Re Waldmo

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Charlene Carla Waldmo

2023 CIRO 47

Canadian Investment Regulatory Organization
Hearing Panel (Manitoba District)

Heard: March 27, 2023, in Winnipeg, Manitoba (via videoconference)
Decision: March 27, 2023
Reasons for Decision: December 19, 2023

Hearing Panel:
Sherri Walsh, Chair
Birju Shah, Industry Representative
Sean Shore, Industry Representative

Appearances:
Michael Mantle, Enforcement Counsel
Brad Moore, Counsel for the Respondent
Charlene Carla Waldmo, Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 Effective January 1, 2023, the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") were consolidated to form the New Self-Regulatory Organization of Canada (now the Canadian Investment Regulatory Organization) (the "Corporation").[1]

¶ 2 On February 1, 2023, the Corporation issued a Notice of Settlement Hearing commencing a disciplinary proceeding against Charlene Carla Waldmo (the "Respondent").

¶ 3 Staff of the Corporation ("Staff") and the Respondent entered into a Settlement Agreement dated February 1, 2023 (the "Settlement Agreement") pursuant to which the Respondent agreed to a proposed

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[1] On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada (the "MFDA") were consolidated into a single self-regulatory organization that was temporarily called the New Self-Regulatory Organization of Canada (referred to herein as the "Corporation") and is recognized under applicable securities legislation. The Corporation adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of the Corporation, contraventions of former MFDA regulatory requirements may be enforced by the Corporation. Pursuant to Mutual Fund Dealer Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.

settlement of matters for which she could be disciplined as an Approved Person of the Corporation, pursuant to Rules 7.4.1.1 and 7.4.4 of the Mutual Fund Dealer Rules.

¶ 4 The jurisdiction of these proceedings is confirmed in Mutual Fund Dealer Rule 1A: Transitional Provisions s.1(ii)(iv); 3; and 5(i).

¶ 5 A settlement hearing (the "Hearing") was held by video conference on March 27, 2023, before a Hearing Panel of the Manitoba District Hearing Committee (the "Panel"). The Respondent attended the hearing in person as did her legal counsel.

¶ 6 At the outset of the Hearing, the Panel granted Staff's motion to move the proceedings *in camera*. The Panel then considered the provisions of the Settlement Agreement and the written and oral submissions made by both Staff and counsel for the Respondent.

¶ 7 At the conclusion of the Hearing the Panel accepted the Settlement Agreement and issued an order to that effect. These are the Panel's reasons for its decision.

II. CONTRAVENTIONS

¶ 8 In the Settlement Agreement the Respondent admitted to having committed the following violations of the Mutual Fund Dealer Rules:

> Between February 2018 to June 2018, the Respondent altered client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2). [2]

III. TERMS OF SETTLEMENT

¶ 9 In the Settlement Agreement, Staff and the Respondent agreed to the following terms of settlement:

a) the Respondent shall pay a fine in the amount of $7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.l(b) of the Mutual Fund Dealer Rules;

b) the Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules;

c) the Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of two months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;

d) the Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.l(f) of the Mutual Fund Dealer Rules;

e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2); and

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[2] Pursuant to Mutual Fund Dealer Rule 1A(1) of the Corporation and s.14.6 of the Corporation By-Law No.1, contraventions of the MFDA By-laws, Rules and Policies that were applicable to the Respondent prior to January 1, 2023 may be enforced by the Corporation. The contraventions reference Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2) which correspond to former MFDA Rules 2.1.1 and 2.1.4. Unless otherwise indicated, the wording of the current Mutual Fund Dealer Rules is the same as the wording of the regulatory requirements that were contravened. On June 30, 2021, amendments to former MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding pre-dated the amendment to that Rule, in this proceeding, references to MFDA Rule 2.1.4 concern the version of former MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

f) the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

¶ 10 Staff and the Respondent agreed to the terms of settlement on the basis of the facts that were set out in paragraphs 7 through 31 inclusive, of the Settlement Agreement. Those facts are reproduced below:

Registration History

7. Commencing in June 1992, the Respondent became registered in Manitoba with TD Investment Services Inc. (the "Dealer Member"), a Dealer Member registered with the Corporation.

