

2016

# ANNUAL ENFORCEMENT REPORT



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

# Message from the President and CEO



I am pleased to present the 2016 Annual Enforcement Report which highlights key enforcement activity over the course of 2016.

As the self-regulatory organization that oversees mutual fund dealers in Canada, the MFDA's regulatory activities focus exclusively on the retail distribution of mutual funds. This focus provides staff with an important level of expertise on the issues that help to protect every day Canadian investors; issues such as suitability, rules regarding conflicts of interests and the legal and practical issues relating to addressing Member supervision and complaint handling.

Staff expertise enables us to better protect Canadian investors by providing Members with relevant and comprehensive guidance. We recently published a suitability research paper which canvasses disciplinary decisions of Canadian securities regulatory authorities regarding the suitability requirement that applies to Approved Persons. In addition, in 2016 the Enforcement Department issued a webcast for Members on complaint handling and the principle of fairness, and updated guidance to Members and Approved Persons on detecting and addressing signature falsification.

In addition to the investor protection provided by the MFDA through its regulatory activities, the MFDA remains committed to providing investors with key information so that they can make informed decisions. To assist investors in understanding regulatory changes that came into effect in 2016 the MFDA published several investor guides and notices. We published an investor notice on the change to pre-sale delivery of Fund Facts, an investor guide to the new performance and compensation reports that investors are now receiving as part of the CRM2 initiative, and an investor guide on selecting an advisor and understanding the advisory process. We also began publishing investor bulletins which provide investors with alerts, summaries of notable enforcement cases and information on how investors can better protect themselves from fraud and financial harm.

As set out in this report, the Enforcement Department has continued to focus on Member supervision and complaint handling, and as a result 2016 saw an increase in disciplinary hearings against Members. As part of our enforcement process, we investigate Member supervision in all cases, and always review Member complaint handling. These two Member obligations are of central importance to a regulatory framework that helps to protect investors and provide positive outcomes for clients. Going forward, we will continue to rigorously enforce these two important regulatory requirements.

Finally, I would like to thank all MFDA management and staff for their hard work and dedication. As an SRO responsible for regulating the distribution of mutual funds, which are the most widely held investment product by retail investors, there is no doubt that our collective efforts have had a large impact on enhancing investor protection across Canada.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mark T. Gordon', written over a light blue horizontal line.

Mark T. Gordon, LL.B.  
President and CEO



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# About Us

## Mutual Fund Dealers Association of Canada

The Mutual Fund Dealers Association of Canada (MFDA) is the national self-regulatory organization (SRO) for the distribution side of the Canadian mutual fund industry. The MFDA is structured as a not-for-profit corporation and its Members are mutual fund dealers that are licensed with provincial securities commissions.

The MFDA is formally recognized as a self-regulatory organization by the provincial securities commissions in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan. An application for recognition is pending before the Superintendent of Securities of Newfoundland and Labrador. The MFDA has also entered into a Co-Operative Agreement with the Autorité des marchés financiers and actively participates in the regulation of mutual fund dealers in Québec.

As an SRO, the MFDA is responsible for regulating the operations, standards of practice and business conduct of its Members and their representatives with a view to enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry. MFDA Members represent approximately \$521.5 billion of mutual fund assets under administration. MFDA Members are registered in every province and territory of Canada and are the sponsors of approximately 83,350 mutual fund sales persons.

