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: Jack Louis Comeau

Heard: April 5, 2013 and May 16, 2013 in Saskatoon, Saskatchewan
Decision and Reasons: July 30, 2013

DECISION AND REASONS
(Misconduct)

Hearing Panel of the Prairie Regional Council:

Daniel Ish, Q.C.	Chair
Elaine Bradley	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association of
	)	Canada
Shaunt Parthev, Q.C.	)	For Jack Louis Comeau
	)	

CONTENTS

A. THE ALLEGATIONS

1. The Mutual Fund Dealers Association (the "MFDA") alleged four violations of rules of the MFDA by Mr. Comeau (the "Respondent"). The allegations were set out in a Notice of Hearing dated August 13, 2012 as follows:

> Allegation #1: Commencing in September 2009 and continuing to June 2010, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending or facilitating the sale of exempt market investment products in the amount of at least $1,167,000 to at least 24 clients outside the Member, contrary to MFDA Rule 1.1.1(a).
>
> Allegation #2: Commencing in September 2009 and continuing to June 2010, the Respondent failed to comply with the policies and procedures of the Member by engaging in outside business activities which were not disclosed to and approved by the Member, thereby interfering with the Member's ability to supervise the Respondent, contrary to MFDA Rules 1.1.2 and 2.5.1.
>
> Allegation #3: Commencing in September 2009 and continuing to June 2010, the Respondent engaged in conduct unbecoming an Approved Person by selling, recommending or facilitating the sale of exempt market investment products to clients after previously seeking permission to do so from the Member and being refused, contrary to MFDA Rule 2.1.1(c).
>
> Allegation #4: Commencing in June 2010, the Respondent interfered with the ability of the Member to conduct a reasonable supervisory investigation of his activities and failed to observe high standards of ethics and conduct in the transaction of business by making statements to the Member which he knew to be misleading, incorrect or inaccurate at the time and in the circumstances that he made them and by disposing of documents relevant to the matters under investigation, contrary to MFDA Rule 2.1.1.

2. The Respondent submitted a formal Reply to the allegations contained in the Notice of the Hearing. The Reply admitted certain alleged facts and conclusions drawn by the staff of the

MFDA in the Notice of Hearing but denied or took exception with other alleged facts and numerous conclusions drawn from them. The challenges by the Respondent to the Notice of Hearing will be dealt with more fully in this decision. In summary, while the Respondent admitted that he did engage in securities related business that was not carried on for the account and through the facilities of the Member by selling exempt market investment products, as set out in Allegation #1, he did challenge the start date set out in the allegation. With respect to Allegation #2, it was submitted in the Reply that it is of no application to the particular facts of this case and Allegation #3 is unnecessary and repetitive, because it is based on the same facts and occurrences as Allegation #1. Also, as with Allegation #1, the Respondent disputes the start date set out in Allegations #2 and #3. The Respondent asserts that the first date of the Edgeworth investments were not made until November 2009.

3. The Reply vehemently denied Allegation #4. It will be clear in this decision that Allegation #4, which alleges uncooperative behavior by the Respondent in the investigation including providing misleading, incorrect or inaccurate information, became the primary focus of the hearing and is the primary focus of this decision.

B. THE EVIDENCE

4. A hearing was held before the Panel in Saskatoon, Saskatchewan on April 5, 2013 and May 16, 2013. Ms. Maria Abate appeared on behalf of the MFDA and Mr. Shaunt Parthev, Q.C. appeared for Mr. Comeau. Although the parties included written submissions with respect to penalty, at the end of the hearing on May 16, 2013 the Panel adjourned for the purposes of determining liability of the Respondent with respect to the four allegations. It was acknowledged that a further hearing with respect to penalty would occur. Notwithstanding the bifurcation of the hearing between liability and penalty, there were nevertheless submissions which related to penalty because, as will be seen, part of the Respondent's defense to the allegations is that he has already been penalized for his conduct by the Member firm with which he was associated.

5. The Hearing Panel heard testimony from three witnesses. The MFDA called as witnesses Mr. Som Houmphanh and Mr. Alan Currie. Mr. Houmphanh was Branch Manager of Sentinel Financial Management Corporation ("Sentinel"), an MFDA Member. In this capacity he was responsible for supervising the Respondent who was an Associate of Sentinel and an MFDA

Approved Person. Mr. Currie is the Manager of Investigations for the Prairie Region of the MFDA. Mr. Jack Comeau testified on his own behalf. In addition to the oral testimony, there were numerous documents admitted into evidence, most of them by agreement of the parties.

6. Interestingly there was little disagreement between the parties with respect to the fundamental facts but there was substantial disagreement with respect to inferences to be drawn from facts. The primary area of dispute revolved around the extent of the Respondent's cooperation both with Sentinel and later with the MFDA concerning off-book trading of exempt market investments. The position of the MFDA is that the Respondent not only did not cooperate but his actions actually misled the investigators and impeded the investigation. The Respondent, on the other hand, challenged strongly this interpretation of the events and took the position that he cooperated fully throughout the investigation and always fully responded to any inquiries made of him either by Sentinel or the MFDA staff.

