



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

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

Re: Sentinel Financial Management Corp.

Heard: August 28, 2018 in Saskatoon, Saskatchewan

Decision: August 28, 2018

Reasons for Decision: September 14, 2018

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Graham Price
James Samanta
Greg Wiebe

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
)	
Frederic D. Wing)	President of the Respondent and
)	Ultimate Designated Person
)	
)	

Background

1. By Notice of Settlement Hearing, dated August 8, 2018, and duly served upon Sentinel Financial Management Corp. (the “Respondent”) by the Mutual Fund Dealers Association of Canada (“MFDA”) a settlement hearing was heard in Saskatoon, Saskatchewan on August 28, 2018.

2. Counsel for the MFDA and Mr. Wing put before the Panel agreed facts and a settlement agreement and made settlement recommendations and various submissions. The Respondent agreed with Staff’s submissions.

3. At the commencement of the hearing, Mr. Samanta disclosed his prior work involvement with Mr. Wing. That involvement did not concern matters arising in this hearing. Mr. Wing confirmed he had no objection to Mr. Samanta being on the Panel.

Agreed Facts

4. The agreed facts are set out in Section IV of the Settlement Agreement, dated August 9, 2018, between the MFDA and the Respondent and marked Exhibit 2 in this hearing.

5. Those agreed facts follow.

Registration History

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

7. The Respondent has been a Member of the MFDA since May 10, 2002.

Corporate Structure

8. The Respondent’s head office is located in Saskatoon, Saskatchewan (the “Head Office”). Presently, the Respondent has sub-branch offices located throughout the provinces of Saskatchewan and Alberta.

Prior Disciplinary History

9. On or about May 6, 2011, the Respondent entered into a Settlement Agreement with the MFDA due to deficiencies arising out of 2007 and 2009 MFDA Compliance Examinations.¹ The Respondent admitted that it:

- a) failed to conduct proper Tier 2 trade supervision on a daily basis to:
 - i. ensure that each order accepted and each recommendation made for an account of a client is suitable for the client and in keeping with that client's investment objectives;
 - ii. ensure that sales of exempt securities were made in accordance with applicable exemptions and other regulatory requirements;
 - iii. ensure that the handling of the Respondent's business was in accordance with the By-laws, Rules and Policies of the MFDA and applicable securities legislation; and
- b) failed to maintain adequate records of trade supervision undertaken including inquiries made, responses received and resolutions achieved following supervisory inquiries;

contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2.

10. On or about July 14, 2011, a Hearing Panel of the MFDA Prairie Regional Council accepted the Settlement Agreement, which required the Respondent to pay a fine in the amount of \$35,000, comply with all applicable MFDA By-laws, Rules and Policies, and applicable securities legislation, and pay costs in the amount of \$2,500.

The 2012 Sales Compliance Examination

11. MFDA Staff conducted a sales compliance examination of the Respondent's Head Office and 3 sub-branch locations from the period of March 1, 2009 to June 30, 2012 (the "2012 Examination"). The 2012 Examination identified compliance deficiencies in the operations of the Respondent, including:

- a) failing to ensure that each order accepted and each recommendation made for an account of a client was suitable for the client and in keeping with that client's documented KYC information; and
- b) the Respondent did not conduct adequate follow-up on the responses required and/or received to address issues identified in their Approved Person reviews.

¹ The 2007 MFDA Compliance Examination covered the Respondent's sales practices from October 1, 2004 to January 31, 2007. The 2009 MFDA Compliance Examination covered the Respondent's sales practices from February 1, 2007 to February 28, 2009.

The 2016 Sales Compliance Examination

12. Commencing on March 14, 2016, MFDA Compliance Staff conducted a sales compliance examination (the “2016 Examination”) at the Head Office and at three sub-branch offices of the Respondent (two sub-branches located in Saskatoon, Saskatchewan and one sub-branch located in Okotoks, Alberta) in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period of July 1, 2012 to January 31, 2016.

13. The results of the 2016 Examination were summarized and delivered to the Respondent in a report dated July 19, 2016 (the “2016 Report”).