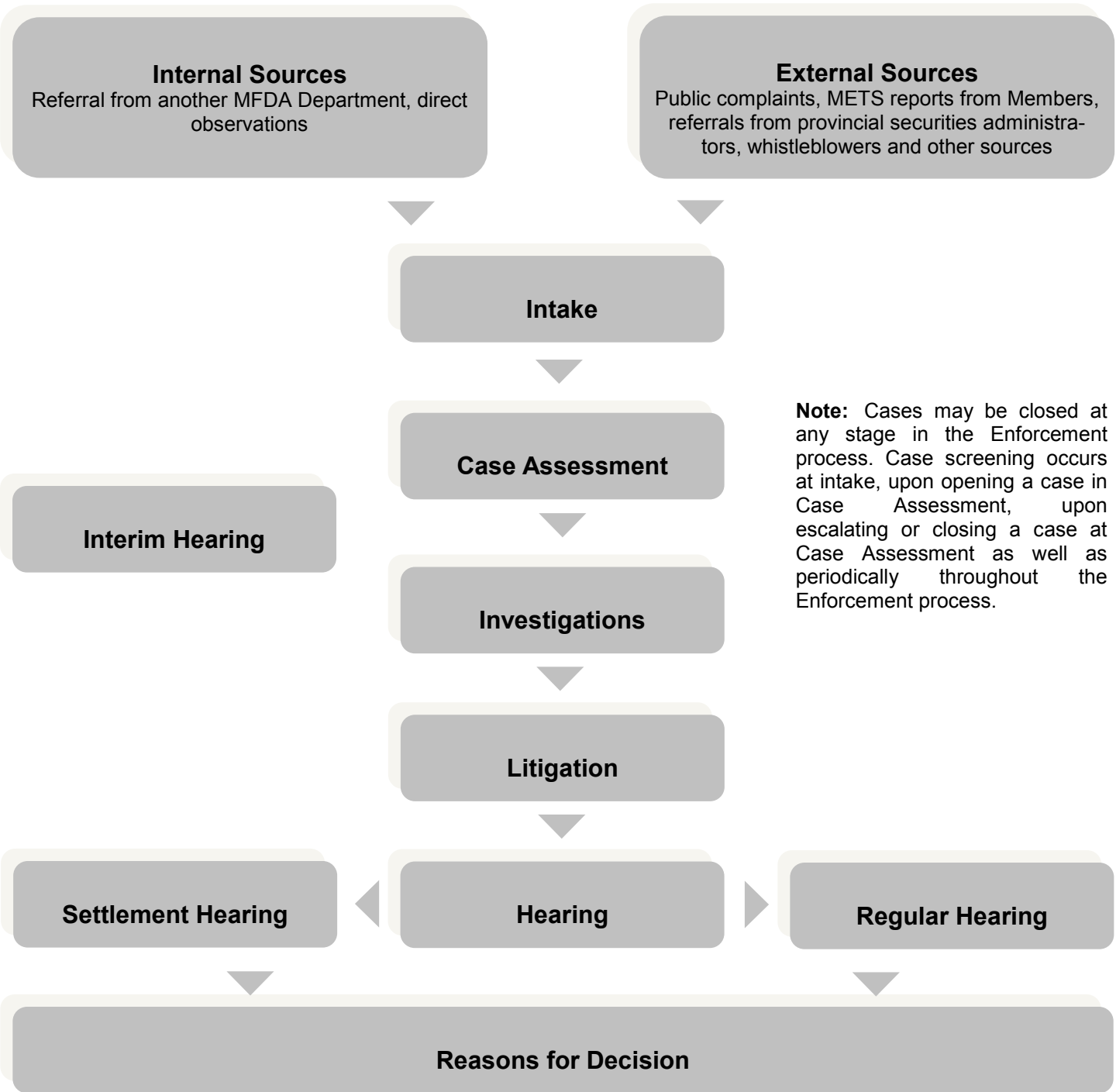
## Enforcement Department

The Enforcement Department investigates situations where our Members and their Approved Persons may have breached our requirements. The Enforcement Department operates on several general principles:

- The Enforcement Department considers general and specific deterrence in its decision making.
- Members and Approved Persons are provided opportunity for input before a decision is made on disciplinary action, except in urgent cases involving potential public harm.
- In all cases, the level of supervision by the Member of its Approved Persons will be part of the review.
- Cases are reviewed proactively, with a view to identifying possible associated misconduct and assessing root causes.
- The Enforcement Department works on a cooperative basis with other regulatory agencies and law enforcement organizations.
- The Enforcement Department works on a cooperative basis with the MFDA Compliance and Policy Departments to refer cases and issues where appropriate.

The Enforcement Department has four main functions: Intake, Case Assessment, Investigations and Litigation.

# Enforcement Process



**Note:** MFDA By-law No. 1 allows for the appeal of a MFDA Hearing Panel decision to the relevant securities commission.



# Statistics

**Table 1. Overview of Enforcement Department Activity, 2014-2016**

The table below summarizes overall activity for the Enforcement Department.

Description	Number		
	2014	2015	2016
Cases opened	418	444	446
Cases closed	373	361	450
Warning letters	90	85	120
Cautionary letters	95	86	86
Proceedings commenced	48	69	111

**Table 2. Cases Opened at Case Assessment by Source, 2014-2016**

The table below lists the sources from which the Enforcement Department became aware of information that led to a case being opened at the Case Assessment stage.

Source	Number		
	2014	2015	2016
METS	251	281	246
Public	137	123	145
CSA and Other Regulators	16	18	15
MFDA Compliance	6	9	26
Whistleblower	4	6	4
Member	3	4	9
Media	1	2	1
Police	1	1	N/A
Total	418	444	446

**Note:** The Whistleblower Program was established in February 2014.

**Table 3. Primary Allegations Made in Cases Opened at Case Assessment, 2014-2016**

The table below lists the primary allegation made in cases opened at the Case Assessment stage.

Nature of Primary Allegation	Number of Primary Allegations		
	2014	2015	2016
Signature Falsification*	46	61	130
Suitability—Investments	36	45	41
Suitability—Leveraging	33	29	28
Business Standards	19	32	24
Unauthorized / Discretionary Trading	18	39	23
Transfer of Accounts	12	7	21
Supervision	3	13	20
Personal Financial Dealings	19	12	19
Complaint Procedures	31	33	19
Commissions and Fees	23	12	17
Policies and Procedures	24	14	13
Falsification / Misrepresentation	54	56	11
Provincial Securities Legislation	3	4	11
Forgery / Fraud / Theft / Misappropriation / Misapplication	12	12	9
Outside Business Activities / Dual Occupation	15	9	8
Acting Outside Registration Status	3	9	6
Confidentiality / Privacy	12	7	4
Sales Communication	7	5	3
Referral Arrangements	4	3	3
Handling of Funds	2	-	2
Other	42	42	34
<b>Total Number of Primary Allegations</b>	<b>418</b>	<b>444</b>	<b>446</b>

\* Effective 2016, a new allegation category was created to include the former pre-signed forms category plus the falsification/ misrepresentation cases that involve signature falsification as described on page 11 of this report.



