



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

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Gregory Dickson

Heard: September 23, 2011 in Toronto, Ontario
Reasons for Decision: October 18, 2011

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. Fred Kaufman, C.M., Q.C.
Robert C. White
Brian Nowak

Chair
Industry Representative
Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of Canada
)	
Gregory Dickson)	The Respondent, by teleconference
)	

Introduction

1. By Notice of Hearing dated April 20, 2011, the Respondent, Gregory Dickson, was advised by the Mutual Fund Dealers Association of Canada (“MFDA”) that it alleged the following violations of its By-laws, Rules or Policies:

Allegation #1: Between May 2007 and November 2008, the Respondent allowed James Dennis (“Dennis”), a registered advisor with an Investment Industry Regulatory Organization of Canada (“IIROC”) investment dealer, to engage in advising and trading activity for the account and through the facilities of the Member by using the Respondent’s representative code to open new accounts at the Member and trade in those accounts for approximately 30 clients, thereby engaging in business conduct contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #2: Between May 2007 and November 2008, the Respondent had a referral arrangement with Dennis whereby the Respondent agreed to pay Dennis substantially all of the sales commissions earned by the Respondent from trading activity in the accounts of clients referred to him by Dennis, contrary to MFDA Rules 2.4.2, 2.1.4 and 2.1.1.

Allegation #3: Between May 2007 and November 2008, the Respondent failed to comply with the Member’s policies and procedures with respect to clients using borrowed monies to invest, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

THE PARTICULARS

2. The Particulars, as set out in the Notice of Hearing, are as follows:

Registration History

1. The Respondent was registered in Ontario as a mutual fund salesperson with IPC Investment Corporation (“IPC”) from May 24, 2007 until November 4, 2008 when he was terminated by IPC as a result of the events described herein.

2. The Respondent is not currently registered in the securities industry in any capacity.

3. IPC is registered as a mutual fund dealer in all provinces and territories in Canada. IPC became a Member of the MFDA on April 17, 2002.

Allegation #1: Know Your Client and Suitability

James Dennis and IPC

4. James Dennis (“Dennis”) was registered in Ontario as a mutual fund salesperson with IPC from June 1996 until July 2005, when he resigned to become registered as an investment advisor at IPC Securities Corporation (“IPCS”). IPCS is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is a related company to IPC, a Member of the MFDA.

5. When Dennis resigned from IPC and transferred to IPCS, some of the clients whose accounts he had serviced at IPC elected to remain there and did not transfer their accounts to IPCS.

6. In July 2006, MK became registered as a mutual fund salesperson with IPC and began servicing the client accounts at IPC formerly serviced by Dennis. MK was formerly Dennis’ administrative assistant at IPC, who, on Dennis’ recommendation, became registered as a mutual fund salesperson with IPC in order to service the client accounts formerly serviced by Dennis.

7. In May 2007, MK resigned from IPC for reasons unrelated to the matters described herein. MK is now registered in Ontario as a mutual fund salesperson with another Member of the MFDA, since April 27, 2009.

8. In March 2007, Dennis met with the Respondent in anticipation of MK’s resignation from IPC in May 2007. The Respondent was a prior business acquaintance of Dennis. Dennis recommended to the Respondent that he become registered as a mutual

fund salesperson with IPC in order to service the client accounts that would no longer be serviced by MK upon her departure. On May 24, 2007, the Respondent became registered as a mutual fund salesperson with IPC.

The Smith Maneuver seminars

9. While at IPCS, Dennis conducted seminars jointly with a mortgage company at which he would promote an investment strategy referred to as the “Smith Maneuver” to potential investors. The Smith Maneuver is a leveraging strategy which involves, among other things, an investor using borrowed monies, usually obtained from a home equity line of credit, to purchase investments. The Smith Maneuver is often marketed to the public as a means by which an investor can, according to the promoters, effectively make his or her mortgage payments tax deductible.

