



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



Annual Enforcement Report 2013
*Ensuring a high level of conduct among our Members
and Approved Persons with regard to mutual fund
distribution in Canada*



Message from the President & CEO

It is with great pleasure that I present the 2013 Annual Enforcement Report. The results presented in this report are the culmination of our continued execution of the MFDA Strategic Plan and its goals of increased operational efficiencies while promoting Member and Approved Person compliance and increasing investor confidence. The results and achievements set out in this report are not only the products of the efforts of the Enforcement Department, but of the collaborative efforts of all MFDA departments and staff working together.

As set out in the report, MFDA Enforcement continues to focus its efforts on key areas of regulatory concern. Case priorities continue to be suitability, outside business activities, signature irregularities, cases of a serious nature such as theft and fraud, and cases involving Seniors and other vulnerable groups. Member supervision of Approved Persons is assessed in all of these cases, and where appropriate, enforcement action is taken for any identified supervisory deficiencies. While we continue to focus regulatory efforts in these areas, it is important to note that the MFDA employs a zero tolerance policy for any breach of regulatory requirements by Members and Approved Persons. Enforcement action is taken in all cases of an identified regulatory breach in the form of disciplinary hearings, Warning Letters and Cautionary Letters.

This report summarizes several important hearings that were completed in 2013 and demonstrates the ability of our industry to effectively regulate itself, and to hold those who do not follow regulatory requirements and breach the public trust, to account.

We continue to apply specialized procedures to achieve operational efficiencies. Procedures such as the simplified formal proceedings process have enabled us to minimize the risk of ongoing harm to the public and to increase our disciplinary response to cases that are of continuing concern.

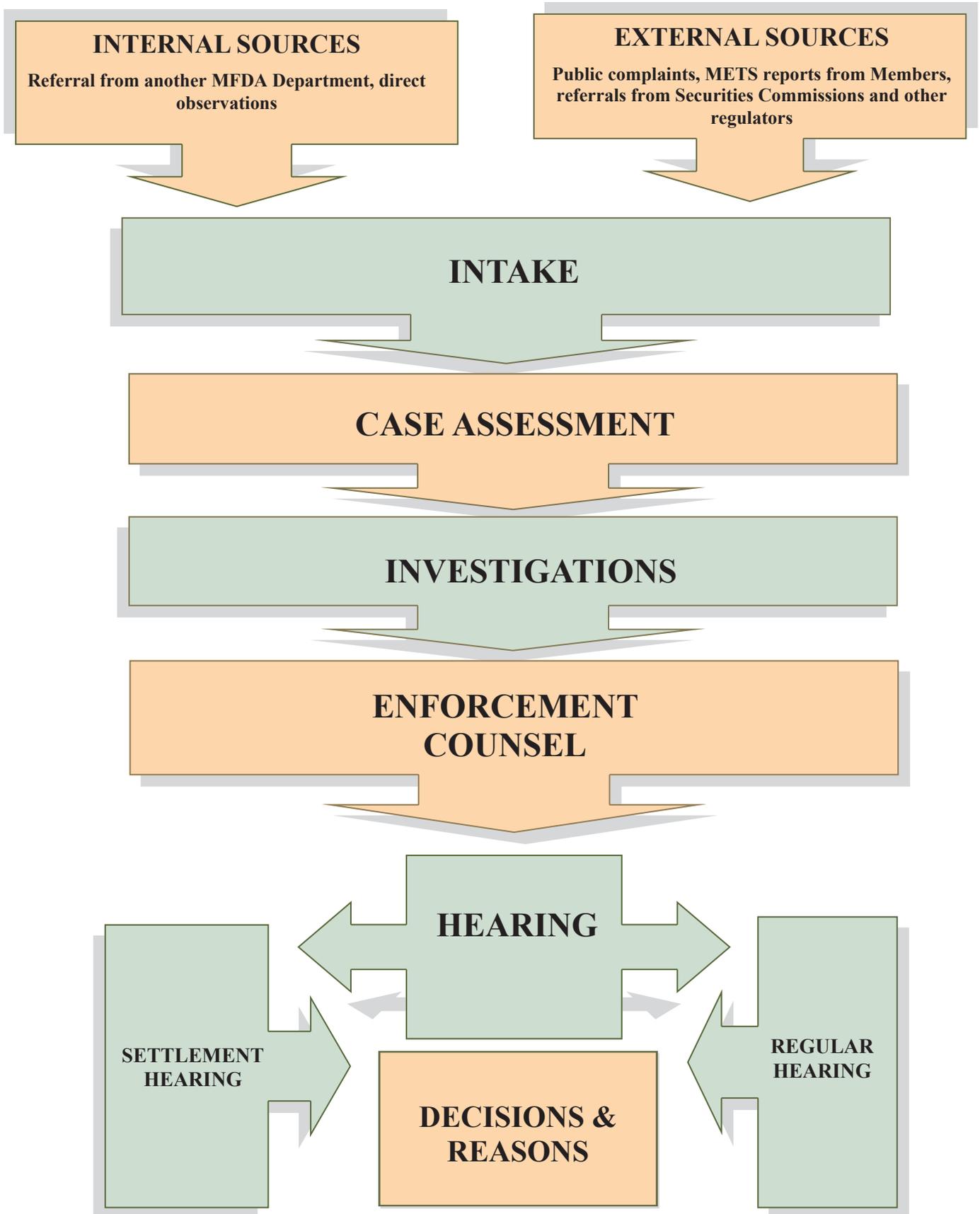
Other complementary initiatives that have recently been introduced by the MFDA include the implementation of a Whistleblower program and an emphasis on investor and Member education through the hiring of the Director, Public Affairs and the Director, Member Education.