**Table 4. Hearings Commenced, 2016 - All Allegations**

The MFDA commenced 111 proceedings in 2016 by Notice of Hearing or Notice of Settlement Hearing. Most of the proceedings involved more than one alleged violation of MFDA Rules, By-laws or Policies.

Nature of Allegation	Number of Allegations made against Approved Persons	Number of Allegations against Members
Signature Falsification	60	
Policies and Procedures	15	
Unauthorized / Discretionary Trading	15	
Personal Financial Dealings	13	
Business Standards	13	
Outside Business Activities / Dual Occupation	11	
Failure to Cooperate	7	
Forgery / Fraud / Theft / Misappropriation/ Misapplication	7	
Conflict of Interest	7	
Conduct Unbecoming	7	
Supervision	6	8
Referral Arrangements	5	1
Acting Outside Registration Status	5	
Commissions and Fees	4	
Suitability—Investments	4	
Complaint Procedures	3	3
KYC Documentation Deficiency	3	1
Books / Records / Client Reporting	3	1
Suitability—Leveraging	2	
Falsification / Misrepresentation	2	
Reporting Violations	1	2
Sales Communication	1	
Provincial Securities Legislation	1	
Confidentiality / Privacy	1	
Stealth Advising	1	
Disclosure	1	
Other	1	
Know Your Product		2
Sub-Total	199	18
Overall Total		217

In 2016, 129 Investigation files were escalated to Litigation with a recommendation to commence formal disciplinary proceedings.

**Table 5. Hearings Concluded, 2016 - Penalties**

In 2016, the Enforcement Department concluded 85 hearings. In those 85 hearings, MFDA Hearing Panels imposed fines of \$21,104,750 of which \$627,753 (approximately 3%) has been collected. Since the commencement of MFDA disciplinary activity in 2004, MFDA Hearing Panels have imposed total fines of \$73,598,211 of which \$7,299,267 (approximately 10%) has been collected.

The MFDA has powers to collect fines from Respondents who remain in the industry as Approved Persons, but does not have the ability to collect fines from former Approved Persons, except in the provinces of Alberta and Prince Edward Island where MFDA Staff make all reasonable efforts to collect any outstanding fines. In 2017, Ontario enacted legislation that gives SROs powers to collect fines.

The table below shows the penalties imposed against Approved Persons and Members by MFDA Hearing Panels in hearings concluded in 2016. Additional types of penalties MFDA Hearing Panels imposed on Approved Persons not shown in the table include suspensions from registration in a supervisory capacity, and orders to rewrite certain industry courses.

Type of Penalty	Total
Permanent Prohibition	22
Suspension	26
Educational Course Requirement	5
Total Fines	\$21,104,750
Total Costs	\$496,000

**Table 6. Hearings Concluded, 2016 - Type of Hearing**

Type of Hearing	Number
Contested/ Uncontested Hearing	34
Settlement Hearing	51
Total Number of Hearings	85

# Key Enforcement Activity

## Addressing Signature Falsification

The MFDA continued its efforts to address signature falsification. Signature falsification was an allegation in 60 of the 111 formal proceedings we commenced in 2016, including 47 of the 52 cases in which the MFDA used the bulk track process.

Most cases of signature falsification investigated by the MFDA do not involve client complaints, an intent on the part of the Approved Person to harm the client or resulting financial harm to the client. In many of the cases, the activity is done for purposes of client or advisor convenience.

In many cases, an Approved Person asks a client to sign a form in blank to be used to conduct a future transaction on the client's verbal instructions. In other cases, errors are made on properly signed and completed forms and those errors are corrected afterwards in writing by the Approved Person without having the client initial the change. On occasion, the Approved Person forgets to include some information on the form and inserts the information after the client has signed it. Sometimes a client gives the Approved Person telephone instructions to conduct a transaction but the Approved Person signs on behalf of the client or photocopies or cuts and pastes a previous client signature. In a small number of cases, signature falsification is used to conduct a further violation of MFDA Rules such as discretionary trading, unauthorized trading or other Rule violations including misappropriation. Of the 60 formal proceedings for signature falsification that we commenced in 2016, five cases fell into this last category.

Regardless of whether the conduct is for the purposes of convenience or to commit a further regulatory violation, MFDA Hearing Panels have consistently ruled that all types of signature falsification violate MFDA Rule 2.1.1 which requires Members and Approved Persons to deal fairly, honestly and in good faith with clients and observe high standards of ethics and conduct in the transaction of business.