14. As described in greater detail below, the 2016 Report identified compliance deficiencies including, but not limited to:

- a) the failure to perform adequate supervision in the areas of trade and account supervision and supervisory queries;
- b) the failure to adequately supervise two Approved Persons under close supervision; and
- c) the failure to conduct sub-branch and Approved Person reviews, either adequately or at all.

Inadequate Supervision of Trades and Accounts

15. During the 2016 Examination, MFDA Compliance Staff identified deficiencies in the Tier 1 trade supervision conducted by the Respondent’s Head Office.

16. The Respondent failed to perform supervisory queries to ensure that each order accepted and each recommendation made for client accounts was suitable for clients and in keeping with those clients’ investment objectives and KYC information, contrary to MFDA Rule 2.2.1(c) and MFDA Policy No. 2.

17. In particular, MFDA Compliance Staff identified instances where client accounts held investments that were inconsistent with those clients’ documented KYC information, where the Respondent failed to conduct a supervisory inquiry.

18. The Respondent also failed to adequately perform supervisory inquiries, and failed to maintain adequate records of trade supervision conducted including inquiries made, responses received, and resolutions achieved following supervisory inquiries, contrary to MFDA Rule 2.2.1(c) and MFDA Policy No. 2.

19. In particular, MFDA Compliance Staff identified the following deficiencies in the Respondent’s Tier 1 supervisory query process:

- a) instances where the Respondent's supervisory staff did not identify all of the issues that required a query;
- b) instances where an Approved Person did not provide a response to a supervisory query and there was no evidence of follow-up from the Respondent;
- c) instances where supervisory queries were performed, but the Approved Person's response was inadequate and the clients' account holdings remained inconsistent with the clients' stated KYC information;
- d) instances where supervisory queries were not conducted in a timely manner;
- e) instances where there were no records documenting the date and details of the resolutions to a supervisory query; and
- f) one instance where the Approved Person's response to address the query was not adequately executed and the issue remained outstanding with no evidence of follow-up from the Respondent.

Failure to Adequately Supervise Activity of Approved Persons Under Close Supervision

20. During the 2016 Examination, MFDA Compliance Staff identified that the Respondent failed to adequately supervise the activity of two Approved Persons in two Saskatoon, Saskatchewan sub-branches of the Respondent, contrary to MFDA Rules 2.5.1, 2.2.1(a), 2.2.1(c), and 2.2.2.

Approved Person TM

21. MFDA Compliance Staff identified that Approved Person TM, who was located at the Respondent's sub-branch at 300 Edson Street, Saskatoon, Saskatchewan, was placed under close supervision commencing in June 2015. MFDA Compliance Staff identified the following deficiencies with respect to Approved Person TM's practice that the Respondent's supervisory staff failed to query:

- a) instances where client accounts held investments that were inconsistent with the clients' documented KYC information, as previously described in paragraph 16, above;
- b) instances where New Account Application Forms and/or KYC update forms appeared to have KYC information collected to match the holdings in the client's account; and
- c) instances where New Account Application Forms / KYC update forms contained alterations to a client's KYC information with no evidence the alterations were authorized or initialed by the client.

Approved Person JW

22. MFDA Compliance Staff identified that Approved Person JW, who was located at the Respondent's sub-branch at 716-2nd Avenue North, Saskatoon, Saskatchewan, was placed under close supervision commencing in April 2013. MFDA Compliance Staff identified the following

deficiencies with respect to Approved Person JW that the Respondent's supervisory staff either failed to query, or where queries were made, failed to adequately follow up and the deficiencies remained outstanding:

- a) instances where client accounts held investments that were inconsistent with the clients' documented KYC information, as previously described in paragraph 16, above;
- b) instances where KYC update forms appeared to have KYC information collected to match the holdings in the client's account; and
- c) instances where New Account Application Forms / KYC update forms contained alterations to a client's KYC information with no evidence the alterations were authorized or initialed by the client.