7. The evidence, both the oral testimony and the documentary evidence, is quite detailed and complicated, even in those areas where there does not seem to be major disagreement. In this decision, we will attempt to summarize the evidence first by outlining the sequence of events that happened over an approximate two-year period and then review the testimony of the respective witnesses and the other evidence submitted. Of course, as the fact-finding tribunal, it is incumbent upon this Panel to make findings on the civil law standard of balance of probabilities (more likely than not) and then consider those facts against the MFDA Rules relied upon in the Notice of Hearing to determine whether there was a breach by the Respondent, Mr. Jack Comeau.

8. The Respondent, Mr. Jack Comeau, is a 55-year-old man with 17 years' experience as a Registered Financial Advisor. At the pertinent time, he was an MFDA Approved Person associated with Sentinel Financial Management Corp., which is an MFDA approved Member. As an Approved Person with Sentinel, the Respondent facilitated the sale of mutual funds as well as exempt market securities. Under the terms of his contract with Sentinel, as well as the Rules and By-laws of the MFDA, he was restricted to only selling securities that were listed or approved by Sentinel. The sale of investment products not approved by a Member for sale by any of its Approved Persons is contrary to MFDA Rule 1.1.1(a). Such sales are not carried on for the account and through the facilities of the Member (Sentinel) and are commonly referred to as

"off-book" transactions.

9. In the fall of 2009, the Respondent received inquiries from clients regarding an exempt market investment products sold by Edgeworth Mortgage Investment Corporation ("Edgeworth"). Edgeworth products were not approved by Sentinel for sale by its Approved Persons, including the Respondent. The Respondent made inquiries into the products, including attending an Edgeworth seminar. On two occasions he discussed with Sentinel's Compliance Officer, Mr. Merlin Chouinard, obtaining Sentinel's approval to sell Edgeworth products. Notwithstanding the efforts by the Respondent, Sentinel did not approve the product. It was the Respondent's evidence that the non-approval was because Sentinel already had a similar product approved for sale. It was also the Respondent's evidence that, at the time, Mr. Chouinard told him that he believed Edgeworth was a good product – this was later confirmed in writing by Mr. Chouinard.

10. In October or November of 2009, the Respondent facilitated the first sale of the Edgeworth product to one of his clients, JH. The exact date of the transaction is unclear but the documentary evidence shows that he received a commission payment on December 15, 2009 which would have included the commission for the sale of the Edgeworth product to Ms. H. The investment of Ms. H was $95,000.

11. On February 22, 2010, the Respondent signed agent agreements with Edgeworth to sell three particular investments, collectively known as the "Edgeworth products". Sentinel was not aware of the agent agreements between the Respondent and Edgeworth. The agreements provided that the agent, Comeau Financial Inc. (owned by the Respondent), would receive a sales commission equal to seven percent (7%) of the net sale price of each offered security and would be eligible for a trailer fee equal to one percent (1%). In the time between the sale of the first Edgeworth product by the Respondent to approximately June 24, 2010, the Respondent recommended and sold a total of $1,167,000 worth of Edgeworth products to 24 clients. It is estimated that the Respondent earned approximately $79,240 in commissions and fees from the sale of the Edgeworth products. None of the recommendations and sales were done with the knowledge of either Sentinel's Compliance Officer or its Branch Manager. Sentinel's Branch Manager, Som Houmphanh, discovered through an internet search the Respondent's involvement in the sale of one Edgeworth product. The information came about as a result of an internet

posting of a Settlement Agreement supervised by the Saskatchewan Financial Services Commission. Mr. Houmphanh immediately began an investigation. One of the first steps was to interview the Respondent on June 23, 2010 concerning his involvement in the sale of Edgeworth products to clients.

12. Mr. Houmphanh testified that the Respondent immediately admitted to referring some of his clients to Edgeworth. It was Mr. Houmphanh's evidence that the Respondent indicated that he was not expecting a commission for the referrals and that there was no referral agreement between him and Edgeworth. Mr. Houmphanh testified that he did ask the Respondent about the extent of his referrals and was told that there was only one, that being Ms. JH who invested a total amount of $95,000.

13. The Respondent's testimony surrounding the June 23, 2010 meeting varied a bit from that of Mr. Houmphanh. He said he believed they were talking only about one client and not about any others. Thus, his answers were designed to address the one issue, that being the investment of Ms. H which was the subject of the Saskatchewan Financial Services Commission Settlement Agreement. On the same day as the interview, June 23, 2010, Mr. Houmphanh wrote an internal memo to Sentinel's Compliance Officer, Mr. Chouinard, which included the following paragraphs:

> *During my interview with Approved Person, Jack Comeau, it was stated that he did refer some of his clients to Edgeworth Mortgage Investment Corporation with the intention that he would not be paid commission on the referral. The Approved Person stated that he understood that there was no referral agreement set up between Edgeworth Mortgage Investment Corporation and the Approved Person.*
>
> *Jack Comeau (Comeau Financial Inc.) contacted Edgeworth Mortgage Investment Corporation on June 23, 2010 to determine what ruling he was named on and what commission amount was paid to Comeau Financial Inc. It was noted that the amount paid, to Comeau Financial Inc., was for the referral amount $6650. This amount will be verified, once the account reconciliation is completed and a confirmation in writing is provided back to myself as the investigator.*
>
> *The client involved in the referral was JH, who invested a total amount of $95,000.00 to the exempt offering by Edgeworth Mortgage Investment Corporation.*
>
> *My conclusion after the interview was that Jack Comeau (Comeau Financial Inc.) referred business, "securities" related to another party, which he received a referral fee for without the authorization of Sentinel Financial Management Corp. This action is considered an "off book" transaction, which violates the code of conduct for business*

ethics and is contrary to the "MFDA" rules and regulations.