Signature falsification is an issue that impacts much of the financial services industry. The MFDA and its Members have for some time placed a focus on detecting and addressing this activity. Most signature falsification cases come to the attention of the MFDA as a result of being detected by Members, with an additional number being detected by the MFDA Compliance Department during examinations. Of the 60 formal proceedings for signature falsification that we commenced in 2016, five cases came to the attention of the MFDA by way of a client complaint. As Members have become increasingly diligent in detecting signature falsification through their branch reviews and other supervisory activity, the number of proceedings commenced by the MFDA for this violation has increased substantially.

The MFDA has continued its efforts to address this conduct by issuing a revised MFDA Staff Notice MSN-0066 – *Signature Falsification* in January 2017 which reviewed background information on signature falsification and outlines actions that should be taken by Members and Approved Persons to detect, address, and prevent this activity. The Notice expands on the information and guidance set out in the original staff notice and in MFDA Bulletin #0661-E – *Signature Falsification* issued on October 2, 2015. The MFDA will continue to robustly deal with this issue and will be seeking increased penalties particularly where the conduct occurred after the publication of MFDA Bulletin #0661-E – *Signature Falsification*.

## Focus on Complaint Handling

In January 2015, the MFDA created a specialized function within the Case Assessment group to review the fairness and timeliness of Member complaint handling. This has several benefits including consistency of staff approach and completeness of the review when assessing Member complaint handling. In November 2015, the MFDA completed its first discipline hearing against a Member relating to a Member's obligation to deal with a client complaint promptly and fairly. In June 2016, the MFDA completed its second discipline hearing against a Member relating to the Member's complaint handling obligations. The 2016 case involved Sterling Mutuals Inc. and is summarized in the Case Highlight section of this report.

## Increased Cases

The chart below shows the total number of formal enforcement proceedings commenced in the last five years. It also shows for each year how many of those proceedings were commenced utilizing the bulk track process that provides for the efficient resolution of routine cases. The bulk track process uses a duty panel whereby multiple hearings are conducted before a single Hearing Panel on one day.

The increase in hearings issued in 2016 was due primarily to an increase in signature falsification cases. As well, the MFDA issued 11 cases against Members for supervision and complaint handling violations.

Year	Notice of Hearings Issued	Bulk Track Cases
2016	111	52
2015	69	36
2014	48	10
2013	65	20
2012	48	2

# Case Highlights

## Member Cases

### **Quadrus Investment Services Ltd.**

Reasons for Decision: February 2, 2017

This case dealt with Quadrus' failure to adequately supervise one of its Approved Persons, RM. RM is currently the subject of a disciplinary hearing.

During a branch review in 2009, Quadrus discovered that RM may have engaged in discretionary trading, engaged in personal financial dealings with clients, and used pre-signed forms. Following the branch review, Quadrus required RM and his branch manager to sign an undertaking to address the deficiencies, but did not place RM under close supervision or report the findings to the MFDA.

In 2010, Quadrus conducted a follow-up branch review and found that RM may have again engaged in discretionary trading and personal financial dealings with clients and used pre-signed forms. Quadrus required RM and his branch manager to sign an action plan to correct the deficiencies. Quadrus did not place RM on close supervision. In addition, Quadrus did not report its findings to the MFDA because it would lead the MFDA to investigate which would tax Quadrus' resources.

In 2014, Quadrus conducted another branch review and discovered pre-signed forms in RM's client files. Quadrus reported its findings to the MFDA. Quadrus also placed RM under close supervision by his branch manager but failed to ensure that all of the close supervision requirements were completed.

In 2015, Quadrus conducted a further review and discovered additional pre-signed forms in RM's client files and evidence that RM had engaged in discretionary trading (some of which took place while RM was on close supervision). Quadrus then expanded the scope of RM's close supervision. After this time, Quadrus did not discover further problems regarding RM.

In a Settlement Agreement, Quadrus admitted that it failed to employ adequate supervision to prevent RM from engaging in discretionary trading, engaging in personal financial dealings with clients and using pre-signed forms. Quadrus also admitted that it failed to report to the MFDA its discoveries in 2009 and 2010 that RM may have engaged in discretionary trading, and its discovery in 2010 that RM may have engaged in personal financial dealings with clients.

The Hearing Panel accepted the Settlement Agreement, and ordered Quadrus to pay a fine of \$75,000 and costs of \$20,000.

Note: Names of Approved Persons involved in Member cases are included in case summaries where related disciplinary cases have been completed and a decision rendered. In cases where related disciplinary cases are on-going or where a decision has not yet been rendered the initials of the Approved Person are used.

## ***IPC Investment Corporation***

Reasons for Decision: February 8, 2017

This case addresses IPC's failure to supervise two Approved Persons and conduct reasonable supervisory investigations into their activities.

IPC entered into a Settlement Agreement with MFDA Staff in which it admitted that it failed to report the suspected prohibited trading activities of Approved Person, Jeffrey D. Mushaluk ("Mushaluk") to the MFDA and failed to conduct a timely supervisory investigation of Mushaluk's activities. As described in greater detail further in this report, Mushaluk acted outside his registration status by selling or making referrals for the sale of shares of a junior mining company listed on the Toronto Venture Exchange.

