisory review or other procedures in place to ensure the completeness and accuracy of the report of client holdings produced by the Member's information systems.

58. The Respondent has admitted that prior to July 2016, it failed to maintain evidence of any nominee named mutual fund asset reconciliation process that had been implemented.

(ii) The Respondent's Experience in the Capital Markets, Level of Activity in the Capital Markets, and Past Conduct

59. The Respondent has been a Member of the MFDA since February 8, 2002. It is registered as a mutual fund dealer and exempt market dealer in the Provinces of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, Quebec and the Northwest Territories. As of April 30, 2020, it maintained 11 branches and 188 sub-branches.

60. With respect to the Respondent's past conduct, this is its third offence and second compliance related offence.

61. Specifically, the Respondent has been disciplined in two Settlement Hearings held before MFDA Hearing Panels: one in 2008; and the other in 2013.

- *Portfolio Strategies Corporation (Re)*, 2008 LNCMFDA 13
- *Portfolio Strategies Corp. (Re)*, 2013 LNCMFDA 5

62. At the outset of this hearing, the Panel was provided with the Settlement Agreements that were the subject of the 2008 and 2013 proceedings, respectively.

63. Counsel for both parties submitted that of the two previous discipline matters, the 2013 decision was factually more relevant to these proceedings because it dealt with trade supervision and KYC record keeping while the 2008 decision dealt with a fact situation which involved a failure to follow up on a client complaint.

64. Staff pointed out that the proposed penalty which has been agreed to in these proceedings has taken into account the Respondent's disciplinary record having particular regard to the

monetary penalty which was agreed to in the 2013 proceedings. In that case, the Hearing Panel approved a fine of \$35,000, with costs of \$5,000.

65. In these proceedings, Staff pointed out that the monetary penalty which has been agreed to is more than double what was approved by the Hearing Panel in 2013.

66. The reason for this increase, Staff submitted, relates to: the nature of the conduct; the fact that there were multiple compliance deficiencies; the fact that this was the Respondent's second compliance related offence; and consideration of the trend in other similar decisions – all of which pointed to a need to escalate the penalty in order to satisfy an appropriate amount in all of the circumstances in this matter.

(iii) The Respondent's Recognition of the Seriousness of its Misconduct and Corrective Measures implemented by the Respondent after the Misconduct

67. By entering into this Settlement Agreement and admitting to the conduct that is the subject of these proceedings, the Respondent has recognized the seriousness of its misconduct.

68. Staff submitted that the Respondent has co-operated with Staff's investigation and by entering into the Settlement Agreement has reduced the length and complexity of the disciplinary proceeding that might have been necessary if the matter had proceeded as a contested hearing.

69. We note, as well, that the Respondent has already taken steps to address the deficiencies identified from the 2016 and 2018 Sales Compliance Examinations, as well as the 2016 and 2017 Financial Compliance Examinations. These steps include:

- a) On July 15, 2018, the Respondent implemented a revised version of its policies and procedures in order to address its compliance deficiencies;

Settlement Agreement, para.53

- b) Starting on January 9, 2017, the Respondent implemented revised policies and procedures concerning the suitability of DSC Mutual Fund trades;

Settlement Agreement, para.42

- c) In December 2017, the Respondent implemented a proper branch review program for which it hired dedicated audit staff;

Settlement Agreement, para.48

- d) As of July 31, 2017, the Respondent has taken steps to improve its internal controls and reconciliation procedures in order to ensure that records of the monthly reconciliations are maintained in compliance with MFDA Rules 2.9 and 5 and MFDA Policy No. 4;

Settlement Agreement, para.51

- e) Starting in June 2017, the Respondent made significant staffing changes in direct response to the compliance deficiencies which are the subject of these proceedings. On June 20, 2017, it terminated the Chief Compliance Officer who was in place during the period of time which gave rise to the compliance deficiencies and at the same time, the Respondent terminated its Vice-President of Operations;

Settlement Agreement, paras.20-22

- f) On June 22, 2017, the Respondent hired a new CCO who started work on July 18, 2017, and who was registered as the Respondent's CCO as of August 2, 2017. Once hired, the new CCO worked cooperatively with MFDA compliance to address the Respondent's compliance deficiencies; and

Settlement Agreement, paras.23-24

- g) The Approved Persons whose accounts were found to have compliance deficiencies regarding the suitability of concentration are no longer with the Respondent: in one case the Respondent terminated the Approved Person's registration; and in the other case, the Respondent accepted the Approved Person's voluntary resignation.