Inadequate Supervision and Inadequate Due Diligence With Respect to Exempt Market Products

23. During the 2016 Examination, MFDA Compliance Staff identified deficiencies in the Respondent's due diligence with respect to exempt market products.

24. The Respondent failed to ensure that the purchase of exempt market products was suitable for clients and in keeping with those clients' investment objectives and KYC information, contrary to MFDA Rule 2.2.1(c), and MFDA Policy No. 2.

25. In particular, MFDA Compliance Staff identified that:

- a) the Respondent failed to perform an independent and objective review of exempt market products;
- b) the Respondent's policies and procedures inadequately addressed concentration thresholds for exempt market products by setting thresholds in relation to the client's net worth, but failing to set thresholds in relation to the total value of the client's financial assets; and
- c) the Respondent's policies and procedures contained outdated and potentially misleading information with respect to several exempt market products, where various mortgage investment corporation exempt market products were classified under the Respondent's policies and procedures manual as "income" products, despite the fact that the Respondent considered all exempt market products to only be suitable for clients with a high risk tolerance and an aggressive growth objective.

26. The Respondent also failed to perform supervisory inquiries with respect to exempt market products, contrary to MFDA Rule 2.2.1(c), and MFDA Policy No. 2. These failures included:

- a) failing to query client accounts which held exempt market products that were inconsistent with the clients' documented KYC information;

- b) failing to query the reasonableness of purchasing exempt market products for clients over the age of 60; and
- c) failing to query inconsistencies in the KYC information of clients holding exempt market products, including clients whose recorded KYC information included an investment objective of “100% growth” or “100% aggressive”, a risk tolerance of “100% high”, but who were over the age of 60 and had a short term time horizon of 1 – 4 years.

Failure to Conduct Sub-Branch Reviews

27. During the 2016 Examination, MFDA Compliance Staff identified that the Respondent failed to conduct sub-branch reviews, either adequately or at all, contrary to MFDA Policy 2 and MFDA Policy 5.

28. In particular, the Respondent:

- a) failed to conduct reviews of 3 newly registered sub-branches;
- b) failed to conduct reviews of 11 existing sub-branches within the time period required under MFDA Policy No. 3; and
- c) failed to conduct timely reviews of 4 existing sub-branches.

Action Taken by the Financial and Consumer Affairs Authority of Saskatchewan

29. The Respondent’s conduct, as described above, is also the subject of an investigation by the Financial and Consumer Affairs Authority of Saskatchewan (the “FCAA”). The Respondent and the FCAA agreed to terms and conditions to be placed on the Respondent’s registration status in Saskatchewan, which are as follows:

- a) the Respondent may not act as a dealer by processing any new purchases in securities that are distributed under an exemption from the prospectus requirement;
- b) the Respondent may not, without the prior written consent of Staff of the MFDA, hire or retain any new dealing representatives or open any new branch or sub-branch locations;
- c) the Respondent shall agree to retain a Monitor acceptable to the MFDA to address and correct the outstanding compliance deficiencies identified by the MFDA and to provide training to the Chief Compliance Officer (“CCO”) and other compliance staff;
- d) the Monitor shall report directly to the MFDA and the Ultimate Designated Person (“UDP”) of the Respondent; and
- e) the Respondent shall hire and maintain a minimum of two full time compliance staff, which includes the CCO.