IPC also admitted that it failed to adequately supervise investment recommendations made by Approved Person, JEC, which resulted in clients holding investments concentrated in gold-related sector funds. IPC failed to ensure that the recommendations were suitable for the clients, adequately supervise concentration risk in client accounts, and take appropriate supervisory action regarding JEC's non-compliance with its directives requiring him to recommend that clients rebalance their accounts. JEC is currently the subject of a disciplinary hearing.

The Hearing Panel accepted the Settlement Agreement, and imposed a fine of \$100,000 and costs of \$15,000.

### ***Sterling Mutuals Inc.***

Reasons for Decision: June 27, 2016

This case dealt with supervisory failings by Sterling Mutuals Inc. (“Sterling”) and by former MFDA Member Armstrong and Quaile Associates Inc. (“A&Q”) before it amalgamated with Sterling. Sterling entered into a Settlement Agreement and admitted the contraventions described below.

Sterling received a complaint from a client relating to Approved Persons Mazzotta and Ireland. Sterling failed to conduct a reasonable supervisory investigation, failed to ensure that the complaint was handled fairly and promptly, and permitted Mazzotta and Ireland to handle the complaint directly with the client.

When Approved Persons BY and SW transferred to Sterling, it failed to exercise due diligence to ensure that the KYC information recorded for the clients serviced by the Approved Persons was accurate and that the assets transferred into new client accounts were suitable. Most of the clients had identical KYC information and were concentrated in precious metals sector funds. To address any suitability concerns, Sterling also instructed the Approved Persons to have clients sign an Acknowledgement and Release form purporting to release them from their suitability obligations.

The Member also admitted the following violations that occurred at A&Q:

- 1) Approved Person Barry Hunt engaged in off-book trading and personal financial dealings with clients and other individuals. Following receipt of a complaint regarding Hunt’s activities, the Member failed to conduct a reasonable supervisory investigation into the complaint, failed to report the complaint to the MFDA, and permitted Hunt to handle the complaint directly with the complainants.
- 2) The Member also failed to ensure that a complaint by two clients regarding a leveraged investment strategy recommended by Approved Person BO was handled fairly and promptly. The Member’s Ultimate Designated Person reviewed the complaint and improperly concluded that the strategy was suitable for the clients based on out-of-date KYC information that was inconsistent with more recent KYC information in the Member’s possession.

A Hearing Panel accepted the Settlement Agreement, and ordered Sterling to pay a fine \$75,000 and costs of \$20,000. As a term of settlement, Sterling also agreed to pay compensation of \$34,000 to two clients.

### ***Professional Investments (Kingston) Inc.***

Reasons for Decision: February 2, 2017

This case dealt with the failure of Professional Investments (Kingston) Inc. (“Professional Investments”) to supervise one of its Approved Persons, Patrick Caicco and to perform a reasonable supervisory investigation into his conduct.

Caicco engaged in off-book trading when he facilitated the sale of approximately \$3.35 million of investment products to at least 33 investors outside Professional Investments.

Caicco sold the investment products through his corporation, Advantage Wealth Building Strategies Inc. (“Advantage Wealth”) which was not an authorized outside business activity.

In a Settlement Agreement, Professional Investments admitted that it failed to ensure that it was aware of and had approved all of Caicco’s outside activities and that all securities related business that Caicco was engaged in was conducted through Professional Investments. Professional Investments also admitted that it failed to conduct a reasonable supervisory investigation after receiving information that ought to have raised concerns regarding Caicco’s activities.

The Settlement Agreement noted that Professional Investments failed to make adequate inquiries: when Caicco disclosed that he was engaged in an outside activity associated with an unnamed charitable foundation, when it observed that the signature line of Caicco’s emails referenced Advantage Wealth, and when it was alerted that clients whose accounts were serviced or had previously been serviced by Caicco had apparently acquired unapproved investment products.

The Hearing Panel accepted the Settlement Agreement and Professional Investments was fined \$60,000 and was ordered to pay costs of \$10,000.



### ***International Capital Management Inc.***

Reasons for Decision (Interim Proceeding): December 16, 2016

On December 16, 2016, the MFDA brought an interim proceeding against International Capital Management Inc. (“ICM”) and its principals, John and Javier Sanchez, on the basis that they had: (1) promoted and distributed between approximately \$18 million and \$24 million of promissory notes issued by a factoring company, Invoice Payment Systems Corporation (“IPS”) to approximately 170 clients; (2) promoted and distributed approximately \$1.5 million of promissory notes issued by a waste management company, Energentium Inc. (“Energentium”) to approximately 19 clients; (3) failed to comply with the terms of an Agreement and Undertaking entered into with Staff in October 2006; and (4) failed to cooperate with Staff’s investigation into the sales of the IPS and Energentium promissory notes. IPS and Energentium are non-arm’s length entities that are owned and controlled by John and Javier Sanchez and their family members. The sales of the promissory notes issued by IPS and Energentium were not processed through ICM or recorded on its books and records.