The report also includes information and links to several important resources that can be found on the MFDA website, such as information on checking the registration and discipline history of an advisor.

Mark T. Gordon
President & CEO

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MFDA ENFORCEMENT PROCESS



Cases may be closed at any stage in the Enforcement process. Case screening occurs at intake, upon opening a case in Case Assessment, upon escalating or closing a case at Case Assessment as well as periodically through the Enforcement process.

Case Assessment

The group receives information in various ways. The most common are complaints received from members of the public, internal referrals from the MFDA Compliance Department and reports from the Member Event Tracking System (“METS”) when Members receive a complaint or identify issues through their branch review programs and other supervisory activity. The Case Assessment group screens this information and opens cases where there is a possibility of a violation of MFDA requirements. The Case Assessment group obtains further information on the cases that are opened and assesses whether there are grounds to believe a violation has occurred. Where there are such grounds, Case Assessment may deal with the matter by way of a Warning or Cautionary Letter or may escalate it to Investigations.

During 2013, the MFDA opened **426** cases as a result of **208** METS events, **181** public complaints, **24** referrals from Securities Commissions and other regulators, **8** internal referrals, **2** Member referrals, **2** financial industry participant referrals and **one** case brought to our attention through the media.

Of the **426** cases opened, **113** were referred to the Investigations group. Case Assessment Staff escalates cases to the **Investigations** group where there are grounds to believe that there has been a substantial breach of MFDA requirements which may warrant formal disciplinary proceedings, or where the matter is sufficiently complex to require a more extensive review by an Investigator.

The table below summarizes the subject matter to which the primary allegation related in cases opened by the MFDA in 2013. The table records the main allegation made for all cases, whether or not MFDA Staff concluded that a violation occurred. Allegations recorded in files constituting less than 1% of total cases opened have not been included in the table:

January 1, 2013 to December 31, 2013	Number of cases	Percentage of total cases opened
Blank Signed Forms	54	13%
Suitability - Leveraging	49	12%
Falsification / Misrepresentation	36	8%
Business Standards	29	7%
Policies & Procedures	27	6%
Suitability-Investments	27	6%
Complaint Procedures	27	6%
Unauthorized / Discretionary Trading	21	5%
Commissions and Fees	20	5%
Outside Business Activities/Dual Occupation	20	5%
Transfer of Accounts	20	5%
Personal Financial Dealings	16	4%
Sales Communication	10	2%
Supervision	10	2%
Referral Arrangements	9	2%
Provincial Securities Legislation	7	2%
Forgery / Fraud / Theft / Misappropriation / Misapplication	6	1%
Handling of Funds	6	1%

Investigations

The Investigations group conducts in-depth analysis of cases, including gathering documentation and conducting interviews with Members, Approved Persons and Complainants, where appropriate. Of the **113** cases investigated in 2013, **61** were referred to **Enforcement Counsel**, with a recommendation to commence formal disciplinary proceedings.