14. On June 24, 2010, Sentinel filed an Event Report Form with MFDA. The document referred to as METS 8063F8 named Jack Louis Comeau as the Approved Person and included the following words as a description of a "violation type": Unauthorized/Discretionary Trading; Outside Business Activities/Dual Occupation; Off Book Transaction. The testimony of one of MFDA's witnesses, Mr. Alan Currie, was that when the MFDA receives an Event Report Form it automatically initiates an investigation.

15. A second meeting occurred between the Branch Manager, Mr. Houmphanh, and the Respondent on June 29, 2010. Mr. Houmphanh's testimony and a memo from him to the Compliance Officer on the same date, indicate that the discussion was concerning the referral payment that he or Comeau Financial Inc. received with respect to the transaction referred to in the Saskatchewan Financial Services Commission Settlement Agreement. The Respondent told the Branch Manager that he was not able to verify the amount of $6,650 received and would contact Edgeworth. The June 29, 2010 memo concludes with the following sentence: "I have informed Jack Comeau that a written statement detailing the events, which has led up to the Saskatchewan Financial Services Commission ruling, be submitted to our office by Monday, July 5, 2010."

16. On July 6, 2010 Sentinel's Compliance Officer asked Mr. Houmphanh to contact Edgeworth to "request from them the names of any referrals that they may have received from our Approved Person, Jack Comeau, and any documentation, including a photocopy of the referred to cheque payable to Comeau Financial in the amount of $6,650.00." Mr. Chouinard also advised Mr. Houmphanh to contact Mr. Comeau to review the content of a letter received from Elena Brunati of the MFDA and stress to him the importance of complying with the request set out in that letter.

17. On July 6, 2010, Mr. Houmphanh advised Mr. Chouinard that Edgeworth refused to disclose any documentation between themselves and Comeau Financial Inc. to Sentinel. On the same day, Mr. Houmphanh had another interview with the Respondent.

18. Mr. Houmphanh testified that in the meeting with the Respondent he was asked to extend to July 12, 2010 the date to allow the Respondent to provide more details about his transactions

with Edgeworth. Mr. Houmphanh also read into evidence two paragraphs from a memorandum that he wrote to Mr. Chouinard following the interview with the Respondent. Those paragraphs state:

> *During our interview, it was stated by the Approved Person, Jack Comeau, that a letter will be provided to Sentinel Financial Management Corp. detailing all the events and what clients the Approved Person has referred to Edgeworth Investment Mortgage Corporation. Jack Comeau will also include a confirmation of the exact commission amount paid to Comeau Financial Inc. to our office by Monday July 12, 2010. The approved person, Jack Louis Comeau, has requested an extension from July 5, 2010 to Monday July 12, 2010, as he requires time to compile a list of potential clients that may have been referred to Edgeworth Investment Mortgage Corporation.*
>
> *It has been stressed to the Approved Person, Jack Louis Comeau, that the importance and cooperation by his office will expedite the process of the investigation.*

19. On July 12, 2010, the Respondent wrote to Mr. Houmphanh in response to the issues raised in the interview and in the response to the "METS Event #8063F8". The pertinent paragraphs of that letter are the following:

> *1) To my knowledge, no referral agreement or commission agreement was signed with Edgeworth. I was merely referring a few interested clients (clients with appropriate objectives, networth, risk tolerance, income requirements, time lines) to look at the Edgeworth Mortgage Investment Corporation investment (MIC), as a potential appropriate investment.*
> *...*
> *3) I have been referring a few clients to Edgeworth since November, 2009. I have not disclosed this activity to Sentinel Financial Management.*
>
> *4) I received a cheque for $6650.00 in February, 2010 as a referral fee for referring JH to Edgeworth. She purchased $95,000 in Edgeworth Mortgage Investment Corp. in November, 2009.*

It will be noted that the letter of the same date written by Mr. Comeau to Mr. Houmphanh did not list clients he referred to Edgeworth but focused only on one referral fee with respect to one client, JH. Also on July 12, 2010 there was another meeting between Mr. Houmphanh and the Respondent. In the meeting, the Respondent expressed his concern to Mr. Houmphanh that he might be exposing himself to legal proceedings if he provided a list of clients he had referred to Edgeworth. Mr. Houmphanh testified, and this was outlined in a memo by him to Mr. Chouinard on July 12, 2010, that he advised the Respondent that it would be "prudent to comply, so that we could move on with our investigation, but it would be up to himself to decide on how he wants to proceed." The last sentence of the memorandum stated: "It has been stressed again to the

Approved Person, Jack Louis Comeau, that the importance and cooperation by his office will expedite the process of the investigation". In his testimony, Mr. Comeau said that he was concerned about legal liability in and around June 12, 2010 and asked Mr. Houmphanh's advice but that Mr. Houmphanh did not give him any advice concerning consulting a lawyer. He did not seek legal advice at the time. Mr. Comeau testified that he was not told to seek legal advice. He also testified that he had concerns about his obligations to his clients because of the *Privacy Act*.