10. Dennis was not satisfied with the leveraging arrangements that IPCS provided to its clients. As a result, Dennis entered into an arrangement with the Respondent whereby Dennis would refer individuals who wished to implement the Smith Maneuver leveraging strategy to the Respondent, who would allow Dennis to use his (the Respondent’s) representative code to open new accounts at IPC for the individuals and to thereafter conduct trading activity in those accounts. As part of the arrangement, the Respondent agreed to share a substantial portion of the sales commissions earned by the Respondent from the trading activity in those accounts with Dennis.

11. The arrangement between the Respondent and Dennis was not disclosed or known to either IPC or IPCS.

12. On October 16, 2008, Dennis was terminated by IPCS.

13. In August 2010, IIROC commenced a disciplinary proceeding against Dennis in respect of his arrangement with the Respondent. In January 2011, an IIROC Hearing Panel found that Dennis had contravened IIROC Rules by failing to disclose his arrangement with the Respondent, which it held constituted an outside business activity

under IIROC rules, to IPCS. The IIROC Hearing Panel has not yet imposed a penalty on Dennis.¹

The arrangement between Dennis and the Respondent

14. In May 2007, the Respondent became registered with IPC and thereafter began servicing the client accounts that were formerly serviced by Dennis (and for a period of approximately one year following Dennis' departure, by MK).

15. In addition, between May 2007 and November 4, 2008, the Respondent allowed Dennis to engage in advising and trading activity for the account and through the facilities of the IPC by using the Respondent's representative code to open new accounts at IPC and to trade in those accounts for approximately 30 new clients who wished to implement the Smith Maneuver leveraging strategy. The manner in which the Respondent allowed Dennis to engage in this activity is described below.

16. Dennis, while registered at IPCS, met with approximately 30 individuals who wished to implement the Smith Maneuver. Dennis completed, or partially completed, IPC account opening, leveraging and trading documentation for the individuals, which he then provided to the Respondent to process in the normal course through IPC using his (the Respondent's) representative code.

17. The IPC documentation completed in whole or in part by Dennis and provided to the Respondent for processing through IPC using the Respondent's representative code included IPC New Account Application Forms, leverage details worksheets, leverage disclosure documents, investment loan applications and order entry forms.

18. The Respondent did not participate in the Smith Maneuver seminars, did not meet with the clients, and did not provide any advice to the clients with respect to the Smith Maneuver, using borrowed monies to invest or the trading in their accounts. Dennis selected the mutual funds the clients purchased for their IPC accounts using the borrowed monies obtained in the course of implementing the Smith Maneuver.

¹ The penalty hearing is scheduled to be heard in April or May 2011.

19. The Respondent focused on ensuring a client's required IPC documentation was complete so that it would not be rejected by IPC. After the Respondent was satisfied that a client's IPC documentation was complete, he signed it as the mutual fund salesperson responsible for the client's account and submitted it to IPC for processing.

20. In the instances where the Respondent received partially completed IPC documentation in respect of a client from Dennis, the Respondent either spoke with Dennis, or with the client by telephone, to clarify the information Dennis had collected from the client or to obtain information that Dennis had not collected, and then completed the documentation himself prior to submitting it.

21. The IPC New Account Application Form required the mutual fund salesperson responsible for the account to record the client's income and net worth, the client's investment knowledge, experience, and investment objectives, and the client's risk tolerance.

22. IPC required its mutual fund salespersons to complete a "leverage details" worksheet prior to implementing a leveraging strategy for a client. This document recorded, among other things, the client's assets, liabilities, risk tolerance and investment objectives in order for the mutual fund salesperson to evaluate whether the leveraging recommendation was suitable having regard to the client's circumstances. For at least 24 of the approximately 30 clients referred to the Respondent by Dennis, the Respondent did not meet with the clients to complete the leverage details worksheet and relied instead on Dennis to complete or partially complete the form; or the Respondent completed the form himself after he obtained the information from Dennis without discussing it with the client.