Additional Factors

30. Since October 2016, the Respondent has ceased selling exempt market products.
31. In November 2016, the Respondent notified its former UDP and CCO that he would be transitioned out of the role of UDP and CCO as a result of the issues that are the subject of this settlement agreement.
32. Since November 4, 2016, the Respondent has had a new UDP.
33. In November 2016, the Respondent hired an interim Branch Manager to assist during the transition to a new Branch Manager and training of a new CCO, incurring a cost of approximately \$18,250 in doing so.
34. In November 2016, in accordance with the terms and conditions described above, the Respondent hired an external monitor to assist in improving the Respondent's branch and Approved Person review program. The Respondent states that the external monitor has assisted in implementing various procedural changes, updates, and enhancements to the Respondent's policies and procedures, and has overseen the Respondent's ongoing Approved Person reviews. The Respondent states that it has incurred a cost of approximately \$49,000 to date with respect to the external monitor, who has been retained until at least December 31, 2018.
35. On June 6, 2017, the Respondent hired a new CCO. The Respondent states that it has incurred a cost of approximately \$1,300 in proficiency and training courses with respect to the new CCO.
36. The Respondent has represented that it has taken steps to improve its internal processes and procedures with respect to trade suitability, as well as its trade supervision process, in order to correct the deficiencies identified during the 2016 Examination. The Respondent has also represented that it will be conducting sub-branch and Approved Person reviews as necessary in order to comply with MFDA Policy 5. The MFDA will be conducting follow-up examinations of the Respondent to determine whether its compliance deficiencies have been corrected.
37. The Respondent states the following with respect to Approved Persons TM and JW:
- a) Effective June 4, 2018, Approved Person TM is no longer registered with the Respondent; and
 - b) Effective June 30, 2018, Approved Person JW has retired and is no longer registered with the Respondent.
38. In addition, the Respondent has revised its complaint handling procedures. The Respondent has resolved all client complaints where the Respondent had refused a recommendation to compensate a client issued by the Ombudsman for Banking Services and Investments. The

Respondent represents that it will continue to utilize its revised complaint handling procedures to ensure that all client complaints are handled in accordance with MFDA Policy No. 3.

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

Contraventions

40. The Respondent admits to the following contraventions of the Rules and Policies of the MFDA:

- a) Between July 2012 and July 2016, it failed to adequately conduct proper Tier 1 trade supervision to:
 - i. ensure that each order accepted and each recommendation made for client accounts, including client accounts holding exempt market products, were suitable for the clients and in keeping with those clients' investment objectives and "Know Your Client" information; and
 - ii. perform supervisory inquiries, either adequately or at all, and failed to maintain adequate records of trade supervision conducted including inquiries made, responses received, and resolutions achieved following supervisory inquiries, including with respect to exempt market products;

contrary to MFDA Rule 2.2.1(c), and MFDA Policy No. 2;

- b) Commencing April 2013, it failed to adequately supervise the activity of an Approved Person, JW, who was under close supervision, including activity with respect to deficiencies in trade suitability and the collection of "Know Your Client" information, contrary to MFDA Rules 2.5.1, 2.2.1(a), 2.2.1(c), and 2.2.2;
- c) Commencing in June 2015, it failed to adequately supervise the activity of an Approved Person, TM, who was under close supervision, including activity with respect to deficiencies in trade suitability and the collection of "Know Your Client" information, contrary to MFDA Rules 2.5.1, 2.2.1(a), 2.2.1(c), and 2.2.2; and

- d) Commencing in July 2012, it failed to complete reviews of sub-branches and their Approved Persons, either adequately or at all, contrary to MFDA Policy No. 2 and MFDA Policy No. 5.

Settlement Agreement, at paras. 40-43.

Terms of Settlement

41. If the Settlement Agreement is accepted, the Respondent will receive the following penalty:

- a) The Respondent shall pay a fine in the amount of \$75,000, pursuant to section 24.1.2(b) of MFDA By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$10,000, pursuant to section 24.2 of MFDA By-law No. 1; and
- 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(a), 2.2.1(c), 2.2.2, 2.5.1, and MFDA Policies No. 2 and 5.

Settlement Agreement, at para. 44.

42. For the reasons set out below, Staff submits that it is in the public interest for the Hearing Panel to accept the Settlement Agreement.

THE LAW

43. The relevant MFDA provisions in this matter are:

Law	Details of Provision	Book of Authorities
Sections 20, 24.1.2, 24.1.4, 24.2, 24.4 of MFDA By-law No. 1	Power of hearing panels to discipline Members, approve Settlement Agreements and order the payment of costs	Tab 1
Rules 14 and 15 of the MFDA Rules of Procedure	Rules relevant to MFDA settlement hearings	Tab 2

MFDA Rule 2.2.1	Know Your Client	Tab 3
MFDA Rule 2.2.2	New Accounts	Tab 4
MFDA Rule 2.5.1	Member Responsibilities	Tab 5
MFDA Policy 2, dated September 12, 2013	Minimum Standards for Account Supervision	Tab 6
MFDA Policy 5, dated July 24, 2006	Branch Review Requirements	Tab 7

Factors Concerning Acceptance of a Settlement Agreement

44. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement referred to it on the recommendation of Staff. The Hearing Panel shall either accept the settlement agreement or reject it.