20. Mr. Chouinard, Sentinel's Compliance Officer, did not testify at the hearing. However, admitted into evidence was the memorandum written by Mr. Chouinard to Mr. Houmphanh dated July 13, 2010, concerning a meeting between the Respondent and Mr. Chouinard on that day. The entire text of the memorandum reads as follows:

> *As per your memo of today's date, I have met with Jack Comeau myself on a personal basis. I have reviewed and emphasized the seriousness of the allegations, which are being made against him. I have also requested of him all client's names which he referred to Edgeworth; whether or not he is aware if those same clients subsequently pursued an actual purchase from Edgeworth.*

This memo indicates that Mr. Chouinard requested from the Respondent a list of "all clients' names which he referred to Edgeworth".

21. The Respondent wrote to Mr. Chouinard on July 16, 2010 a letter which said:

> *Please find enclosed a list of clients who I referred to Edgeworth Properties and who purchased units in the Edgeworth Investment Corp. (MIC).*
>
> *JH - $90,000*
> *JC - $80,000*
> *BD - $155,000*
> *CD - $43,000*
> *WL - $25,000*
> *JL - $25,000*
> *MS - $22,000*
> *KS - $36,000*

It will be noted that the letter purported to be a list of clients referred to Edgeworth and is not qualified in any way. Nothing in the letter suggests anything other than it is a complete list. In his testimony, Mr. Comeau indicated that around June-July 2010 he had a paper file with details of the Edgeworth investments that he made for his clients. He said the information on the file had been transferred to an electronic file stored on his computer. In his testimony, Mr. Comeau was

adamant that he did not destroy the paper file to hide any evidence but that simply it was destroyed after the information had been saved electronically. The Respondent told MFDA investigators about the existence of the file in a meeting on May 16, 2011.

22. A letter was written by Mr. Chouinard to Mr. Comeau on July 19, 2010 acknowledging receipt of the July 16 letter which listed eight clients and the amount of their investments with Edgeworth. Mr. Chouinard was seeking information about the referral fees (commissions) paid to the Respondent in respect of these investments. Although Sentinel attempted to get the information directly from Edgeworth, Edgeworth refused to provide it. Thus, on the July 19, 2010 Mr. Chouinard wrote:

> *I am in receipt of your letter of July 16, 2010 giving the names of additional individuals whom you referred business to outside of the knowledge of Sentinel Financial.*
>
> *Jack, it is important that we have knowledge of any and all referral fees paid to yourself on these individual pieces of business. Edgeworth will not give this information to me due to confidentiality. I would therefore request that you contact Edgeworth and have them supply the details to yourself and that you forward them to me no later than August 3, 2010.*

23. On August 20, 2010 the Respondent provided a response to Mr. Chouinard's July 19 letter in which he asked for details of all referral fees paid to the Respondent by Edgeworth. The entire text of the August 20, 2010 letter reads:

> *Please find enclosed the information that was requested regarding MFDA file#3114/10/07/SK.*
>
> *1. Commissions received by Edgeworth:*
>
> *$6,650 (JH - $90,000)*
> *$9,450 (BD & CD - $135,000)*
>
> *A cheque totaling $16,100 from Edgeworth was dated December 15, 2009, and deposited into the Comeau Financial Inc. account on February 13, 2010.*
>
> *2. Dates that EdgeworthMIC was recommended to my clients:*
>
> | | |
> |---|---|
> | *JH* | *- October 29, 2009* |
> | *BD* | *- December 2, 2009* |
> | *CD* | *- December 5, 2009* |
> | *JC* | *- December 3, 2009* |
> | *JL* | *- December 15, 2009* |
> | *WL* | *- January 11, 2010* |

MS *- February 22, 2010*
KS *- February 22, 2010*

3. At the time of purchase, I did not indicate to my clients that the Edgeworth MIC was not offered through Sentinel Financial. All of these clients have now been made aware of this. I have enclosed a copy of the subscription agreements signed by the clients.

4. I have provided copies of my bank statements from November, 2009 to July 2010 (most current bank statements that I have).

If you have any questions please feel free to give me a call.

It will be noted that the Respondent stated to Sentinel that the referral fees he received from Edgeworth were $16,100; composed of $6,650 and $9,450 for referring two clients who subsequently purchased Edgeworth products. He also confirmed that he did not advise the clients who purchased Edgeworth products that they were not being offered through Sentinel. Information subsequently received from Edgeworth, pursuant to an order of the Alberta Securities Commission, indicated that between December 15, 2009 and July 14, 2010 the Respondent received a total of $68,100 as referral fees from Edgeworth. The Edgeworth documentation showed six separate payments the first of which was dated December 15, 2009 for $16,100. The last payment was received July 14, 2010, more than a month prior to the letter of the Respondent to Mr. Chouinard of August 20, 2010.

24. After receiving the Respondent's August 20, 2010 letter it appears that Mr. Chouinard was still interested in receiving more information concerning the Edgeworth investments. He asked Mr. Comeau to write to Edgeworth authorizing them to send to Sentinel all information concerning the transactions that the Respondent had with Edgeworth. It was Mr. Comeau's testimony that Sentinel, likely Mr. Chouinard, drafted a letter dated August 25, 2010 which Mr. Comeau signed and sent to Edgeworth. In part it reads:

Please be advised that I am authorizing Edgeworth Properties Inc. to give over all information concerning any transactions, which I participated in with your organization, to the Compliance Officer, Merlin H. Chouinard of Sentinel Financial Management Corporation. This is to include any documentation as per my clients and also any cheques or any other form of remuneration given to me as a result of these transactions, whether they were simply referred by me or whether I actually completed the paperwork on behalf of Edgeworth Properties Inc.