ICM, John Sanchez and Javier Sanchez consented to the relief sought by Staff and were ordered to, among other things: (1) cease selling any investments, including the IPS and Energentium promissory notes, other than prospectus qualified mutual funds and Guaranteed Investment Certificates; (2) cease operating a trust account at ICM; (3) cease engaging in any outside business activities or referral arrangements except with respect to insurance products sold pursuant to a valid insurance license; and (4) provide certain information and documents to Staff.

***International Capital Management Inc.***

Reasons for Decision: February 8, 2017

From June 2012 to September 2013, ICM was designated in Early Warning by MFDA Staff as a result of corrections to accounting adjustments which caused ICM to become capital deficient. MFDA Staff notified ICM in writing that, while designated in Early Warning, it was not permitted to make any payments by way of loan, advance, dividend or bonus to Officers or related companies of ICM without the prior approval of MFDA Staff.

ICM entered into a Settlement Agreement in which it admitted that it contravened the Early Warning requirements by making payments, without prior written approval from the MFDA, for salary and override payments to Officers of ICM, and payments to two related companies of ICM.

The Hearing Panel accepted the Settlement Agreement, and imposed a fine of \$30,000 and costs of \$5,000.

## **Approved Person Cases**

### ***Jeffrey D. Mushaluk***

Reasons for Decision: November 10, 2016

Mushaluk entered into an Agreed Statement of Facts in which he admitted that he engaged in off book trading and acted outside his registration status by selling, recommending, facilitating the sale, or making referrals in respect of the sale of shares of a junior mining company listed on the Toronto Venture Exchange. Based upon Mushaluk's recommendations, 29 clients purchased approximately \$519,502 worth of shares of the junior mining company. Mushaluk arranged for the transactions to be processed through a referral arrangement between the Member and its IIROC affiliate. Mushaluk failed to abide by the terms of the referral arrangement which required him to limit his referral-related activities to providing clients with a basic description of the services available through the Member's IIROC affiliate and contact information for its representative.

The Hearing Panel prohibited Mushaluk from engaging in securities related business for three years, and imposed a fine of \$25,000 and costs of \$5,000.

### ***Craig Richard MacDonald***

Reasons for Decision: September 21, 2016

MacDonald falsified the signature of a client on several account forms in order to open accounts and purchase mutual funds on behalf of the client. MacDonald also engaged in discretionary trading by processing these transactions without receiving instructions from the client with respect to the funds and amounts of the funds to be purchased.

About ten months later, in response to an email request which appeared to be from the client, MacDonald falsified the client's signature on a redemption form and letter of direction in order to process a redemption in the client's account and wire transfer the monies to a bank account held by the client's brother. MacDonald was not aware that the client's email account had been hacked by a third party who was attempting to misappropriate the client's monies. In processing the redemption, MacDonald falsely recorded on account forms that he had confirmed the transaction with the client in person and disregarded the Member's directives regarding the requirements necessary to process a wire transfer request and protect against wire transfer fraud by third parties.

The Hearing Panel imposed a one year prohibition, fine of \$10,000 and costs of \$2,500. The Hearing Panel also ordered MacDonald to complete an ethics course prior to re-entering the mutual fund industry.

### ***Henry Wen-Hwei Huang***

Reasons for Decision: September 8, 2016

In an Agreed Statement of Facts, Huang admitted that he falsified the identity of the account holder on void cheques and changed the address of three clients on record at a fund company to his own personal address, in order to deposit the proceeds of client redemptions into his own bank account. After the redemption proceeds were deposited to his bank own account, Huang used the redemption proceeds to make payments to the clients or to other individuals at the clients' direction.

Huang also submitted a loan application to a lender which contained false KYC information, falsified client signatures on account forms, processed unauthorized trades, and recorded false KYC information for the client accounts. Lastly, Huang provided false responses during an interview with MFDA Staff in the course of an investigation into his conduct.

Huang was permanently prohibited from conducting securities related business, and ordered to pay a fine of \$25,000 and costs of \$7,500.

### ***Gilles Robert Latour***

Reasons for Decision (Misconduct): June 7, 2016

Reasons for Decision (Penalty): December 19, 2016

This case dealt with misappropriation of monies from clients who were vulnerable seniors.

Latour solicited and accepted over \$650,000 from at least three clients and failed to return or account for these monies. Latour purported to borrow the monies from clients in exchange for interest-paying promissory notes. Latour failed to provide documents and information, and attend an interview, as requested by MFDA Staff during the course of its investigation into his conduct. Latour is the subject of an ongoing criminal proceeding.

The Hearing Panel imposed a permanent prohibition, a fine of \$900,000 and costs of \$10,000.

### ***Ronald Lemay***

Settlement Agreement Approved: February 2, 2017

This case dealt with an Approved Person recommending that clients concentrate their investments in precious metals sector funds.