Hearings

As part of its regulatory mandate, the MFDA is authorized to commence disciplinary proceedings against its Members and Approved Persons who have allegedly engaged in misconduct. All decisions by Staff to commence disciplinary proceedings are made by a committee of MFDA Senior Management.

Hearings are conducted in the region where the alleged misconduct occurred before a three person Hearing Panel which is responsible for determining whether any misconduct occurred and if so, whether any penalties should be imposed on the Member or Approved Person. Hearing Panels are usually comprised of two members of the MFDA Regional Council with securities industry experience and a Chair of the Hearing Panel, who is a retired judge or a lawyer with experience conducting disciplinary hearings.

There are two disciplinary hearing types; **regular** and **settlement**. At the conclusion of a regular hearing, the Hearing Panel issues written reasons for its decisions concerning misconduct and penalties. Possible penalties include fines, suspension or permanent prohibition. Hearing Panels exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining appropriate penalties in each case where misconduct has been found. The MFDA has Penalty Guidelines that set out the general principles and factors to be considered and criteria on the penalty types. [Further information on the MFDA Penalty Guidelines can be found on our website.](#)

If MFDA Staff or a Respondent believes that the decision of the Hearing Panel was incorrect or unfair, a review of the decision can be requested. In a case involving an Approved Person or a decision of the MFDA Board of Directors, the decision can be reviewed by the securities commission in the province where the hearing took place.

As an alternative, settlement discussions may be initiated at any time for the purpose of attempting to resolve the allegations of misconduct at a settlement hearing rather than a regular hearing. Enforcement Staff and the Approved Person or Member can enter into a written Settlement Agreement that contains a description of the facts acceptable to both parties, an admission by the Respondent of misconduct and an agreement as to the penalties to be imposed on the Respondent. At the settlement hearing, a Hearing Panel will review the Settlement Agreement and hear the arguments of the parties to the settlement in support of the proposed terms of settlement. The Hearing Panel then determines whether the proposed settlement is reasonable and in the public interest. Reasons are written by the Hearing Panel if the settlement is accepted.

Cautionary and Warning Letters

Where Staff is of the view that a violation of MFDA requirements has occurred, a case may be closed with an administrative resolution in lieu of formal proceedings at any stage in the Enforcement process. An administrative resolution typically consists of either a Cautionary Letter or a Warning Letter. Warning Letters are issued in circumstances where the violation is one that the MFDA could have escalated to a formal disciplinary hearing, but due to the existence of screening factors, including a consideration of available resources, has chosen not to. Cautionary Letters are issued when the violation is less serious in nature and one that the MFDA would not generally escalate to a formal disciplinary hearing. **137** cases were closed with the issuance of a Warning Letter in 2013 and **138** were closed with the issuance of a Cautionary Letter.

Protection of Seniors & Other Vulnerable Investor Groups

The protection of Seniors (defined by the MFDA as investors 60 years of age or over) and other vulnerable groups (such as those with very limited financial resources or language, literacy or disability issues) continued to be an area of focus for the Enforcement Department in 2013. Approximately 25% of hearings commenced in 2013 involved these types of investors. Cases concluded in 2013 which involved vulnerable groups have been identified on Pages 10 and 11.

In 2013 two new Director level positions were created at the MFDA with a focus on Investor and Member Education. Together the Director, Public Affairs and the Director, Member Education have concentrated on several initiatives to further educate MFDA Members, Approved Persons and investors on issues relating to seniors and other vulnerable groups. These activities included the Seniors Summit held in October 2013, the provision of targeted on-site training to Members and their Approved Persons on Seniors' issues by MFDA Staff, meeting with investor advocates to solicit investor feedback, attendance at investor outreach events and the publication of a brochure aimed at teaching investors how to identify and avoid investment fraud.