The letter ended off indicating that there was some urgency to receiving a response because it involved an ongoing investigation.

25. Mr. Houmphanh testified that he continued reviewing files. He was attempting to verify any amounts that may have been redeemed from clients' investments for the Edgeworth purchases. He testified that he noticed a trend that some clients did hold Canadian Western Trust accounts and did hold the exempt Edgeworth products within these accounts. After further investigation, he concluded that there were more clients involved than the eight listed by the Respondent in his July 16, 2010 memorandum. Mr. Houmphanh reported this to the Compliance Officer on August 27, 2010.

26. On August 31, 2010, the Compliance Officer, Mr. Chouinard, provided to the MFDA an update on his investigation into the Respondent's conduct concerning Edgeworth. It appears from this correspondence that Mr. Chouinard was only aware of the eight clients identified to him by the Respondent of having purchased Edgeworth products on the advice of the Respondent. The letter says that Sentinel discovered at least 11 other clients who purchased Edgeworth products but Sentinel did not believe that Mr. Comeau was involved with these transactions. A summary of the investigation to date was included in the letter in numbered paragraph 7 which stated:

> *7) Please be advised of the following as an interim investigation report:*
>
> *a) Jack Comeau did indeed conduct business outside of Sentinel Financial Management Corp. in what would be considered an "off book transaction."*
> *b) The product that Approved Person, Jack Comeau, represented to his clients, in this manner, was reviewed by myself again as to its benefits. As stated to the MFDA earlier, I believe the product to be of a compatible nature with other products in the marketplace at this time;*
> *c) It is my belief that Approved Person, Jack Comeau, truly believed that he was offering a genuine service to his clients and was at all times conscience [sic] of their well being. As stated earlier, I have contacted as many of the clients personally as time has allowed and it was conveyed to me that they were happy and satisfied with their decision, irrespective of the fact that the business had been done outside of the dealership.*
> *d) It is Sentinel's intention to fine Mr. Comeau any and all commissions he received in these transactions, along with an administration fee of $2,500.00. We will also require proof that he has completed the Exempt Products course. The completion of this and its passing of the corresponding examination will be made available to the MFDA in the near future. As we believe the fine will be between $16,000.00 and $35,000.00, we are not considering additional penalties.*
> *e) Approved Person, Jack Comeau, has been cooperative with our ongoing investigation and seems to have a sense of remorse in regards to his actions. He has also been made aware of the harm that such action can do to the capital*

markets and is respectful of that fact.

The letter concluded indicating that it was expected that the investigation should be finalized by mid-September and that it anticipated that the Respondent would incur some fines and fees.

27. It appears that Sentinel believed that it had all of the relevant information concerning the Respondent's dealings with Edgeworth and that the Respondent had been cooperative. This conclusion appears to have been arrived at notwithstanding the request by Sentinel to have Mr. Comeau obtain more information from Edgeworth, the request that was sent on August 25, 2010. On September 14, 2010 Sentinel imposed a penalty upon the Respondent. The Compliance Officer wrote a letter to the Respondent. The letter contained the following paragraphs:

> *That you, Jack Comeau, through the corporate entity known as Comeau Financial, Inc. transacted securities business outside of your dealership, Sentinel Financial Management Corp. This action is contrary to securities law and MFDA Rule 1.1.1.*
>
> *We, Sentinel Financial Management Corp., impose upon you the following penalty and conditions:*
>
> *1) You will pay a fine to Sentinel Financial Management Corp. in the amount of $16,100.00;*
> *2) You will pay an administration fee in the amount of $5,000.00;*
> *3) You will supply proof that you have studied for and completed the Exempt Marketing program.*
>
> *These conditions and fines must be satisfied to the satisfaction of Sentinel Financial Management Corp. no later then [sic] September 30, 2010.*
>
> *Sentinel Financial informs you that they are ending their part of the participation in this file unless otherwise instructed by the MFDA and/or Saskatchewan Financial Services Commission. It should be noted that if any information subsequent to our investigation becomes available to you in regards to this file that you must supply it to myself at your earliest possible convenience. You should also be aware that if any information becomes available to any parties subsequent to this agreement that this file may be reopened with all of the processes and consequences entailed.*

28. The MFDA was made aware of the penalty imposed upon the Respondent. Nevertheless, it continued its investigation over the following months. The Respondent was invited to an interview with MFDA Investigator Harry Wenzel and MFDA Manager of Investigations Alan Currie. The interview took place May 16, 2011 in Saskatoon and a written transcript of the interview was made. The transcript in its entirety was admitted as an exhibit.

29. There is little doubt that Mr. Wenzel and Mr. Currie had reason to believe that the Respondent had not fully disclosed to Sentinel the full extent of his business with Edgeworth on behalf of Sentinel clients. Mr. Currie testified that they were aware, from information gathered in their investigation, that there were several more clients involved. In the May 16, 2011 interview the Respondent was not presented with a further list of clients but he was asked some very direct questions about the extent of the Edgeworth business and the number of clients involved. An example of some of the questioning follows:

At page 22:
Q: Thank you. So the names that you've mentioned, the total number of persons that invested in Edgeworth based on your recommendations…
A: Was eight.
Q: Eight persons?
A: Yes, there are several couples.
Q: And the persons that you recommended invest in Edgeworth, were they Sentinel clients…
A: They all were my clients, that's correct. They've all been my clients for many years.