23. In accordance with MFDA Rule 2.6, IPC also required its mutual fund salespersons to provide a client with a "leveraging disclosure" document, which explained the risks of borrowing to invest, and to obtain the client's signature on the document following a discussion of those risks with the mutual fund salesperson. For at least 24 of the 30 clients, the Respondent received the leverage disclosure document

already signed by the client, which the Respondent would then sign as a witness after the fact and not in the presence of the client.

24. Additionally, except for possibly one or two clients with respect to whom the Respondent claims he met and discussed the risks of borrowing to invest, the Respondent did not meet with and explain the risks of borrowing to invest to the clients referred to him by Dennis.

25. The Respondent did not assess the accuracy or reliability of the information collected by Dennis from the clients and recorded by him in the IPC documentation prior to the Respondent opening the client accounts at IPC.

26. The Respondent did not conduct his own review of the suitability of the leveraging strategy and the trades recommended by Dennis and instead relied on Dennis to, or assumed that Dennis would, only refer clients to him for whom the leveraging strategy and trades recommended by Dennis were suitable.

27. The Respondent and Dennis had an arrangement regarding the sales commissions earned by the Respondent from the trading in the accounts of the clients referred to him by Dennis. The Respondent would receive those sales commissions from IPC in the normal course and then, unbeknownst to IPC, would retain a portion for himself² and pay the balance to Dennis.

28. During the seven month period from December 2007 to June 2008, the Respondent paid Dennis total sales commissions of at least \$142,823, retaining for himself at least \$2,196 per month (or at least approximately \$15,000).

29. At all material times, IPC was not aware that the Respondent was opening new client accounts and processing trades in those accounts on behalf of or at the direction of Dennis or that the Respondent was sharing the sales commissions he earned on those

² It was agreed that the Respondent would be entitled to earn \$35,000 per year from the referral arrangement, which he would pay to himself in monthly installments of \$2,916, remitting the balance of the sales commissions to Dennis.

trades with Dennis.

30. There is no evidence that the clients referred to the Respondent by Dennis were advised by the Respondent or Dennis that Dennis would be receiving substantially all of the sales commissions generated by the implementation of the Smith Maneuver and the resulting trading activity.

31. By allowing Dennis to open new client accounts at IPC and to conduct trading in those accounts using his (the Respondent's) representative code in the manner described above, the Respondent failed to fulfill his fundamental regulatory obligations as the mutual fund salesperson responsible for servicing the clients' accounts, in that the Respondent failed to:

- a) collect the client's know-your-client (KYC) information from the clients and learn the essential facts relative to the clients in order to assess the accuracy and reliability of the information and to ensure that the clients understood the nature and purpose of the information, such as their risk tolerance, being collected from them;
- b) discuss and explain the risks of borrowing to invest with the clients prior to the clients implementing the Smith Maneuver leveraging strategy;
- c) conduct his own review of the suitability of the proposed leveraging strategy with the clients prior to its implementation; and
- d) conduct his own review of the suitability of the trades in the clients' accounts;

thereby failing to comply with the requirements of MFDA Rule 2.2.1 and engaging in business conduct contrary to MFDA Rule 2.1.1.

Allegation #2: Referral arrangement

32. By entering into a referral arrangement with Dennis and paying Dennis substantially all of the sales commissions earned by the Respondent from trading activity in the accounts of clients referred to him, the Respondent failed to comply with MFDA Rules 2.4.2, 2.1.4 and 2.1.1.

Allegation #3: Member Policies

33. IPC's policies and procedures, dated July 2007 provided:

Our Policy

The Know Your Client rules require you to make a diligent and business like effort to learn the essential and current financial and personal circumstances and objectives of each client.

You must make every effort to ensure that no activity which may be deemed to be unsuitable is allowed to occur.

Nevertheless, situations may arise where it is suitable for clients to borrow to invest in mutual funds. In such cases, you are required to deliver the Leverage Disclosure Document to the client and to make sure that he or she understands the impact of it, especially the effect on the client's equity in the fund in the event of a market downturn.