Lemay entered into a Settlement Agreement in which he admitted that he recommended to at least 142 clients that the clients concentrate their investment holdings in precious metals sector funds, without conducting adequate due diligence to assess the suitability of his investment recommendations on a client-by-client basis having regard to each client's KYC information. Lemay recorded that at least 142 clients had "high" risk tolerance on account forms in order to ensure that the KYC information for the clients matched his investment recommendations. Lemay further failed to fully explain the risks and benefits of investing in precious metals sector funds.

In addition, Lemay failed to use due diligence to learn and accurately record essential KYC factors relative to two clients prior to making investment recommendations and accepting investment orders from them, and failed to ensure that the recommendation made to those two clients to invest in precious metals sector funds was suitable.

The Hearing Panel accepted the Settlement Agreement, and imposed a permanent prohibition, a fine of \$5,000 and costs of \$2,500.

# Hearings Concluded by Type of Primary Allegation

## Acting Outside Registration Status

Mushaluk, Jeffrey

## Books / Records / Client Reporting

Connor Financial Corporation

## Business Standards

De Backer, Jacqueline (Involved Seniors)

Ireland, David

Mazzotta, Carmine

## Complaint Procedure

Brinson, Ronald Bruce

Gentile, Gabriele

Sterling Mutuals Inc. (Armstrong & Quaille Associates Inc.)  
(Involved Seniors)

## Conflict of Interest

Martin, Charles

Sukman, Terry (Involved Seniors)

Thiessen, Robert James

Wright, John

## Failure to Cooperate

McBurney, Michael (Involved Seniors)

Stuart, James (Involved Seniors)

Stuart, Walter Howard (Involved Seniors)

## Forgery / Fraud / Theft / Misappropriation / Misapplication

Aksomitis, Carla-Marie (Involved Seniors)

Bartolini, Deborah (Involved Seniors)

Bhathal, Rupinder (Involved Vulnerable Persons)

Cox, Jeffrey (Involved Seniors)

Eagan, Conrad (Involved Seniors)

Latour, Gilles (Involved Vulnerable Persons)

St. John, Donald

Stuart, Marilyn Dianne Stuart (Involved Seniors)

W.H. Stuart Mutuals Ltd. (Involved Seniors)

## Outside Business Activities / Dual Occupation

Tewahade, Bemelekot

Chang, Russell

Kodric, John

## Personal Financial Dealings

Mok, Gerard (Involved Seniors)

Manning, Grant

Sarang, Lakhjit (Involved Seniors)

Huang, Lisa

Lee, Hyun Chul

Huang, Henry

Davis, Keith (Involved Seniors)

## Policy and Procedure

Dhillon, Sital (Involved Vulnerable Persons)

## Referral Arrangements

Oosterveld, Jack

Thong, Al (Involved Seniors)

## Stealth Advising

Guglielmi, Michael

## Suitability - Investments

Rumball, Gerald

## Suitability - Leveraging

Warren, Rodney

## Supervision

WFG Securities Inc.

## Unauthorized / Discretionary Trading

Moakler, John

Ng, Seung Tung (Eric)

Okopny, Edward

Poirier, Michelle

Romain, Ernest

Stolarz, Frank

# Hearings Concluded by Type of Primary Allegation

## Signature Falsification (Pre-Signed Forms)

Aleshka, Adam

Bandola, Lori

Bansal, Gurpreet

Barak, Zohar

Blundell, Brian

Carty, Anthony

Chan, Nathaniel Ming Shan

Cheung, Stephen

Coelho, Jose

De Souza, Eronaldo

Duhan, Michael

Estabrooks, Tony Nathan

Fenton, Richard

Foley, Derrick

Garofalo, Christopher

Garries, Nathan

Gibson, Ronald

Gocool, Bobby

Goolcharan, Shaun

Gowing, Catherine

Grenke, Karen

Harris, Martin

Hogan, Orville

Husain, Mohammed

Kent, Robert

Leung, Howard

Lisborg, Einar

MacDonald, Craig

MacWhirter, Daniel

Martin, Jeremy

Mernagh, Brenden

Meunier, Jacqueline

Nokony, Kathryn

Pang, Peter Chi Yan

Rainville, Christopher

Smith, Melissa

Sutton Akers, Rachel

Sutton, Mervyn

Techer, Tanis

Way, William

Weller, James

White, Theon

Wilson, Grant

Yeung, Cho Shan

Zukiwski, Kenneth

# Glossary

## Approved Person

Refers to an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of a Member who (i) is registered or permitted, where required by applicable securities legislation, by the securities commission having jurisdiction, or (ii) submits to the jurisdiction of the MFDA.

## Business Standards

Refers to a breach of the high business standards required by MFDA Rule 2.1.1(b).

## Canadian Securities Administrators

Refers to the umbrella organization of provincial and territorial securities regulators in Canada.

## Commissions and Fees

Refers to allegations involving practices such as disclosure of commission structure and cost, and other issues such as where an Approved Person recommends a trade or multiple trades in a client's account for the purpose of generating sales commissions or otherwise creating a benefit for the Approved Person where there is little or no rationale for the trade.