At page 25:
Q: You talked about the manner in which products are approved through Merlin and you've confirmed for us, I think by your written statements, that you didn't sign a referral agreement or commission agreement with Sentinel. If you hadn't signed a commission agreement or a referral agreement, how is it that you were to be paid $6,650 as per the Sentinel agreement and the schedule.
A: I was paid $16,100.
Q: In total?
A: Yes.

At page 26:
Q: …So the chart identified $6,650 paid to Comeau Financial Inc. If you hadn't signed a referral agreement or a commission agreement, how would this commission had been paid to you, as per that schedule?
A: I can't answer that. I don't know.

Q: Just answer how you knew that your commissions were going to be paid, how is that worked out generally?

A: I had a phone call from the Administrative Assistant at Edgeworth saying there's a cheque for me, come and pick it up. So that's what I did.

Q: But did you know in advance that you would be receiving a commission?

A: I probably felt I was going to get paid. I don't know…

Q: What does that mean, Jack, you probably felt you were going to get paid?

A: Well, usually when you do business, I would think that I was going to get paid. Yes, I would have assumed I was going to get paid, I think.

At page 30: Q: Flip to July 16th. So July 12th, the letter to Som, followed by July 16th. This is more information being provided by Jack Comeau to Merlin Chouinard. So where did this information come from? We see a number of clients and amounts beside them.

A: This is when Merlin came to me and said, "Jack, you got to tell us everything here. This is serious. You can't be just telling part of it, you got to come clean".

Q: So what did you do?

A: I realized, okay, I guess this is serious, I got to come clean. They're telling me not just JH, I got to tell them all the people that I did refer business to.

Q: So where did you get that information?

A: Well, I didn't have to make a phone on this, I knew – this is what I had on file.

Q: I'm sorry, I apologize for that. You had to make a phone call or you didn't have to make a phone call?

A: I did not have to make a phone call for this, I had this on file. I had to make a phone call, not to confirm that I had sold JH, just on this cheque. Because I didn't have records of that amount in my bank account. My bank account did not show $6,650 – a

deposit for $6,650. I had to make a phone call to Danielle. I knew that JH was a client that I'd sold Edgeworth to, I didn't need to have that confirmed. I knew that.

Q: So did you need to have the amount confirmed?

A: No, I knew the amount.

At page 31: Q: So JH on the July 16th letter, and this is the letter that you wrote to Merlin after he told you it was serious?

A: Yes, I noticed it was a little different.

Q: So this is the letter that you addressed to Merlin after he gives you, "It's serious" talk; right? So this information was in your head –

A: No, I had it on record.

Q: Where did you have it on record?

A: It would have been in one of my file folders, I had a file folder at that time on –

Q: Talk about the file folder, what is that?

A: It was a file that just showed that I was just keeping track of the business I'd done with Edgeworth.

Q: Do you have a copy of that?

A: I don't have that file any more.

Q: Why not?

A: I don't know why not, but I don't have that file any more. I have the file on all this stuff.

Q: These clients, would a note have been in their client file, that KS invested –

A: There's notes on each of their files.

Q: That pertain to Edgeworth?

A: That is correct. I do have that.

Q: So what did you call the file –

A: It was just a file folder that said "Edgeworth" – you know, I don't know if said anything on it, but had Edgeworth stuff in it.

At page 32: Q: So what was in this file that gave you –

A: It would have been a piece of paper like this, that I would have been writing down the people that had – these people's names, as

the transactions took place, how much business they had done. And I believe I had copies of the subscription agreements as well.

Q: In this file?

A: That's correct.

Q: So what was then copied to the client file, the actual client file, the Sentinel client file?

A: The notes of the conversations.

Q: The notes of the conversations that pertain to them purchasing Edgeworth?

A: Yes, I always do notes with – I mean, I try. There's times when I don't do it, but I try very hard to do notes all the time of all my meetings with my clients and conversations on the telephone, I mean, I'm not 100 percent perfect on that, but I tried quite hard to do that.

…

At page 33: Q: Sir, did you have any concerns about putting Edgeworth notes on a file when you knew that Edgeworth wasn't an approved product?

A: Yes, I do have concerns about doing that. So they probably are very bare, they're not as explicit as they normally would be, but, yes, if somebody wants to – yes, I do, definitely.

Q: You did at the time –

A: I would always have that concern if I was doing something that I'm not supposed to and have notes on it, yes, that incriminates me. Absolutely.

Q: So would you have mentioned the name, Edgeworth, then, in those notes?

At page 34: A: I probably would not have. I probably talked about mortgage investment.

Q: So Edgeworth would have been abbreviated MIFC? Or how would it have been abbreviated?

A: I'd have to go back and check those notes, but I may not have – like Alan says, I probably wouldn't have used the word "Edgeworth", I would have said "MIC" or mortgage investment.

Q: So when you provide those notes to us, you'd be able to distinguish you recommending Edgeworth to client A or client B and that'll be identifiable to you?

A: It should be to me.

Q: So that we can understand it?

A: Yes, my notes aren't – like, I don't write down every sentence that I say. Of course I don't do that. They're brief, they tend to include things that I don't do normally and, you know, just a special thing of that meeting that's different. And so there would be some mention or talking about the requirement for income likely and suggesting a MIC investment and the pros and cons of a MIC investment.