8. Commencing in September 2009, the Dealer Member. designated the. Respondent as a branch manager.

9. At all material times, the Respondent was also employed with the Toronto-Dominion Bank (the "Bank''), which is affiliated. with the Dealer Member.

10. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Background

The Variable Compensation Program

11. At all material times; a portion of the Respondent's compensation consisted of variable compensation (the "Variable Compensation Program''). The Respondent's variable compensation was based on a composite of metrics, one of which was a customer feedback metric (the "Customer Feedback Metric") derived from satisfaction surveys completed by clients (the "Surveys'').

12. The Surveys were sent to a random sample of clients by email using the client's email address stored· on the Client Contact Information Systems (described below) used by the Dealer Member.

13. The Surveys were emailed to clients after, among other things; an Approved Person had processed transactions or account changes on behalf of the client.

14. The Dealer Member collected client feedback information through-the Surveys in order-to, among other things, assess in relation to branch staff: (1) the performance of Approved Persons; (2) variable compensation payable to Approved Persons; (3) eligibility of Approved Persons for rewards and recognition programs of the Dealer Member and the Bank; and (4) any client complaints or concerns with the services provided by Approved Persons to clients.

15. The Surveys posed questions to clients related to the services offered by branch staff, including Approved· Persons, and asked the clients to· score their responses. Survey results of a certain value reduced the Customer Feedback Metric for the Respondent's branch.

16. The Survey results from all clients who were serviced by Approved Persons who worked at the Respondent's branch were factored into calculating the Customer Feedback Metric for the Respondent's branch.

17. The Respondent was provided with documentation which described how the Customer Feedback Metric was calculated and how it affected her variable compensation.

Misconduct

18. At all material times, Approved Persons were subject to a Code of Conduct and Ethics which prohibited Approved Persons from engaging in unethical business practices.

19. At all material times, Approved Persons registered with the Dealer Member had access to systems used by the Dealer Member to collect client information (the ''Client Contact Information Systems").

20. Between. February 2018 and June 2018, the Respondent altered email addresses contained within ·the Client Contact Information System, without the consent of the individual account holder, in approximately 25 instances by altering one or more characters in the individual's email address.

21. The Respondent's conduct impacted 8 clients who held investment accounts with the Dealer Member, in addition to 17 other individuals who held bank accounts at the Bank

22.. The Dealer Member prohibited Approved Persons from editing or deleting a client's information contained within the Client Contact Information System without the consent of the client.

23. Editing or deleting a client's information contained within the Client Contact Information System did not restrict the client's ability to access their investment accounts or bauk accounts online, or to receive their account statements.

24. The Respondent engaged in the misconduct set out above in order to prevent clients from receiving a Survey which could have potentially negatively affected the Customer Feedback Metric for the Respondent's branch, as well as her eligibility for rewards and recognition programs. The impact on the Respondent's compensation is not known.

25. As. a consequence of the Respondent's misconduct, she:

    (a) prevented clients from receiving the Survey which may have affected the Customer Feedback. Metric and consequently the variable compensation the Respondent and Approved Persons in her branch would receive as well as her eligibility for rewards and recognition programs maintained by the Dealer Member;

    (b) interfered with the Dealer Member's ability to verify the client's identity when providing services to the client virtually;

    (c) prevented clients from receiving notifications that their investment account statements, bank account statements, and/or confirmations of trades within their investment accounts were available;

    (d) prevented clients from receiving promotional communications about products and services offered by the Dealer Member; and

    (e) may have misdirected the Dealer Member's correspondence to an email address of someone other than the client.

Additional Factors

26. On September 14, 2018, the Dealer Member-issued the Respondent a letter of reprimand in respect of the misconduct described in this Settlement Agreement.