MFDA By-law No.1, Staff's Book of Authorities, Tab 1.

45. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, citing the I.D.A. Ontario District Council in *Milewski (Re)*:

“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.” [Emphasis added.]

Sterling Mutuals Inc. (Re), MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at p. 9, Staff's Book of Authorities, Tab 8.

Milewski (Re), [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999, Staff's Book of Authorities, Tab 9.

46. Hearing Panels have also held that settlements worked out by the parties should be respected, as panels do not know what led to the settlement, or what was given up by the parties during the course of the negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement is likewise a factor to consider.

Fike (Re), MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017 at paras. 22-23, Staff's Book of Authorities, Tab 10.

47. Settlements assist the MFDA in meeting its regulatory objective of protecting the public by proscribing activities that are harmful to the public, and by enabling flexible remedies tailored to the interests of both the MFDA and a respondent. The ability of the MFDA to enter into settlements is enhanced where Hearing Panels do not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness.

British Columbia Securities Commission v Seifert, 2007 BCCA 484 at para. 31, Staff's Book of Authorities, Tab 11.

48. In past cases, 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 settlement agreement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) Whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) Whether the settlement agreement will foster confidence in the regulatory process itself.

Sterling Mutuals Inc. (Re), *supra*, at pp. 8-9 and the decisions cited therein, Staff's Book of Authorities, Tab 8.

MFDA Penalty Guidelines

49. The MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed pursuant to a settlement agreement. The penalty types and ranges stated in the Penalty Guidelines are not mandatory or binding; they are intended to provide a basis upon which a Hearing Panel’s discretion can be exercised consistently in like circumstances.

Excerpts from the MFDA Penalty Guidelines, Staff’s Book of Authorities, Tab 12.

50. In cases involving misconduct of the type admitted to in the present case, the Penalty Guidelines recommend consideration of the following penalties and factors:

BREACH	PENALTY TYPE & RANGE	SPECIFIC FACTORS TO CONSIDER
Supervision (Guidelines, p. 21)	<ul style="list-style-type: none"> • Fine (Member): Minimum of \$25,000. • Condition that 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. • Suspension. • Termination in egregious cases. 	<ul style="list-style-type: none"> • Extent of inadequacy in the procedures for supervision or the actual supervision of employee(s). • Extent of employee(s) misconduct. • Amount of losses or compensation for which the Member is liable as a result of the employee(s) misconduct. • “Red flag” warnings that should have been caught by a proper system of supervision or follow-up. • Corrective measures taken since discovery of problem. • Intentional or reckless disregard for requirements, or whether due to carelessness or inadvertence.
Suitability and Know Your Client (Guidelines, p. 22)	<ul style="list-style-type: none"> • Fine: Minimum of \$10,000. • Write or rewrite an appropriate industry course (e.g. Canadian Investment Funds Course). • Period of increased supervision. • Suspension. • Termination in egregious cases. • Permanent prohibition in egregious cases. 	Suitability <ul style="list-style-type: none"> • Extent of research conducted by the Approved Person with respect to the recommended security. • Magnitude of losses directly attributable to the unsuitable recommendations. • The number of clients affected. • The level of sophistication of the clients. • The existence of any pattern of making unsuitable recommendations. • Presence of any ulterior motive (i.e. financial gain to the Respondent) • Evidence that client was misled as to the suitability of the investment. • Evidence that Approved Person attempted to cover-up or conceal unsuitable investments. Know Your Client <ul style="list-style-type: none"> • Nature and extent of failure to know your client.