Q: So the folder that you discarded, that had a running tally of the client name and the purchase that they made, what else was included in that?

A: That would have been it.

Q: Was a date included of the purchase or the client's net worth?

A: No, the client's net worth, that's in my client files. It would have been the amount of Edgeworth and the date and the name of the person.

Q: And when did you get rid of that particular folder?

A: As soon as these discussions started, I got rid of that folder.

At page 35:

Q: So that would have been after the June 23rd meeting with Som, the folder was discarded?

A: I can't tell you if it was after June – I mean, when did we started the discussions.

Q: You started them with Som on June 23rd.

A: Yes, it would have been after that then.

…

At page 53:

Q: So going back to the general overarching question, why pursue a product that wasn't approved by Sentinel and recommended it to several clients?

A: Why did I do what I did? I didn't want to do this, my much

> preferred method would have been for Sentinel to approve this product, it was a good product. I felt it was a good thing for my clients. I knew I was doing the wrong thing, I definitely know now that it's a big no-no. You know, did I do the right thing, no, I didn't; did I do a bad thing, yes. Do I know that now, yes. Was it good for my clients: yes, it's going to be a good thing for my clients. Ultimately, my clients aren't going to be harmed by having invested in this product. …

30. It will be recalled that as of May 16, 2011, the date of the interview in Saskatoon with the MFDA staff, the Respondent had only disclosed Edgeworth transactions with respect to eight of Sentinel clients. Toward the end of the interview, Mr. Wenzel and Mr. Currie introduced into the conversation the names of two other clients. Those were JC and DD. As stated, no list was provided to the Respondent in the interview but it was clear that the MFDA was aware that other clients of the Respondent and Sentinel were involved in Edgeworth products.

31. On May 17, 2011, the day following the interview, Mr. Wenzel of the MFDA, wrote to the Respondent asking for further information that he undertook to provide. The information appears to be with respect to the eight clients identified by the Respondent in July 2010 but also includes the request for "maximizer contact notes that reveal indirect and/or direct reference(s) to Edgeworth exempt product purchases or intentions to purchase for any clients not identified above…". In response to this request, the Respondent provided information, including an Excel spreadsheet and notes with respect to the transactions. The letter identified a total of 16 clients, including the original eight clients previously identified and another eight clients not previously identified either to Sentinel or to the MFDA. The letter concluded with the following sentences:

> *However, if you wish to have me produce any of the letters, emails, or memos, please let me know. I can do that upon your request. If you require anything else, or have further questions, please do not hesitate to contact me.*

32. On June 29, 2011, the MFDA wrote to Edgeworth requesting specific information. More particularly, Edgeworth was asked to provide information concerning referral or commission agreements between it and Mr. Comeau or Comeau Financial Inc., the number of persons referred to Edgeworth by the Respondent, and the identities of the persons who purchased Edgeworth. Edgeworth refused to comply with this request and as a result MFDA obtained an

order from the Alberta Securities Commission to have Edgeworth provide the requested information. The information was provided in August of 2011. The information from Edgeworth included agent/referral agreements between Edgeworth and Comeau Financial Inc. (a total of three), a list of clients referred by the Respondent, commission/referral fees paid to the Respondent, and an invoice dated March 31, 2010 from Comeau Financial to Edgeworth for $52,500. Upon receipt of this information the MFDA became aware that the Respondent had referred 24 clients to Edgeworth. Up to this time the Respondent had disclosed only 16 names, eight on July 16, 2010 and eight more on May 20, 2011.

33. On August 10, 2011, the MFDA provided to Sentinel the remaining client names not previously known together with documentation. The commissions paid to the Respondent were $63,140, in addition to the $16,100 previously disclosed for a total of $79,240. On the same day, Sentinel's Compliance Officer wrote to the Respondent advising that he had re-opened the file with respect to the Respondent's off-book transactions. The closing sentence of the letter said: "Bring in all material, which will assist in my renewed investigation of the issues presented therein".

34. On August 25, 2011, the Respondent met with Mr. Houmphanh and Mr. Chouinard. Both the Respondent and Mr. Houmphanh testified that the meeting was not an amicable one. There was a fairly heated exchange between Mr. Chouinard and Mr. Comeau. In the meeting the Respondent was advised that he would be suspended from Sentinel for a period of three months and that he must complete, during this time, an ethics and practice course. The penalty was formalized in a letter the following day (August 26, 2011). The suspension letter in its entirety reads as follows:

> *You are hereby suspended as to acting on behalf of Sentinel Financial Management Corp. in all securities related activity effective September 1, 2011. This suspension will be for a period of three months, ending November 30, 2011. This action is taken as to cause:*
>
> *1) That you failed to provide full disclosure to an on-going investigation of your activities in regards to "off book" trades;*
>
> *2) That you have misrepresented as assurance of "return of capital" to a client that has invested in a product with no such assurances as part of your "off book" activity.*
>
> *Note: A complaint file has been opened on behalf of that client.*

During this period you are required to complete the "Conduct and Practices Handbook Course." Assistance can be supplied to you by our Branch Manager, Som Houmphanh.

Jack, my most important consideration, and indeed obligation, is to the clients of Sentinel Financial Management Corp. In this regard, I would ask that you make sure that any inquiries as to assistance of a "securities related nature" is referred to Tom Symenuk, or our Branch Manager, Som Houmphanh.