It is your responsibility to ensure that a leveraging strategy is suitable for the client and that they have sufficient means to service the loans...

34. By not delivering the Leverage Disclosure Document to the clients and failing to ensure that the clients understood the impact of leveraging or ensuring that a leveraging strategy was suitable for the clients, the Respondent failed to comply with IPC's policies and procedures with respect to clients using borrowed monies to invest, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

The Facts

3. Prior to the hearing, Enforcement Counsel and the Respondent prepared an Agreed

Statement of Facts (the “Statement”) which, in part, provided as follows:³

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits, and the Respondent does not oppose, that the appropriate penalty to impose on the Respondent is a prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two-years, pursuant to s.24.1.1 of MFDA By-law No. 1 (the “By-law”); and a fine of \$15,000, pursuant to s. 24.1.1 of the By-law.

6. Staff seeks, and the Respondent does not oppose, a \$2,500 costs award against the Respondent, pursuant to s. 24.2 of the By-law.

IV. AGREED FACTS

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

³ Although the Agreed Statement of Facts closely resembles the facts set out in the Notice of Hearing, it is set out here in its entirety because the panel’s findings are based on this document.

8. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

9. The Respondent was registered in Ontario as a mutual fund salesperson with IPC Investment Corporation (“IPC”) from May 24, 2007 until November 4, 2008 when he was terminated by IPC as a result of the events described herein.

10. The Respondent is not currently registered in the securities industry in any capacity.

11. IPC is registered as a mutual fund dealer in all provinces and territories in Canada. IPC became a Member of the MFDA on April 17, 2002.

Allegation #1: Know Your Client and Suitability

James Dennis and IPC

12. James Dennis (“Dennis”) was registered in Ontario as a mutual fund salesperson with IPC from June 1996 until July 2005, when he resigned to become registered as an investment advisor at IPC Securities Corporation (“IPCS”). IPCS is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”) and is a related company to IPC, a Member of the MFDA.

13. When Dennis resigned from IPC and transferred to IPSC, some of the clients whose accounts he had serviced at IPC elected to remain there and did not transfer their accounts to IPCS.

14. In July 2006, MK became registered as a mutual fund salesperson with IPC and began servicing the client accounts at IPC formerly serviced by Dennis. MK was formerly Dennis’ administrative assistant at IPC, who, on Dennis’ recommendation,

became registered as a mutual fund salesperson with IPC in order to service the client accounts formerly serviced by Dennis.

15. In May 2007, MK resigned from IPC for reasons unrelated to the matters described herein. MK is now registered in Ontario as a mutual fund salesperson with another Member of the MFDA, since April 27, 2009.

16. In March 2007, Dennis met with the Respondent in anticipation of MK's resignation from IPC in May 2007. The Respondent was a prior business acquaintance of Dennis. Dennis recommended to the Respondent that he become registered as a mutual fund salesperson with IPC in order to service the client accounts that would no longer be serviced by MK upon her departure. On May 24, 2007, the Respondent became registered as a mutual fund salesperson with IPC.

The Smith Maneuver seminars

17. While at IPCS, Dennis conducted seminars jointly with a mortgage company at which he would promote an investment strategy referred to as the "Smith Maneuver" to potential investors. The Smith Maneuver is a leveraging strategy which involves, among other things, an investor using borrowed monies, usually obtained from a home equity line of credit, to purchase investments. The Smith Maneuver is often marketed to the public as a means by which an investor can, according to the promoters, effectively make his or her mortgage payments tax deductible.