27. As a result of the misconduct described above, the Dealer Member imposed a one day unpaid suspension on the Respondent, prohibited the Respondent from participating in the Dealer Member's rewards and recognition programs in 2018, and negatively impacted the Respondent's managerial assessment rating for the fiscal quarter and the remaining calendar year, which negatively affected the Respondent's base salary for the following year.

28: The Dealer Member has contacted affected clients in order to confirm the client's contact preferences contained in the Client Contact Information Systems.

29. There is no evidence of financial losses to clients arising from the misconduct described in this Settlement Agreement.

30. The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.

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

V. ANALYSIS

The Law

¶ 11 As set out in the Notice of Settlement Hearing, the misconduct which is the subject of these proceedings involved a breach of MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1) and MFDA Rule 2.1.4 (now Mutual Fund Dealer Rule 2 .1.4 (2)).

Standard Of Conduct

¶ 12 MFDA Rule 2.1.1 establishes minimum standards of honesty and ethics that Approved Persons are required to uphold. Among other things, the rule requires that:

> Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 13 The rule has been interpreted and applied in a purposeful manner in a wide range of circumstances. As the Hearing Panel in *Breckenridge Re* stated, the rule:

> ... articulates the most fundamental obligations of all registrants in the securities industry.
>
> *Breckenridge Re*, MFDA file NO. 200718, Hearing Panel of the Central Regional Council, 2007 LNC MFDA 38 at para 71

¶ 14 The Respondent has admitted that without the client's knowledge or authorization she edited or deleted the e-mail addresses of eight clients of the Member and 17 other individuals who held bank accounts with the bank affiliated with the Member (the "Bank"), on a client contact information system (the "Client Contact Information System") used by the Member and the Bank. She did this in order to prevent the Member and the Bank from sending client satisfaction surveys to obtain feedback from clients about services that they had received from the Respondent and other Approved Persons of the Member and employees of the Bank. The Respondent's conduct had the effect of interfering with both the Member's supervision of her and its ability to communicate with clients.

¶ 15 The Respondent's remuneration consisted of variable compensation that was based on a composite of metrics, including one called the Customer Feedback Metric. This metric was derived from clients' responses to the client satisfaction surveys. Survey results of a certain value could reduce the Customer Feedback Metric for the Respondent's branch.

¶ 16 The Respondent has admitted that the reason she engaged in the misconduct was to prevent clients from submitting surveys which had the potential to negatively affect her compensation and her eligibility for rewards and recognition programs.

¶ 17 By altering client contact information stored on the Client Contact Information System, the Respondent's conduct negatively affected both the relevant clients and the Member because it:

(a) prevented clients from receiving and submitting the client satisfaction surveys;

(b) interfered with the Dealer Member's ability to verify the client's identity when providing services to the client virtually;

(c) prevented clients from receiving notifications that their investment account statements, bank account statements, and/or confirmations of trades within their investment accounts were available;

(d) prevented clients from receiving promotional communications about products and services offered by the Dealer Member; and

(e) may have misdirected the Dealer Member's correspondence to an email address of someone other than the intended client.

¶ 18 MFDA Hearing Panels have previously held that where an Approved Person makes changes to client

information without the knowledge or authorization of the client, their conduct contravenes Rule 2.1.1. See, for example, the following decisions:

(a) changing a client's residential address on a Member's back office system to prevent a client from learning about the performance of their investments;

Patel (Re), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201921, Reasons for Decision dated December 4, 2019

(b) changing a client's address on a Member's back office system to falsely indicate that the client was a resident of a jurisdiction where the Approved Person was registered;

An (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016109, Reasons for Decision dated March 29, 2017

(c) failing to accurately record client information which concealed from the Member that a client was no longer resident of a jurisdiction where the Approved Person was registered; and

Collymore (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202214, Reasons for Decision dated December 14, 2022

(d) changing a client's Banking information based upon email instructions received from a third party who, without the Respondent's knowledge, had gained unlawful access to the client's email.