Implemented a Whistleblower Program. [More information can be found here](#)

2013

Published MFDA Bulletin #0569 [Complaint Handling Document Deficiencies](#)

Suitability

Suitability also continued to be a priority for the Enforcement Department in 2013. The MFDA revised its screening threshold for suitability complaints captured via the METS system to increase attention on this area, with a particular focus on the suitability of leveraged investment recommendations.

Following hearings held in Vancouver in 2013, a Hearing Panel of the Pacific Regional Council of the MFDA found that Enzo DeVuono had recommended and sold mutual funds to two unsophisticated elderly clients by way of a leveraged investment strategy without performing the necessary due diligence to learn the essential facts relative to the clients and without ensuring that the investments and the leveraged investment strategy were suitable and appropriate for the clients and in keeping with their investment objectives. Further information about this case and all current and completed hearings can be found on the MFDA's website.

KEY ENFORCEMENT ACTIVITY 2013—HEARINGS

Hearings Commenced in 2013

The MFDA commenced **65** hearings in 2013, an increase from the **48** commenced in 2012. Most proceedings involved more than one alleged violation. The table below shows the primary matter to which the allegations related in these proceedings. Not all proceedings commenced in 2013 have been concluded and allegations in ongoing proceedings have not been proven:

Allegations by Notice of Hearing or Notice of Settlement Hearing issued in 2013	Approved Persons	Members
Blank Signed Forms	15	
Outside Business Activities/Dual Occupation (includes Securities Related Business Outside the Member)	14	1
Falsification / Misrepresentation (includes misleading a Member or Regulator)	9	
Personal Financial Dealings	6	
Forgery / Fraud / Theft / Misappropriation / Misapplication	4	
Failure to Cooperate	3	
Suitability—Leveraging	3	
Conduct Unbecoming	2	
Unauthorized/Discretionary Trading	2	
Complaint Procedures	1	
Suitability—Investments	1	
Referral Arrangements	1	
Supervision		1
Securities Order		1
Financial Requirements		1
Total	61	4
Overall Total	65	

Hearings Concluded in 2013

The table below shows the penalties imposed against Approved Persons and Members by Hearing Panels in hearings concluded in 2013:

Type of Penalty	Approved Persons/ Members
Total Fines	\$10,850,500
Total Costs	\$243,500
Permanent Prohibition	21
Suspension (ranging from one month to ten years)	11

The MFDA concluded **47** hearings in 2013. They resulted in fines of **\$10,850,500** and costs of **\$243,500** against Members and Approved Persons. All fines and costs against current Members and Approved Persons who remain in the industry have been collected. The MFDA does not have the power to collect fines from former Members or Approved Persons, except in the province of Alberta where Staff makes all reasonable collection efforts. Staff also pursues options for collecting costs from former Members or Approved Persons as applicable law may permit.

As well as imposing fines, costs, permanent prohibitions and suspensions, Hearing Panels imposed other penalties on Approved Persons in hearings concluded in 2013, such as suspensions from being registered in any supervisory capacity, and rewriting and passing an industry course acceptable to MFDA Staff prior to being re-registered in the mutual fund industry.

Falsification/Misrepresentation—Scott Kelly

Following a hearing on January 15, 2013, a Hearing Panel of the Central Regional Council of the MFDA found that Scott Kelly (“Kelly”) falsified two client signatures on account documents in June 2011.

The Hearing Panel imposed the following penalties on Kelly:

A permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member; a fine of \$500,000; and costs of \$5,000.

The falsification of documents is very serious. This conduct can lead to failed supervision, inaccurate audits, improper information in new accounts and compromised accuracy of clients’ information.

MFDA Hearing Panel on Scott Kelly’s conduct

Personal Financial Dealings—Luigi Ciardullo

Following a hearing on March 19, 2013, a Hearing Panel of the Central Regional Council of the MFDA found that between March 2006 and November 26, 2010, Luigi Ciardullo (“Ciardullo”) engaged in personal financial dealings with clients by accepting a total of at least \$379,864 from at least 13 clients, at least \$250,209 of which Ciardullo has failed to repay or otherwise account for.