18. Dennis was not satisfied with the leveraging arrangements that IPCS provided to its clients. As a result, Dennis entered into an arrangement with the Respondent whereby Dennis would refer individuals who wished to implement the Smith Maneuver leveraging strategy to the Respondent, who would allow Dennis to use his (the Respondent's) representative code to open new accounts at IPC for the individuals and to thereafter conduct trading activity in those accounts. As part of the arrangement, the Respondent agreed to share a substantial portion of the sales commissions earned by the Respondent from the trading activity in those accounts with Dennis. The arrangement between Dennis and the Respondent is described in greater detail below

19. The arrangement between the Respondent and Dennis was not disclosed or known to either IPC or IPCS.

20. On October 16, 2008, Dennis was terminated by IPCS.

21. In August 2010, IIROC commenced a disciplinary proceeding against Dennis in respect of his arrangement with the Respondent. In January 2011, an IIROC Hearing Panel found that Dennis had contravened IIROC Rules by failing to disclose his arrangement with the Respondent, which it held constituted an outside business activity under IIROC rules, to IPCS. On June 29, 2011, the IIROC Hearing Panel imposed a fine on Dennis totaling \$321,855.14, of which \$291,855.14 was attributed to disgorgement of the net profit earned by the Dennis as a result of the misconduct and \$30,000 was attributed to deterrence, costs of \$15,000 and a requirement that he successfully re-write an industry-related course and be subject to strict supervision for a period of one year in the event he sought to re-enter the industry.

The arrangement between Dennis and the Respondent

22. In May 2007, the Respondent became registered with IPC and thereafter began servicing the client accounts that were formerly serviced by Dennis (and for a period of approximately one year following Dennis' departure, by MK).

23. In addition, between May 2007 and November 4, 2008, the Respondent allowed Dennis to engage in advising and trading activity for the account and through the facilities of the IPC by using the Respondent's representative code to open new accounts at IPC and to trade in those accounts for approximately 30 new clients who wished to implement the Smith Maneuver leveraging strategy.

24. Dennis, while registered at IPCS, met with approximately 30 individuals who wished to implement the Smith Maneuver. Dennis completed, or partially completed, IPC account opening, leveraging and trading documentation for the individuals, which he

then provided to the Respondent to process in the normal course through IPC using his (the Respondent's) representative code.

25. The IPC documentation completed in whole or in part by Dennis and provided to the Respondent for processing through IPC using the Respondent's representative code included IPC New Account Application Forms, leverage details worksheets, leverage disclosure documents, investment loan applications and order entry forms.

26. The Respondent did not participate in the Smith Maneuver seminars, did not meet with the clients, and did not provide any advice to the clients with respect to the Smith Maneuver, using borrowed monies to invest or the trading in their accounts. Dennis selected the mutual funds the clients purchased for their IPC accounts using the borrowed monies obtained in the course of implementing the Smith Maneuver.

27. The Respondent focused on ensuring a client's required IPC documentation was complete so that it would not be rejected by IPC. After the Respondent was satisfied that a client's IPC documentation was complete, he signed it as the mutual fund salesperson responsible for the client's account and submitted it to IPC for processing.

28. In the instances where the Respondent received partially completed IPC documentation in respect of a client from Dennis, the Respondent either spoke with Dennis, or with the client by telephone, to clarify the information Dennis had collected from the client or to obtain information that Dennis had not collected, and then completed the documentation himself prior to submitting it.

29. The IPC New Account Application Form required the mutual fund salesperson responsible for the account to record the client's income and net worth, the client's investment knowledge, experience, and investment objectives, and the client's risk tolerance.

30. IPC required its mutual fund salespersons to complete a "leverage details" worksheet prior to implementing a leveraging strategy for a client. This document recorded, among other things, the client's assets, liabilities, risk tolerance and investment

objectives in order for the mutual fund salesperson to evaluate whether the leveraging recommendation was suitable having regard to the client's circumstances. For at least 24 of the approximately 30 clients referred to the Respondent by Dennis, the Respondent did not meet with the clients to complete the leverage details worksheet and relied instead on Dennis to complete or partially complete the form; or the Respondent completed the form himself after he obtained the information from Dennis without discussing it with the client.