Chiu (Re), [2017] Hearing Panel of the Central Regional Council, MFDA File No. 201757, Reasons for Decision dated October 20, 2017

¶ 19 The Panel finds that the Respondent's conduct demonstrates a disturbing lack of integrity and clearly amounts to a failure to: 1) deal fairly, honestly and in good faith with clients; 2) observe high standards of ethics and conduct in the transaction of business; and 3) refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest, in contravention of MFDA Rule 2.1.1.

VI. CONFLICT OF INTEREST

¶ 20 The version of MFDA Rule 2.1.4 that was in effect at the relevant time required that:

(a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member;

(b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d);

(c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest; and

(d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

MFDA Rule 2.1.4 as at July 15, 2016

¶ 21 As the Hearing Panel in *Gaunt (Re)* stated:

> A conflict of interest occurs when one party to a matter advances, uses or pursues his own interests in dealing with another person, to whom he has an obligation of dealing fairly, to the detriment of that other person or to his own advantage rather than the person to whom he owes the duty of fairness.
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> *Gaunt (Re),* [2013] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201232, Reasons for Decision dated September 20, 2013, at para 47

¶ 22 A failure to address a conflict of interest through the exercise of responsible business judgment influenced only by the best interests of the client can result in client harm, give rise to civil liability and undermine public trust in the investment industry.

¶ 23 MFDA Hearing Panels have held that where an Approved Person advances their own interests by processing trades or making changes to client accounts without the client's knowledge or authorization, their conduct gives rise to a conflict of interest with the client which must be addressed in compliance with the requirements of MFDA Rule 2.1.4.

> *Rana (Re)*, [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201871, Reasons for Decision dated March 19, 2019
>
> *Hale (Re)*, [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202046, Reasons for Decision dated March 9, 2021
>
> *Leonard (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 201919, Reasons for Decision dated October 2, 2020

¶ 24 As described above, the Respondent has admitted that she made unauthorized changes to client contact information in order to prevent clients from receiving a survey which could have potentially negatively affected her compensation as well as her eligibility for rewards and recognition programs.

¶ 25 This conduct had the potential to disadvantage clients in the manner described above.

¶ 26 By virtue of her admitted misconduct, therefore, the Respondent advanced her own interests ahead of the interests of her clients thereby creating a conflict of interest. She did not disclose the conflict to the Member or the clients in writing; nor did she ensure that the conflict was addressed by the exercise of responsible judgment influenced only by the best interests of the clients.

¶ 27 The Panel agrees, therefore, that the Respondent clearly contravened MFDA Rule 2.1.4.

General Principles Regarding the Acceptance of Settlement Agreements

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

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

> Mutual Fund Dealer Rule 7.4.4.3

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

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

¶ 31 Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected is because Panels do not know what led to the settlement,

or what was given up by the parties during the course of their negotiations. The presence of experienced legal counsel during the negotiation of a settlement agreement, as was the case in this matter, is also 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 and 23
>
> *Ho (Re)*, [2018] Hearing Panel of the Central Regional Council, MFDA File No. 2017120, Reasons for Decision dated March 5, 2018, at para 25

¶ 32 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.
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> *British Columbia (Securities Commission) v Seifert*, 2007 BCCA 484, at para 31

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

Factors Concerning Acceptance of a Settlement Agreement

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

(a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;

(b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;

(c) whether the settlement agreement addresses the issues of both specific and general deterrence;

(d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

(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.

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

¶ 35 A Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

> *Ibid* at para 70

Factors Concerning the Appropriateness of the Proposed Penalty

¶ 36 The primary goal of all securities regulation is investor protection.

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

¶ 37 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, supra, at paras 59 & 68

¶ 38 With these principles in mind, the factors that MFDA Hearing Panels have considered 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.