		<ul style="list-style-type: none"> • Magnitude of losses directly attributable to the failure to know your client. • The level of sophistication of the client. • Extent of due diligence conducted to determine the essential facts of the client.
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Excerpts from the MFDA Penalty Guidelines at pp. 21-23, Staff’s Book of Authorities, Tab 12.

Appropriateness of the Proposed Penalty

51. The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is protection of the investor.

Pezim v British Columbia (Superintendent of Brokers), [1994] 2 SCR 557 (SCC) at paras. 59, 68, Staff’s Book of Authorities, Tab 13.

Breckenridge (Re), MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 74, Staff’s Book of Authorities, Tab 14.

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

Pezim v British Columbia (Superintendent of Brokers), *Supra*, at paras. 59, 68, Staff’s Book of Authorities, Tab 13.

53. Factors that hearing panels frequently consider when determining whether a 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.

Breckenridge (Re), Supra at para. 74, Staff's Book of Authorities, Tab 14.

APPLICATION IN THE PRESENT CASE

54. The Hearing Panel has taken the factors set out in these Reasons into account concerning the Settlement Agreement with the Respondent, as follows:

i) Nature of the Misconduct: Member Supervision

55. The contraventions that the Respondent has admitted to are serious. They primarily deal with the Member's failure to adequately supervise its approved persons, as well as client trades and accounts, including trades with respect to exempt market products. When there is a failure to conduct proper Tier 1 trade supervision, or supervise approved persons generally, the potential exists for significant client harm and/or losses.

56. As an essential element of investor protection, Members are responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business in accordance with MFDA By-laws, Rules and Policies and with applicable securities legislation.

MFDA Rule 2.5.1, Staff's Book of Authorities, Tab 5.

57. MFDA Rules 2.2.1, 2.5.1 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 Policy No. 2 also emphasizes the importance of preparing and maintaining proper records of action taken in furtherance of this fundamental obligation.

Portfolio Strategies Corporation (Re), MFDA File No. 201122, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated February 13, 2013, Staff's Book of Authorities, Tab 15.

58. MFDA Rule 2.2.2 pertains to the supervision of opening accounts, and requires Members to properly supervise the opening of new accounts to ensure, among other things, that KYC information is duly collected. New accounts must be reviewed and approved by the appropriate person, and records of the approval must be maintained in accordance with MFDA Rule 5.1.

MFDA Rule 2.2.2, Staff's Book of Authorities, Tab 4.

59. Trade and account supervision is an essential element of investor protection and critical to the process of ensuring that, among other things, all trade orders accepted and recommendations made for clients are suitable.

60. In April 2008, the MFDA issued MFDA Staff Notice 0069 entitled Suitability Guidelines ("MSN-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, MSN-0069 stresses the importance of implementing an appropriate and effective trade and account supervision process. MSN-0069 also stresses the MFDA's concerns with respect to exempt market products, which Staff considers to be high risk investments.

MFDA Notice #MSN-0069 dated April 14, 2008 (updated Feb 22, 2013), Staff's Book of Authorities, Tab 16.

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

ii) Nature of the Misconduct: Branch Reviews

62. The Respondent also failed to conduct sub-branch reviews as required under MFDA Policy Nos. 2 and 5. A Member's failure to comply with the MFDA's branch and sub-branch review requirements poses a risk that those branches and sub-branches are not complying with MFDA Rules, Policies, and other regulatory requirements, which in turn could pose a serious risk to investors.

63. MFDA Policy No. 5, which came into effect on July 24, 2006, requires each MFDA Member to establish a Branch Review Program to effectively assess and monitor compliance with regulatory requirements at all branch locations.

MFDA Policy No. 5, dated July 24, 2006, Staff's Book of Authorities, Tab 7.

64. 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, Supra, at pp. 1-2, Staff's Book of Authorities, Tab 7.

65. MFDA Policy No. 5 sets out the requirements for the frequency of the branch review cycle by Members as follows:

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. (Emphasis added)

MFDA Policy No. 5, Supra, at p. 4, Staff's Book of Authorities, Tab 7.