31. In accordance with MFDA Rule 2.6, IPC also required its mutual fund salespersons to provide a client with a "leveraging disclosure" document, which explained the risks of borrowing to invest, and to obtain the client's signature on the document following a discussion of those risks with the mutual fund salesperson. For at least 24 of the 30 clients, the Respondent received the leverage disclosure document already signed by the client, which the Respondent would then sign as a witness after the fact and not in the presence of the client.

32. Additionally, except for possibly one or two clients with respect to whom the Respondent claims he met and discussed the risks of borrowing to invest, the Respondent did not meet with and explain the risks of borrowing to invest to the clients referred to him by Dennis.

33. The Respondent did not assess the accuracy or reliability of the information collected by Dennis from the clients and recorded by him in the IPC documentation prior to the Respondent opening the client accounts at IPC.

34. The Respondent did not conduct his own review of the suitability of the leveraging strategy and the trades recommended by Dennis and instead relied on Dennis to, or assumed that Dennis would, only refer clients to him for whom the leveraging strategy and trades recommended by Dennis were suitable.

35. The Respondent and Dennis had an arrangement regarding the sales commissions earned by the Respondent from the trading in the accounts of the clients referred to him by Dennis. The Respondent would receive those sales commissions from IPC in the

normal course and then, unbeknownst to IPC, would retain a portion for himself and pay the balance to Dennis..

36. During the seven month period from December 2007 to June 2008, the Respondent paid Dennis total sales commissions of at least \$142,823, retaining for himself at least \$2,196 per month (or at least approximately \$15,000).

37. At all material times, IPC was not aware that the Respondent was opening new client accounts and processing trades in those accounts on behalf of or at the direction of Dennis or that the Respondent was sharing the sales commissions he earned on those trades with Dennis.

38. There is no evidence that the clients referred to the Respondent by Dennis were advised by the Respondent or Dennis that Dennis would be receiving substantially all of the sales commissions generated by the implementation of the Smith Maneuver and the resulting trading activity.

39. By allowing Dennis to open new client accounts at IPC and to conduct trading in those accounts using his (the Respondent's) representative code in the manner described above, the Respondent failed to:

- (a) collect the client's know-your-client (KYC) information from the clients and learn the essential facts relative to the clients in order to assess the accuracy and reliability of the information and to ensure that the clients understood the nature and purpose of the information, such as their risk tolerance, being collected from them;
- (b) discuss and explain the risks of borrowing to invest with the clients prior to the clients implementing the Smith Maneuver leveraging strategy;
- (c) conduct his own review of the suitability of the proposed leveraging strategy with the clients prior to its implementation; and
- (d) conduct his own review of the suitability of the trades in the clients' accounts.

Allegation #3: Member Policies

40. IPC's policies and procedures, dated July 2007 provided:

Our Policy

The Know Your Client rules require you to make a diligent and business like effort to learn the essential and current financial and personal circumstances and objectives of each client.

You must make every effort to ensure that no activity which may be deemed to be unsuitable is allowed to occur.

Nevertheless, situations may arise where it is suitable for clients to borrow to invest in mutual funds. In such cases, you are required to deliver the Leverage Disclosure Document to the client and to make sure that he or she understands the impact of it, especially the effect on the client's equity in the fund in the event of a market downturn.

It is your responsibility to ensure that a leveraging strategy is suitable for the client and that they have sufficient means to service the loans...

41. The Respondent is not currently registered and represents that he has no intention of ever re-entering the securities industry in any capacity.

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

Misconduct Admitted

43. By engaging in the conduct described above, the Respondent admits that he:

- (a) allowed Dennis to engage in advising and trading activity for the account and through the facilities of the Member by using the Respondent's representative code to open new accounts at the Member and trade in those accounts for approximately 30 clients, thereby engaging in business conduct contrary to MFDA Rules 2.2.1 and 2.1.1;
- (b) had a referral arrangement with Dennis whereby the Respondent agreed to pay Dennis substantially all of the sales commissions earned by the Respondent from trading activity in the accounts of clients referred to him by Dennis, contrary to MFDA Rules 2.4.2, 2.1.4 and 2.1.1; and
- (c) failed to comply with the Member's policies and procedures with respect to clients using borrowed monies to invest, contrary to MFDA Rules 1.1.2 and 2.5.1, and MFDA Rule 2.1.1.