## Complaint Procedures

Refers to allegations involving the requirement that every Member shall establish written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly.

## Discretionary Trading

Refers to a situation whereby a Member or Approved Person is granted authority by the client to make a trade without obtaining specific instructions from the client prior to the execution of the trade concerning one or more elements of the trade: selection of the security to be purchased or sold, the amount of the security to be purchased or sold, and the timing of the trade. MFDA Members and Approved Persons are not permitted to engage in discretionary trading.

## Falsification

Refers to the false making or alteration of a document by which the rights or obligations of another person are affected but where a person is not deprived of a property or a right.



### Forgery

Refers to the creation of a false document with the intent that it be acted upon as the original or genuine document, and where the victim is deprived of property or rights.

### Fraud

Refers to an act of dishonest deception, misrepresentation, or an intentional distortion of truth in order to induce another to part with something of value or to surrender a legal right.

### Handling of Funds

Refers to the failure to properly handle client funds in accordance with MFDA requirements.

### Know Your Client (KYC)

Refers to the requirement that a Member and Approved Person collect information about a client to assist in making suitable investment recommendations.

### Leveraging

Refers to the practice of using borrowed money for the purpose of investing.

### Member

Refers to mutual fund dealers that are Members of the MFDA.

### Misapplication of Funds

Refers to situations where funds in the rightful possession of an Approved Person or Member are put to an improper purpose for the benefit of a third party.

### Misappropriation

Refers to situations where a person has a right to be in possession of property but puts it to his or her own benefit.

### Misrepresentation

Refers to a misstatement or omission of a material fact with the intent to deceive.

### Outside Activities (OA)

Refers to any activity conducted by an Approved Person outside of the Member: (a) for which direct or indirect payment, compensation, consideration or other benefit is received or expected; (b) involving any officer or director position and any other equivalent positions; or (c) involving any position of influence.

### Personal Financial Dealings (PFD)

Refers to situations in which an Approved Person or Member engages in financial activity with a client. A concern arising from this type of conduct is that conflicts of interest arise in connection with such activity. PFD can include borrowing from clients, lending to clients, and engaging in private investment schemes with clients.

### Policies and Procedures

Refers to the requirement on Members to establish and maintain written policies and procedures (that have been approved by senior management) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the MFDA, and applicable securities legislation.

### Pre-Signed Form

Refers to forms that have been signed by a client when they were blank or only partially completed.

### Provincial Securities Legislation

Refers to the violation of provincial securities legislation and requirements for which there is no comparable MFDA requirement.

### Referral Arrangements

Refers to an arrangement whereby a Member is paid, or pays a fee for the referral of a client to, or from, another person. All referrals must go through a Member.

### Sales Communications

Refers to the requirement that advertisements and sales communications must be approved by a designated partner, director, officer, compliance officer or branch manager before being issued. The rationale for this is to ensure that no misleading, inaccurate or otherwise prohibited information is provided to a client who may act upon such information in making investment decisions.

### Senior

Refers to investors 60 years of age or over.

### Signature Falsification

Refers to the creation, possession, or use of documents which have been pre-signed or on which client signatures have been falsified through other means. Examples include cutting and pasting a previous signature, signing a client's name to a document, having a client sign multiple forms for use in future trading, and using liquid paper to white out old instructions and write in new ones on a signed client form.

### Suitability

Refers to the requirement that recommendations made by an advisor be suitable in relation to a client's investment objectives, risk tolerance and other personal circumstances.

### Supervision

Refers to the MFDA's investigation of whether a supervisory failure may have contributed to situations where an Approved Person engaged in misconduct. Supervisory failures may include inadequacy in the procedures for supervision or in the actual supervision of others.

### Theft

Refers to the taking of property, not rightfully in one's possession, for personal use and exploitation.

### Transfer of Accounts

Refers to the transfer of an account without proper client consent or a delay in the transfer of the account.

### Vulnerable Person

Refers to investors particularly at risk due to circumstances such as language barriers, limited literacy, disability issues, or very limited financial resources.

### Unauthorized Trading

Refers to the practice of a Member or Approved Person making trades without the client's knowledge or approval.

# Resources

## Further Information

The MFDA website has additional information 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)
- [Enforcement Statistics](#)
- [For Seniors](#)
- [For Investors](#)

## 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](mailto:complaints@mfda.ca), by using the complaint form available on the website or by calling the MFDA at 416-361-6332 (toll-free: 1-888-466-6332).

## Other Resources

### Ombudsman for Banking Services and Investments

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](http://www.obsi.ca) or 1-888-451-4519) or a lawyer.

### National Registration Search

In Canada, anyone trading securities or in the business of advising clients on such securities, including Approved Persons and Members, 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.

### Disciplined List

The Canadian Securities Administrators (CSA) maintains a cross-jurisdictional [Disciplined List](#), which can be used to search for any disciplinary action taken against an individual or company by a provincial securities regulator or self-regulatory organization, including the MFDA.

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