66. In the present matter, the Respondent failed to comply with MFDA Policy 5, as well as its general supervisory obligations under MFDA Policy No 2; by

- a) failing to conduct reviews of 3 newly registered sub-branches;
- b) failing to conduct reviews of 11 existing sub-branches within the time period required; and
- c) failing to conduct timely reviews of 4 existing sub-branches.

Settlement Agreement, at para 28.

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

67. The Respondent is registered as a mutual fund dealer in the provinces of Saskatchewan, Manitoba, Alberta, and British Columbia. The Respondent has been a Member of the MFDA since May 10, 2002. Currently, the Respondent maintains branches and sub-branches in Saskatchewan and Alberta.

Settlement Agreement, at paras. 6-8.

68. The Respondent entered into a Settlement Agreement with Staff on May 6, 2011, as a result of compliance deficiencies identified in 2007 and 2009 MFDA compliance examinations (the "2011 Settlement Agreement"). Those deficiencies included:

- a) the failure to conduct proper Tier 2 trade supervision on a daily basis; and
- b) the failure to maintain adequate records with respect to trade and account supervision.

Settlement Agreement, at para. 9.

69. As a result of the compliance deficiencies raised in the 2011 Settlement Agreement, the Respondent agreed to pay a fine in the amount of \$35,000, and costs of \$2,500.

Settlement Agreement, at para. 10.

Sentinel Financial Management Corp. (Re), MFDA File No. 201034, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated August 25, 2011, Staff's Book of Authorities, Tab 17.

iv) The Respondent's Recognition of the Seriousness of its Misconduct

70. The Respondent has recognized the seriousness of its conduct and the importance of implementing and maintaining compliance procedures that meet the standards set out in the MFDA's Rules and Policies. The Respondent has cooperated at all times throughout the investigation, and entered into the Settlement Agreement, thus reducing the length and complexity of the disciplinary proceeding that might have been necessary.

Settlement Agreement, at paras. 38-39.

71. As a result of the compliance deficiencies that are the subject of this Settlement Agreement, the Respondent also entered into an agreement with the Financial and Consumer Affairs Authority of Saskatchewan that resulted in the imposition of terms and conditions on its registration while changes to its compliance structures could be developed and implemented. Those terms have included that:

- a) the Respondent may not act as a dealer by processing any new purchases in securities that are distributed under an exemption from the prospectus requirement;

- b) the Respondent may not, without the prior written consent of Staff of the MFDA, hire or retain any new dealing representatives or open any new branch or sub-branch locations;
- c) the Respondent shall agree to retain a Monitor acceptable to the MFDA to address and correct the outstanding compliance deficiencies identified by the MFDA and to provide training to the Chief Compliance Officer (“CCO”) and other compliance staff;
- d) the Monitor shall report directly to the MFDA and the Ultimate Designated Person (“UDP”) of the Respondent; and
- e) the Respondent shall hire and maintain a minimum of two full time compliance staff, which includes the CCO.

Settlement Agreement, at para. 29.

72. The Respondent has represented that it has corrected the deficiencies identified from the 2016 MFDA Sales Compliance Examination. It has also taken additional steps to improve its compliance processes generally, as follows:

- a) The Respondent has ceased selling exempt market products;
- b) The Respondent has hired a new UDP;
- c) The Respondent hired an interim Branch Manager, incurring cost of approximately \$18,250 to date;
- d) The Respondent hired an external monitor to implement the changes required to the Respondent’s supervisory processes, incurring a cost of approximately \$49,000 to date, and who has been retained until at least December 31, 2018;
- e) The Respondent hired a new CCO and incurred approximately \$1,300 in proficiency and training courses; and
- f) The two approved persons under close supervision who are the subject of this Settlement Agreement, TM and JW, are no longer registered with the Respondent.