Included in the 13 clients was an elderly couple from whom Ciardullo obtained \$250,000 based on his representation to these clients that their monies would be invested in specific mutual funds. Instead, Ciardullo diverted the clients’ monies to his own use. Ciardullo also issued account statements on the letterhead of his company, “Pinnacle Financial Services”, which falsely stated that the clients’ monies were invested in various shares of publicly traded companies, or in mutual funds that did not exist.

The Hearing Panel imposed the following penalties on Ciardullo:

A permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member; a fine of \$500,000; and costs of \$7,500.

The Respondent is a wicked man. He preyed on an elderly couple and robbed them of \$250,000. He then cruelly misled them as to what he was doing.

MFDA Hearing Panel on Luigi Ciardullo’s conduct

Forgery/Fraud/Theft/Misappropriation/Misapplication—Paul Yoannou

Following a hearing on April 25, 2013, a Hearing Panel of the Central Regional Council of the MFDA found that between February 2006 and July 11, 2011, Paul Yoannou (“Yoannou”) solicited and accepted at least \$6,000,000 from at least 18 individuals, which he led them to believe would be invested on their behalf in various non mutual fund investment programs (the “Investment Programs”). The Investment Programs were not legitimate investment opportunities, nor were they known to or approved by the Member.

Yoannou did not use any of the monies provided to him by the clients and other individuals to purchase investments for their accounts. Instead, he deposited the monies in bank accounts under his control and for his benefit, thereby misappropriating the monies.

The Hearing Panel imposed the following penalties on Yoannou:

A permanent prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member; a fine of \$6,000,000 and costs of \$7,500.

Yoannou had additionally received a six year imprisonment sentence at a criminal trial held in February 2013 in Toronto after pleading guilty to 15 counts of fraud.

The Respondent is a despicable fraudster. He stole at least \$6,000,000 from 18 clients and other individuals and used the cover of his employment by [the Member] to advance his fraudulent schemes.

MFDA Hearing Panel on Paul Yoannou’s conduct

Outside Business Activities/Dual Occupation—Christiaan Hesselink

Following a hearing on September 27, 2013, a Hearing Panel of the Central Regional Council of the MFDA found that between October 2007 and March 2010, Christian Hesselink (“Hesselink”) sold at least \$7.8 million of an exempt market product (“Skyline”) to 52 clients and 18 individuals. Six clients redeemed mutual funds in order to do so. Hesselink earned \$346,286 in commissions. Hesselink had sought prior permission from the Member in order to sell Skyline, which the Member had denied.

The Hearing Panel imposed the following penalties on Hesselink:

A five year prohibition from conducting securities related business in any capacity while in the employ of, or associated with, any MFDA Member; a fine of \$400,000; and costs of \$7,500.

This Respondent is ungovernable. He blithely ignored [the Member’s] ruling that Skyline was not an approved product and went “off book” to refer numerous clients and others to Skyline. His pious statement that he did this, in part, so that his friends and clients could get a good product with which to balance their portfolios rings hollow when one considers the amount of fees he earned.

MFDA Hearing Panel on Christiaan Hesselink’s conduct

KEY ENFORCEMENT ACTIVITY 2013—COMPLETED HEARINGS

Financial Requirements

PDQ Financial Services Inc. (Toronto, ON)

Cesidio Negri (Toronto, ON)

Falsification/Misrepresentation

Hugh Smilestone (Halifax, NS)

Barbara Man (Toronto, ON)

Kelvin Byce (Toronto, ON)*

Omar Hayat (Toronto, ON)†

Scott Kelly (Toronto, ON)**

Conduct Unbecoming

William Maynes (Toronto, ON)

Referral Arrangements

Edmund Teelucksingh (Toronto, ON)

Suitability—Leveraging

Enzo DeVuono (Vancouver, BC)†

Provincial Securities Legislation

Jack Comeau (Saskatoon, SK)

Christophe Taylor (Calgary, AB)

Early warning designation is intended to help prevent a Member from getting into serious financial difficulty. When a Member becomes unable to meet its financial obligations there can be risk for its clients. Moreover, the public image of the investment industry can be compromised when individual Members are, or appear to be, financially insecure. A Member must, therefore, take its responsibilities, while under early warning, very seriously.