Settlement Agreement, paras.30 & 40

70. Both parties spent considerable time in their submissions focusing on the individual who was the CCO during the period which is the subject of these proceedings. It is a matter of public

record that that individual was Mr. Kenneth Parker. At the outset of this hearing, the parties gave the Panel a Notice of Settlement Hearing in File No. 202025 dated July 31, 2020, regarding Mr. Parker.

71. The Notice stated that the Settlement Agreement which will be the subject of that Settlement Hearing, concerns allegations that the Respondent "failed to adequately fulfill certain responsibilities as Chief Compliance Officer of Portfolio Strategies Corporation, contrary to MFDA Rule 2.5.3(b)".

72. Staff submitted that in bringing this information to the Panel's attention it was confirming to the Panel that disciplinary action is being taken regarding the CCO who was in place during the period of time which gave rise to the compliance deficiencies which are the subject of these proceedings.

73. In making that submission, however, Enforcement Counsel stressed that it is the Member who ultimately bears responsibility for any deficiencies or failures and that the proceedings regarding Mr. Parker do not relieve the Member of its fundamental obligations, including its obligation to ensure that Mr. Parker, as its CCO, was conducting his duties in an appropriate manner, consistent with the By-laws, Rules and Policies of the MFDA.

74. Counsel for the Respondent submitted that the disciplinary proceedings which are being taken against Mr. Parker are a central factor in this case. In making that submission, however, she confirmed that the Respondent was not saying that this was either a defence or excuse for the contraventions to which the Respondent has admitted in these proceedings.

75. Respondent's counsel also pointed out, as the Settlement Agreement which is the subject of these proceedings identifies, that prior to joining the Respondent, Mr. Parker worked in the securities industry for approximately 20 years including holding senior positions with a provincial securities regulator and as the CCO of a different Member.

76. Counsel for the Respondent and Mr. Kent, himself, also stressed that the Respondent acted quickly and decisively in terminating and replacing Mr. Parker.

77. The Panel acknowledges that Members can only act through the individuals they hire and that when an individual fails to perform their duties in accordance with the obligations imposed upon them by the Member and the regulator, that certainly affects the Member's abilities to carry out its own obligations.

78. We confirm, however, that that does not diminish or excuse a Member's obligations to comply with all of the regulatory, statutory and contractual obligations it owes to clients.

79. In this case, the Panel notes that there were multiple compliance deficiencies which occurred over a considerable timeframe and which the MFDA brought to the Respondent's attention on a number of occasions, before the Member actually terminated the CCO who was in place during the time those deficiencies occurred.

80. Nonetheless, Enforcement Counsel submitted that the steps which the Respondent has taken to address the deficiencies and contraventions which are the subject of the Settlement Agreement, as identified at paragraph 69 above, are considerable mitigating factors for the Panel to take into account in its deliberations.

81. We agree.

82. In approving the Settlement Agreement, the Panel also acknowledges the Respondent's submission that the remedial steps were undertaken before the MFDA commenced its proceedings.

(iv) Client Harm

83. There is no evidence that any client harm resulted from the Respondent's conduct although deficient supervisory processes certainly increase the risk that potential client harm may go undetected or that preventable harm may not be addressed before serious problems occur.

(v) Deterrence

84. The Panel agrees with Staff's submission that the proposed fine of \$100,000 and costs of \$10,000, constitute a substantial penalty which advances the goals of both specific and general deterrence, having regard to the facts set out in the Settlement Agreement.

85. In this regard, the Panel notes that the fine is more than double the \$35,000 fine that was approved by the Hearing Panel in the 2013 discipline matter involving the same Respondent. We agree with Staff's submission that the escalation of the financial penalty will deter the Respondent from failing to address the type of compliance deficiencies that are described in the Settlement Agreement and any future deficiencies that may be brought to its attention.