The Hearing

4. The only evidence submitted at the hearing was the Agreed Statement of Facts. After due consideration, and particularly in light of the final paragraph of the Statement ("Misconduct Admitted"), the Panel ruled that the misconduct alleged against the Respondent had been proven, and the parties were asked to move on to the penalty phase.

5. Enforcement Counsel submitted, and the Respondent agreed, that, given the circumstances described in detail above, the appropriate penalty would be a two-year prohibition, a fine of \$15,000, and costs in the amount of \$2,500.

Discussion

6. As Enforcement Counsel pointed out, "It is a fundamental aspect of investor protection

that all securities related business is conducted by properly registered individuals under the supervision of a Member.” Here, by allowing Dennis, who was not a registered mutual funds salesperson with the Member, to open new client accounts at IPC and to conduct trading in those accounts, the Respondent not only failed to collect the necessary “know-your-client” information, but also failed to ensure that clients understood the particular risks associated with the strategy employed. Nor did the Respondent assess the suitability of the actions proposed.

7. Although Dennis was properly registered at an IIROC member firm and therefore was deemed to possess the necessary proficiencies to engage in this type of activity, by facilitating the trading through IPC, the Respondent enabled Dennis to trade outside the purview of his IIROC member firm. As a result, neither the IIROC member nor the MFDA Member supervised these activities – conduct clearly detrimental to the public interest.

8. Other violations resulted from the private agreement between the Respondent and Dennis, not least among them the Respondent’s failure to comply with the Member’s policies and procedures, which are designed to ensure that its business is carried out in accordance with MFDA By-laws, Rules and Policies.

9. It is well established that Hearing Panels, in determining appropriate penalties, should consider the protection of the investing public, the integrity of the security markets, specific and general deterrence, and the protection of the MFDA’s membership and its enforcement process. (See, for instance, *Re Arnold Tonnies*, a decision of the Prairie Regional Council, MFDA File No. 200503.) But Panels must also consider mitigating factors, and here we note that the Respondent has cooperated with Staff throughout the investigation and that he clearly appreciates and recognizes his misconduct. Nor is there any evidence of client loss or complaints related to the arrangement between Dennis and the Respondent. We also note that the Respondent has since left the industry.

10. The sanctions proposed by the parties are in line with previous cases concerning matters of a similar nature: see *Re Mary Elizabeth Rygiel*, MFDA File No. 200708, *Re uc Marc Andre Laverdiere*, MFDA File No. 200936, and *Re Michael Franco*, MFDA File No. 201016.

Disposition

11. Considering the facts of this case, the relevant precedents, the aggravating as well as the mitigating factors, the Panel, after deliberating, accepted the joint submission of the parties. However, as a matter of prudence, the Panel also held that should the Respondent at some future date decide to re-enter the mutual fund industry, he must first successfully complete an appropriate course.

12. In the result, the following penalties and costs are imposed on the Respondent:

- (a) a prohibition on the authority of the Respondent to conduct securities related business while in the employ of, or associated with, any MFDA Member, for a period of two years pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) the Respondent shall write or re-write and pass an appropriate industry course acceptable to MFDA Staff, prior to being registered in the mutual fund industry, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- (c) the Respondent shall pay a fine in the amount of \$15,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (d) the Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of MFDA By-law No. 1; and
- (e) if at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

13. We would like to thank Enforcement Counsel for his thoughtful and entirely fair presentation of the case against the Respondent which was of great assistance to the Panel.

DATED this 18th day of October, 2011.

“Fred Kaufman”

The Hon. Fred Kaufman, C.M., Q.C.,
Chair

“Robert White”

Robert C. White,
Industry Representative

“Brian Nowak”

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