Headley (Re), [2006] Hearing Panel of the Pacific Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para 85

¶ 39 A Hearing Panel may also refer to the MFDA's Sanction Guidelines when deciding whether a penalty is appropriate. While those guidelines are not mandatory or binding on a Panel, they provide a summary of the key factors upon which a Panel can exercise its discretion in a consistent and fair manner. Many of the same factors that have been considered in MFDA Hearing Panels decisions are reflected and described in these guidelines.

Application of the Factors listed above in the present case

Seriousness of the misconduct

¶ 40 We agree with Staff's submission that the Respondent's misconduct in this case was serious.

¶ 41 By altering or deleting one or more characters in clients' e-mail addresses without the clients' knowledge or authorization in order to advance her own objectives, to the potential detriment of the clients, the Respondent engaged in deceitful conduct that gave rise to conflicts or potential conflicts of interest that she failed to address in compliance with regulatory requirements.

¶ 42 This type of misconduct was addressed in *Salina (Re)*, where the Hearing Panel stated:

> The failure to disclose and properly address conflicts or potential conflicts is serious misconduct. Such conflicts can result in harm to the client, expose the member to liability, and undermine trust in the

> mutual fund industry. As stated by the hearing Panel in *Haylock (Re)* "it is always a serious matter when there is a conflict of interest between an Approved Person and her client".
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> *Salina (Re)*, [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202081, Reasons for Decision dated August 30 2022 at para 32
>
> *Haylock (Re)*, [2013] Hearing Panel of the Central Regional Council, MFDA File No. 201243, Reasons for Decision dated July 5, 2013 at para 7

¶ 43 The Respondent's misconduct was intentional. It was not based upon a lack of knowledge or training in the investment industry. The seriousness of her conduct was aggravated by the fact that she was a branch manager who was entrusted with responsibility for ensuring that other Approved Persons complied with their regulatory objectives.

¶ 44 The Panel finds, therefore, that the Respondent's misconduct was serious and risked undermining the Corporation's fundamental objectives to protect the investing public and foster confidence in the integrity of the Canadian capital markets, the Corporation and the regulatory process itself.

Respondent's Recognition of the Seriousness of the Misconduct

¶ 45 By entering into the Settlement Agreement, the Respondent has demonstrated that she recognizes the seriousness of the misconduct. She has accepted responsibility for her actions and saved the Corporation the time, resources and expenses that would have been necessary if this matter had proceeded by way of a contested disciplinary hearing.

The Respondent's Past Conduct including Prior Sanctions

¶ 46 The Respondent has been registered since 1992 and has not previously been the subject of disciplinary proceedings commenced by the MFDA or the Corporation.

Client Harm

¶ 47 There is no evidence of financial losses to clients arising from the misconduct. The Member has contacted affected clients in order to confirm that the client contact preferences recorded on the Client Contact Information Systems are now correct. Both Staff and counsel for the Respondent assured the Panel that the Member had two separate e-mail systems: one which was used to send promotional communications as well as certain bank notifications; and the other which was used for mutual fund notifications and the RSI process. The Respondent's misconduct only affected the first of these two systems. Both counsel assured the Panel that nothing related to the mutual fund RSI process or account statements or transactions was affected by the Respondent's conduct.

Benefits to the Respondent

¶ 48 While the precise impact of the Respondent's misconduct on her compensation is not known, she has acknowledged that she engaged in the misconduct in order to prevent clients from receiving a survey and conveying feedback which had the potential to negatively affect her variable compensation as well as her eligibility for rewards and recognition programs.

Deterrence

¶ 49 Both the Supreme Court of Canada and MFDA Hearing Panels have held that deterrence is an important factor to be taken into account when determining the appropriateness of a penalty. See, for example: *Cartaway Resources Corp (Re)*, [2004 one SCR 672] at paras 52-62.

¶ 50 Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets:

> The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent

is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.

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

¶ 51 Staff submitted that the proposed penalty which includes financial penalties and a two-month suspension on the Respondent's authority to work in a supervisory role, will operate as both a specific deterrent to her and a general deterrent to prevent other Approved Persons from engaging in similar misconduct in the future.