(vi) Public Interest and Proportionality

86. We find it is in the public interest to accept the Settlement Agreement which was reached as the result of significant negotiations between the parties, both of whom were represented by senior, experienced counsel and the proposed penalty is proportionate having regard to all of the circumstances of this matter.

(vii) Integrity of the Capital Markets and the Regulatory Process

87. We find that the proposed penalty clearly conveys that the Respondent's misconduct constitutes serious regulatory contraventions that have resulted in significant penalties.

88. Further, by revealing the extent and nature of the misconduct that the Respondent engaged in and imposing significant penalties as a consequence, the Settlement Agreement will foster confidence in the integrity of the capital markets and in the regulatory process, in furtherance of the MFDA's objective to enhance investor protection and ensure high standards of conduct in the mutual fund industry.

(viii) Previous Decisions in Similar Cases

89. In her submissions, counsel for the Respondent confirmed that in negotiating the terms of the Settlement Agreement both counsel spent significant time scrutinizing and analyzing previous decisions in similar cases in order to agree upon the most appropriate penalty in the circumstances.

90. The following chart references the cases which Staff submitted, concern similar misconduct and the penalties that were imposed and agreed upon in those cases:

Case	Facts	Outcome
PSC 2 (Re) ²	<ul style="list-style-type: none"> The Respondent admitted that it failed to adequately supervise some trades; maintain adequate records of trade supervision that was conducted; and establish and implement adequate policies and procedures to supervise leveraging recommendations 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$35,000 Costs of \$5,000
Sentinel (Re) ³	<ul style="list-style-type: none"> The Respondent admitted that it failed to adequately conduct trade supervision to ensure recommendations were suitable for clients, failed to perform supervisory inquiries, failed to adequately supervise two APs under close supervision, and failed to conduct AP reviews. The Respondent spent \$49,000 for an external monitor, \$1,300 in new training for the new CCO, and \$18,250 for an interim branch manager. This was a second compliance related offense. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$75,000 Costs of \$10,000
Equity Associates Inc. (Re) ⁴	<ul style="list-style-type: none"> The Respondent admitted that it failed to supervise or maintain adequate records of its Head Office, branch and sub-branch activity including KYC amendments, new account openings, daily trading, and leverage, failed to establish and maintain adequate policies and procedures to conduct trend analysis, failed to maintain adequate compliance resources, failed to maintain adequate records of supervision of uniformity of KYC and concentration, failed to conduct an adequate RSI regarding an AP being charged with criminal offenses, and failed to conduct an RSI regarding suitability and concentration concerns for another AP. The Respondent subsequently hired a consultant to conduct reviews on the Member's leveraged accounts. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> Fine of \$125,000 Costs of \$20,000

² *Portfolio Strategies Corporation (Re)*, 2013 LNCMFDA 5

³ *Sentinel (Re)*, *supra*

⁴ *Equity Associates Inc. (Re)*, 2018 LNCMFDA 193 (MFDA File No. 201716)

Case	Facts	Outcome
Investia Financial Services Inc. and FundEX Investments Inc. (Re) ⁵	<ul style="list-style-type: none"> • The Respondent admitted that it failed to adequately establish, implement, and maintain policies for the supervision of trades and excessive trading, new account opening and leveraging, failed to ensure adequate controls and supervision were in place to prevent former Approved Persons from engaging in securities related business and outside activities, and failed to conduct a reasonable supervisory investigation with respect to Approved Person. • The conduct arose out of two MFDA sales compliance examinations. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$100,000 • Costs of \$15,000 • Requirement to implement revised policies and procedures and leverage review action plan
Investia Financial Services Inc. (Re) ⁶	<ul style="list-style-type: none"> • The Respondent admitted that it: <ul style="list-style-type: none"> • Failed to adequately supervise, establish, and maintain adequate internal controls relating to the outside business activities of four separate Approved Persons; • Failed to adequately supervise, establish, and maintain adequate internal controls relating to an approved person who had altered KYC information in clients' accounts without the clients' knowledge or authorization; and • Failed to inform and report to at least 2 clients that an approved person had altered KYC information in the clients' accounts without the clients' knowledge or authorization. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$200,000 • Costs of \$20,000