MFDA Hearing Panel on PDQ Financial Services Inc.'s conduct

Blank Signed Forms

Shawn Bolt (Toronto, ON)

Gary Golden (Winnipeg, MB)*†

Grant Page (Winnipeg, MB)*

Michael Dunn (Toronto, ON)*

Domenic Pizzimenti (Toronto, ON)*

Arron Appleton (Toronto, ON)*

Orville Carruthers (Toronto, ON)*

Brian Poncelet (Toronto, ON)*

Michael McKale (Toronto, ON)*

At the conclusion of the hearing, the Chair asked the Respondent why he would jeopardize his livelihood by such foolish behaviour. He said “it was an error in judgment”. The Chair sternly warned him against such behaviour in the future.

MFDA Hearing Panel on Domenic Pizzimenti's conduct

***These cases proceeded via the Enforcement Department's bulk track, enabling the hearing of multiple cases in one sitting.**

****This case proceeded via the Enforcement Department's fast track, expediting the hearing to minimize risk of ongoing harm to the public.**

† These cases involved Seniors and other vulnerable groups.

Where an Approved Person conceals outside business activity from the Member, the Approved Person has failed to observe high standards of ethics and conduct in the transaction of business and has also failed to refrain from engaging in business conduct or practice which is unbecoming or detrimental to the public interest. This is even more so the case when an Approved Person undertakes securities related business outside the Member.

MFDA Hearing Panel on Tony Tong's conduct

Outside Business Activities/Dual Occupation

Zhengwen Qi (Toronto, ON)†

Xiaodan Huang (Toronto, ON)†

Elizabeth VandenBoomen (Toronto, ON)†

Tony Tong (Calgary, AB)†

Christiaan Hesselink (Toronto, ON)

Ricardo Cavalli (Edmonton, AB)

Keith Tan (Toronto, ON)

Peiqing He (Toronto, ON)

Hazel Gaminde (Toronto, ON)

Personal Financial Dealings

Geoffrey Gaunt (Halifax, NS)

Stephen Pigeau (Toronto, ON)**

Sandra Levine (Toronto, ON)†

Luigi Ciardullo (Toronto, ON)†**

Daniel Lipovetsky (Toronto, ON)

Richard Bangyay (Toronto, ON) †

Kimberly Haylock (Toronto, ON) **†

Angie Lau (Toronto, ON)*

The evidence demonstrates that the Respondent took advantage of a vulnerable person who had placed her trust in him. He persuaded her to enter into a transaction whereby her indebtedness to others was increased by \$100,000. However he provided her with no security for her loan to him. He put her in a position where her financial security was severely prejudiced.

MFDA Hearing Panel on Richard Bangyay's conduct

It is, however, very clear to the Panel that the Respondent used her position with [the Member] to gain the trust of clients, exploit their lack of sophistication and knowledge of investments and insurance, obtain information as to their finances and then devise a variety of schemes to misappropriate their monies for her own benefit.

MFDA Hearing Panel on Dorothy Chan's conduct

**Forgery/Fraud/Theft/Misappropriation/
Misapplication**

Dorothy Chan (Vancouver, BC)†

Paul Yoannou (Toronto, ON)**

Trevor Amundrud (Calgary, AB)

Leslie McIntosh (Calgary, AB)†

***These cases proceeded via the Enforcement Department's bulk track, enabling the hearing of multiple cases in one sitting.**

****These cases proceeded via the Enforcement Department's fast track, enabling the hearing to be expedited to minimize risk of ongoing harm to the public.**

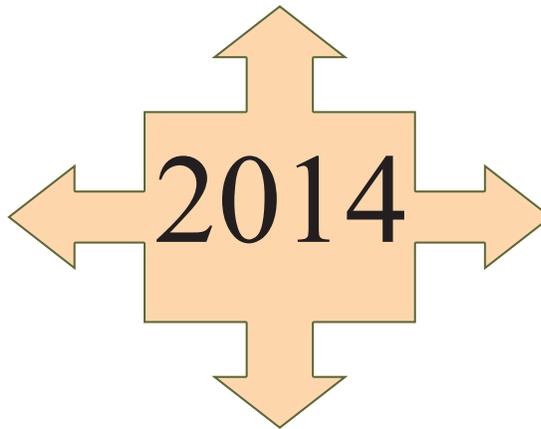
† These cases involved Seniors and other vulnerable groups.