Sanctions Imposed by the Member

¶ 52 As the Sanction Guidelines indicate, the sanctions imposed by the Member in this case were an appropriate factor for the Panel to consider when determining whether to accept a Settlement Agreement. We agree with Staff's submission that the sanctions which the Member imposed in this case will also promote specific deterrence for the Respondent.

Previous Decisions made in Similar Circumstances

¶ 53 Staff submitted that the proposed penalty falls within a reasonable range of appropriateness having regard to the previous decisions made by MFDA Hearing Panels and Hearing District Panels which involved similar circumstances, as reflected in the chart below:

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
Stokes (Re), [2023] File No. 202305, Notice of Settlement Hearing issued February 1, 2023	The Respondent: • altered client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients.	**Settlement** • Fine of $7,500. • Costs of $5,000. • Industry Course. • 2 month BM suspension.	No prior disciplinary history. No evidence of client loss resulting from the Respondent's misconduct. The Respondent altered the email addresses of four clients of the Member and 9 other bank clients
Kandiah (Re), [2023] File No. 202302, Notice of Settlement Hearing issued February 1, 2023	The Respondent: • altered client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients.	**Settlement** • Fine of $7,500. • Costs of $5,000. • Industry Course. • 2 month BM suspension.	No prior disciplinary history. No evidence of client loss resulting from the Respondent's misconduct. The Respondent set the contact preferences to "No" for seven clients who held investment accounts at the Dealer Member and 36 other individuals who held accounts at the Bank, without their consent.
Cheung Re), [2023] File No. 202303, Notice of Settlement Hearing issued February 1, 2023	The Respondent: • instructed an Approved Person under her supervision to alter client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients.	**Settlement** • Fine of $10,000. • Costs of $5,000. • Industry Course. • 3 month BM suspension.	No prior disciplinary history. No evidence of client loss resulting from the Respondent's misconduct. In her capacity as a branch manager, instructed an Approved Person under her supervision to set client contact preferences to "No", without the consent of the client.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
Santos (Re), [2023] File No. 202251, Notice of Settlement Hearing issued December 5, 2022	The Respondent: • altered client contact information on the Member's system without the knowledge or authorization of the client, which had the effect of avoiding the Member's supervisory and training controls and impacted its ability to communicate with clients.	**Settlement** • Fine of $16,000. • Costs of $5,000. • Industry Course. • 12 month BM suspension.	No prior disciplinary history. No evidence of client loss resulting from the Respondent's misconduct. In approximately 126 instances the Respondent altered 1 or more characters in the individual's email address in order to alter the recipient of the email. The Respondent's conduct impacted approximately 37 clients who held investment accounts with the Member.
Collymore, supra	The Respondent: • opened a new account and processed a purchase of mutual funds for a client who was a non-resident of Canada which the Respondent was not permitted to do under the Member's policies and procedures; and • failed to update a client's residential address which concealed from the Member that the client was no longer a resident of Canada and that there were restrictions on the investment services the Respondent was permitted to provide the client due to different tax treatment.	**Settlement** • Fine of $7,500. • Costs of $5,000.	No prior disciplinary history. The Respondent accepted responsibility for her misconduct.
Hale (Re), [2021] Hearing Panel of the Prairie Regional Council, MFDA File No. 202046, Reasons for Decision dated March 9, 2021	The Respondent: • processed 18 transactions in respect of 18 clients as redemptions and purchases, rather than as switches, to ensure the transactions counted towards sales targets established by the Member; and • obtained, possessed and used to process transactions, 10 pre-signed account forms in respect of 10 clients.	**Settlement** • Fine of $22,500 (installments). • Costs of $2,500.	Client harm of $3,200.25. The Respondent increased his sales revenue but did not meet the Dealer Member's sales targets and, therefore, did not receive a financial benefit from the misconduct.