Settlement Agreement, at paras. 30-36.

v) Deterrence

73. Staff considers a fine of \$75,000 and costs of \$10,000 to be a serious penalty which will be sufficient to achieve the goals of specific and general deterrence, having regard to the aggravating and mitigating factors described above. The fine is more than double the \$35,000 fine approved by the hearing panel in the 2011 Settlement Agreement, which Staff believes to be appropriate when a Member is penalized for similar conduct on a second offense dealing with deficiencies arising out of an MFDA sales compliance examination.

74. A fine of \$75,000 is also proportionate to the size of the Member in this matter and recognizes the efforts the Respondent has taken to address the deficiencies raised in the 2016 MFDA Sales Compliance Examination.

vi) Penalty Guidelines

75. Staff is seeking a penalty which exceeds the minimum fine recommended by the Penalty Guidelines for a Member's breach of the Rules and Policies as described above. This is primarily due to the pre-existing conduct and number of contraventions.

vii) Previous Decisions in Similar Cases

76. The following penalties have been imposed in similar circumstances:

Case	Facts	Outcome
<i>Investia Financial Services Inc. and FundEX Investments Inc. (Re)</i> ²	<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	The Hearing Panel approved the settlement agreement with the following terms: <ul style="list-style-type: none">Fine of \$100,000Costs of \$15,000Requirement to implement revised policies and

² *Investia Financial Services Inc. and FundEX Investments Inc. (Re)*, MFDA File Nos. 200932 and 201031, Hearing Panel of the Central Regional Council, Decision and Reasons dated March 26, 2012, Staff's Book of Authorities, Tab 18.

	<p>outside activities, and failed to conduct a reasonable supervisory investigation with respect to Approved Person.</p> <ul style="list-style-type: none"> • The conduct arose out of two MFDA sales compliance examinations. 	<p>procedures and leverage review action plan</p>
<p><i>Investia Financial Services Inc. (Re)</i>³</p>	<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
<p><i>TeamMax Investment Corporation (Re)</i>⁴</p>	<ul style="list-style-type: none"> • The Respondent admitted, as a result of two MFDA sales compliance examinations, that: <ul style="list-style-type: none"> ○ It failed to, or inadequately responded to, requests for information from MFDA Staff; ○ It failed to establish and implement policies and procedures regarding leverage suitability and failed to conduct a historical leverage review; ○ It failed to implement an adequate supervisory structure and failed to discharge its supervisory obligations; ○ It failed to regularly update its policies and procedures; <ul style="list-style-type: none"> ○ It failed to implement a branch review program; ○ It failed to detect and query patterns in KYC information for 3 approved persons, and ○ It failed to conduct supervisory activities for outside business activities of its approved persons. 	<p>The Hearing Panel approved the settlement agreement with the following terms:</p> <ul style="list-style-type: none"> • Fine of \$60,000 • Costs of \$10,000 • A direction that the UDP shall not be appointed as the CCO, or perform CCO functions, without the consent of the MFDA.

³ *Investia Financial Services Inc.* MFDA File No. 2016113, Hearing Panel of the Central Regional Council, Decision and Reasons dated October 30, 2017, Staff's Book of Authorities, Tab 19.

⁴ *TeamMax Investment Corporation*, MFDA File No. 201695, Hearing Panel of the Central Regional Council, Decision and Reasons dated July 7, 2017, Staff's Book of Authorities, Tab 20

<p><i>Queensbury Strategies Inc.(Re)</i>⁵</p>	<ul style="list-style-type: none"> • The Respondent admitted, as a result of a MFDA sales compliance examination that: <ul style="list-style-type: none"> ○ 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
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SUMMARY

6. Having regard to all of the foregoing factors, the Hearing Panel finds the penalties proposed in the Settlement Agreement are reasonable and proportionate and will deter the Respondent and other Members from meeting their supervisory obligations under MFDA Rules and Policies. 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.

DATED this 14th day of September, 2018.

“Graham Price”

Graham Price
Chair

“James Samanta”

James Samanta
Industry Representative

“Greg Wiebe”

Greg Wiebe
Industry Representative

DM 634555

⁵ *Queensbury Strategies Inc.*, MFDA File No 201033, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 1, 2011, Staff’s Book of Authorities, Tab 21.