⁵ *Investia Financial Services Inc. and FundEX Investments Inc. (Re)*, 2012 LNCMFDA 31 (MFDA File Nos. 200932 and 201031)

⁶ *Investia Financial Services Inc. (Re)* 2017 LNCMFDA 201 (MFDA File No. 2016113)

Case	Facts	Outcome
Queensbury Strategies Inc. (Re) ⁷	<ul style="list-style-type: none"> • The Respondent admitted, as a result of a MFDA sales compliance examination, that • It 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; • It failed to have adequate back office system controls; and • It failed to adequately supervise an approved person and conduct a reasonable supervisory investigation. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$35,000 • Costs of \$2,500
De Thomas Wealth Management Corp (Re) ⁸	<ul style="list-style-type: none"> • De Thomas admitted that it failed to conduct sub- branch reviews at all business locations at least once every three years • De Thomas admitted that it failed to adequately supervise an AP when the Member approved and permitted the AP to sell syndicated mortgages outside of the Member. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • \$40,000 fine • \$10,000 costs
Professional Investment Services (Canada) Inc. (Re) ⁹	<ul style="list-style-type: none"> • The Respondent admitted that: it failed to carry out terms of an A&U with Staff; • The Respondent admitted that between March 2007 and Dec 2008, it failed to: <ul style="list-style-type: none"> • establish and implement branch review program • review and approve all KYC information • ensure KYC information was accurately recorded on its back-office system • ensure KYC for all client accounts; • timely approval of opening client accounts and • implement a 2 tier supervision structure and retain evidence of trade review 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$50,000 • Costs of \$25,000 • Independent Monitor with a \$250,000 retainer to PwC

⁷ *Queensbury Strategies Inc. (Re)*, 2011 LNCMFDA 28 (MFDA File No. 201033) Settlement Agreement 2011 LNCMFDA 26

⁸ *De Thomas, supra*

⁹ *Professional Investment Services (Canada) Inc., (Re)* 2009 LNCMFDA 24

Case	Facts	Outcome
Sterling Mutuals Inc. (Re) ¹⁰	<ul style="list-style-type: none"> • The Respondent admitted that: <ul style="list-style-type: none"> • It failed to implement adequate head office trade supervision including maintaining evidence of trade reviews; • It failed to implement an adequate trade or business style name approval process • Failed to deliver client name account statements that were compliant with Rule 5.3.3 • Failed to establish an adequate two tier compliance structure <p>This was the Respondent's first disciplinary proceeding.</p>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$50,000 • Costs of \$5,000 • Ordered to retain an Independent Monitor (Consultant) to address its deficiencies
Peak Investment Services Inc. (Re) ¹¹	<ul style="list-style-type: none"> • The Respondent admitted that: <ul style="list-style-type: none"> • It failed to review branches and sub-branches within 3 years as required by MFDA Policy No 5 • It failed to make timely reports to the MFDA on the Member Event Tracking System • It failed to conduct reasonable supervisory investigations after discovering potential misconduct of Approved Persons <p>The Respondent was also prosecuted by the AMF for different compliance deficiencies and paid a \$200,000 fine and \$20,000 in costs</p> <p>The Respondent hired a new CCO, hired 10 additional compliance staff and spent over \$1 Million on legal and consulting fees to improve its policies and procedures</p>	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$75,000 • Costs of \$15,000

VI. CONCLUSION

91. Having reviewed the Settlement Agreement and heard submissions from Staff, counsel for the Respondent and from the President and CEO of the Respondent, the Panel is satisfied that the 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 in all of the circumstances.

¹⁰ *Sterling, supra*

¹¹ *Peak Investment Services Inc., supra*

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

DATED this 30th day of November, 2020.

“Sherri Walsh”

Sherri Walsh
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Charlene Snell”

Charlene Snell
Industry Representative

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