Rana, supra	The Respondent: • processed transactions in 2 client accounts as redemptions and purchases rather than as switches, to ensure that the transactions counted towards the Member's sales targets; • obtained, photocopied and used a partially completed signed account form in order to process a transaction on behalf of a client; and • altered and used an account form to process a transaction without having the client initial the alteration.	**Settlement** • Fine of $12,500. • Costs of $5,000.	No prior disciplinary history. No evidence of client loss resulting from the Respondent's misconduct. All transactions were authorized. The Respondent received a 1 day Member suspension and was placed under enhanced supervision by the Member.
Subzwari (Re), [2022] Hearing Panel of the Central Regional Council, MFDA File No.202159, Reasons	The Respondent: • set up pre-authorized contributions in the accounts of client without the knowledge or authorization of the clients in order to meet	**Settlement** • 18 month prohibition. • Fine of $4,000.	The Respondent demonstrated an inability to pay a greater fine. No prior disciplinary history.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
for Decision dated May 10, 2022	sales targets or to qualify for a bonus based on Member sales incentives; and • entered false or misleading information on account forms submitted to the Member which falsely indicated that the clients authorized the implementation of pre-authorized contribution	• Costs of $2,500.	No evidence of client loss resulting from the Respondent's misconduct. The Respondent received no financial benefit from his misconduct
Patel, supra	The Respondent: • without a client's authorization, changed the client's residential address on the Member's back office system to the branch address at which the Respondent conducted business; • in response to a supervisory query from the Member, changed a client's investment objectives on a KYC form without the client's knowledge or authorization and falsified the client's signature on a form; and • misled the Member during the course of its supervisory investigation into his conduct.	**Settlement** • 2 year prohibition. • Fine of $5,000 (installments). • Costs of $2,500.	The Respondent demonstrated an inability to pay a greater fine. No prior disciplinary history. The Member reimbursed the client for their losses. The Respondent was terminated.
Chiu, supra	The Respondent: • changed a client's banking information based upon email instructions received from a third party who, without the Respondent's knowledge had gained unlawful access to the client's email, without obtaining a signed account form from the client authorizing the change; • processed 2 redemptions in a client account based upon email instructions received from a third party who, without the Respondent's knowledge had gained access to the client's email, without taking steps to verify that he was communicating with the client; and • processed a redemption in a client's account without obtaining instructions regarding which mutual funds to redeem and in what amounts, thereby engaging in discretionary trading.	**Settlement** • 3 month branch manager suspension. • Fine of $12,500. • Costs of $2,500.	No prior disciplinary history. The Member issued the Respondent a warning letter.
An, supra	The Respondent: • processed 5 trades in the accounts of 1 client without the client's authorization; • falsified the signature of 1 client on 5 account forms; • completed KYC information on an account form for 1 client without having met or discussed the information with the client; and • without client authorization, changed a client's address on the Member's back	**Settlement** • Permanent prohibition.	No financial benefit to the Respondent. The Respondent was terminated.

CASE	MISCONDUCT	PENALTIES	OTHER FACTORS:
	office system to falsely represent the client was a resident of Ontario.		

¶ 54 Staff took the time at the Hearing to review these decisions for the Panel's benefit including identifying the reasons why the penalties in some instances were higher than what was proposed in this case. For example, in the *Santos* decision, the conduct involved a much higher number of clients and was deliberately conducted to evade the Member's scrutiny.

¶ 55 Based on Staff's submissions the Panel agrees that the proposed penalty falls within a reasonable range of appropriateness

VII. CONCLUSION

¶ 56 For all of the above reasons, having reviewed the Settlement Agreement and having considered Staff's submissions both written and oral, the Panel is satisfied that the penalty which is proposed 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.

¶ 57 The Panel, therefore, accepts the Settlement Agreement.

Dated at Winnipeg this 19 day of December 2023.

"Sherri Walsh"

Sherri Walsh, Chair

"Birju Shah"

Birju Shah, Industry Representative

"Sean Shore"

Sean Shore, Industry Representative

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