LOOKING FORWARD

Signature Irregularities

The MFDA considers the falsification of client signatures and the use of blank signed forms as falling well below the ethics and conduct expected of all registrants in the securities industry, even if allegedly for the “convenience” of clients. This issue adversely affects the integrity and reliability of key documents such as Know Your Client and trading forms and can be a feature of fraud, misappropriation and unauthorized trading cases. Fifteen hearings were concluded in 2013 in relation to this issue with additional hearings scheduled for 2014. Other cases have been closed with Cautionary or Warning Letters, depending on various screening factors such as the number of investors impacted, whether financial loss occurred, whether the conduct was an isolated incident and the level of risk posed to the public by the conduct. Although the MFDA has noted increased supervision of this issue across Member firms, we intend to provide additional education to Members in relation to signature irregularities in 2014.

Continued focus on suitability cases, especially those involving Seniors and other vulnerable groups, as well as leveraged investment recommendations.



Continued use of Simplified Formal Proceedings process to minimize risk of ongoing harm to the public and allow the MFDA to increase its disciplinary response on cases that are of continuing concern.

Outside Business Activities

One of the most common allegation types in hearings conducted in 2013 involved undisclosed outside business activities of Approved Persons. Where a Member becomes aware of an Approved Person’s undisclosed outside business activity, whether through a client complaint or other source, the MFDA expects that the Member will conduct a reasonable supervisory investigation to ensure that any issues identified are adequately addressed and resolved. Any information received by a Member that would suggest the outside activities of an Approved Person may bring the Member or the mutual fund industry into disrepute must be followed up. In addition, Members have ongoing obligations to take reasonable measures to detect undisclosed outside business activities before any issues arise. The Enforcement Department will be paying particular attention to the adequacy of Member supervision in ongoing and future cases involving outside business activities.

RESOURCES

Our Website

Further information can be found on the MFDA's website, including with respect to the following areas:

- [Opening an Investment Account](#);
- [Protecting Yourself from Fraud](#);
- [Guide to the Hearing Process](#);
- [Penalty Guidelines](#);
- Enforcement Hearings (including [Hearings Schedule](#), [Current Cases](#), [Completed Cases](#) and [Cases Under Review/Appeal](#));
- Hearing Procedures (including [Rules of Procedure](#) and [Forms](#));
- Related By-Law Sections (Sections 18 – 26); and
- [Enforcement Statistics](#).

How to File a Complaint

- Information on how to file a complaint about a Member or Approved Person can be found at <http://www.mfda.ca/investors/complaints.html>. Investors can complain electronically by emailing complaints@mfda.ca, by using the complaint form available on the website or by calling MFDA complaints at 416-361-6332 (toll-free: +1-888-466-6332).

Other Resources

- Any action taken by the MFDA will not include an order that investors be compensated for any financial losses they may have suffered. Additionally, the MFDA is unable to assist clients with civil claims. Investors who wish to pursue financial compensation may wish to consult with the Ombudsman for Banking Services and Investments (www.obsi.ca or 1-888-451-4519) or a lawyer.
- In Canada, anyone trading securities or in the business of advising clients on such securities must be registered with the provincial or territorial securities regulator, unless an exemption applies. Check the [National Registration Search](#) to find out if an individual or firm is registered in your province or territory and what product and services a firm or individual can offer or contact your provincial securities regulator.
- The Canadian Securities Administrators (“CSA”) maintains a cross-jurisdictional [Disciplined Persons List](#), which can be used to search for any disciplinary action taken against an individual by a provincial securities regulator or self-regulatory organization, including the MFDA.