As a gesture of good faith, and not to cause you financial duress, Sentinel Financial Management Corp. will continue to pay you ongoing trailers.

It is my hope that during these three months you will have an opportunity to sincerely reflect on how you wish to conduct your business as a representative of our firm. It also will give us, as an organization, more time to acquire more details and to assist the MFDA on their own investigation of "off book" transactions. It is my sincere hope that you can return to an active role December 1, 2011 with all of the privileges afforded you by this organization.

If you have any questions or concerns in relationship to any of the above, you may contact me personally or Som Houmphanh.

35. The letter referred to a failure to provide full disclosure to an ongoing investigation. Sentinel, at the time, had a disciplinary table in its policy manual. The discipline outlined for undisclosed or unapproved outside business activities was internal supervision. Similarly, internal supervision was the penalty for selling unapproved products. Interestingly, for failure to cooperate, the listed penalty is "termination of registration".

36. On September 12, 2011, the Respondent wrote to Mr. Wenzel at the MFDA and provided a full list of clients that he referred to Edgeworth. The letter was in response to a request to Sentinel of August 10, 2011 to obtain from the Respondent a signed statement concerning his involvement in the purchases of Edgeworth products. The list provided by the Respondent contained 23 names. The one name missing, which would have brought the full list to 24, was that of JC, the Respondent's mother. The September 12, 2011, letter was the first time the Respondent provided either to Sentinel or the MFDA a full list of the clients that he had referred to Edgeworth.

37. The Respondent wrote another letter to MFDA on September 19, 2011 in response to another request from MFDA for further information. The letter stated that there were no invoices submitted to Edgeworth and also that cheques he received from Edgeworth were not cashed until mid-November 2010, after the first Sentinel investigation.

38. The three month suspension of the Respondent by Sentinel was due to expire on November 30, 2011. The Respondent resigned from Sentinel on November 9, 2011. Mr. Comeau joined another firm in January 2012 but has been unable to register as an Approved Person with the other firm because of the ongoing investigation and the current disciplinary allegations.

39. In August 2012, the MFDA commenced disciplinary proceedings in respect of Mr. Comeau based on the four allegations that are the subject matter of this proceeding.

40. At the time of his suspension from Sentinel the Respondent had a "book of business" of approximately $158 million, $45 million of which was with respect to mutual funds. He had approximately 843 clients. He testified that he is defending this action because he wants to be reinstated as an Approved Person and resume selling securities. His current business includes insurance and exempt market products but not mutual funds. He estimated that the financial cost to him of not being an Approved Person, together with the cost of defending the current proceeding, is in the $550,000-$600,000 range. Mr. Comeau lost status as an Approved Person when he resigned from Sentinel in November 2011. Had he returned to Sentinel at the end of the three month suspension, presumably he would have continued as an Approved Person and, subject to the current proceedings, would have continued with his full range of business.

C. THE PARTIES' SUBMISSIONS

MFDA Staff Submissions

41. The submissions of the MFDA staff addressed each of the four allegations set out in the Notice of Hearing. The first allegation, engaging in off-book trading, was admitted by the Respondent in his formal Reply. The only point of contention between the parties was the date upon which the Respondent began the off-book trading with respect to Edgeworth Products. The Respondent maintained that it did not begin until November 2009 whereas the MFDA staff made reference to an Investment Instructions document received from a client, CD, dated September 5, 2009, in which she instructed the Respondent to purchase 4,300 preferred shares of Edgeworth Mortgage Investment Corporation. This, it was submitted, confirmed that the start date of the sale of Edgeworth products was at least in September 2009. In light of the admission by the

Respondent to Allegation #1, in addition to whether the conduct began in September 2009 or November 2009, the MFDA staff submissions were largely limited to pointing out that the Respondent had signed an agency agreement with the Member in March 2005 in which he undertook to comply with all the rules, guidelines and procedures of the Member as well as the regulatory requirements. Also, it was submitted that the Respondent clearly understood the policies and procedures of the Member. Indeed, it was submitted that he acknowledged in the very first interview with Mr. Houmphanh that he had breached both Member and MFDA rules by engaging in off-book trading.

42. The preponderance of the MFDA staff submissions, as with the evidence produced at the hearing, was with respect to Allegation #4. It is the MFDA's position that commencing in June 2010 the Respondent interfered with the ability of the Member to conduct a reasonable supervisory investigation by failing to fully respond to inquiries and by misleading the Member, and later misleading MFDA investigation staff.

43. It was submitted that at the outset of the Member's investigation on June 23, 2010, beginning with the initial interview between Mr. Houmphanh and the Respondent, the Respondent denied signing referral agreements with Edgeworth. Again he denied it in a signed letter written to the Member on July 12, 2010, when later the investigation revealed that the Respondent had signed three referral agreements before June 2010.

44. It was submitted that early in the investigation the Respondent attempted to verify and investigate his receipt of a $6,650 referral payment in an attempt to feign cooperation with the Member's investigation. At the time, he failed to reveal that he had actually received commissions and referral fees totaling nearly $80,000 related to 24 clients' sales of Edgeworth products.

45. These actions of the Respondent, it was argued, were indicative of an intention not to cooperate with the investigation. The submissions made reference to a number of other events in the months between June 2010 and September 2011 in support of its argument that the Respondent did not cooperate with the investigation.

46. The MFDA staff made reference to a letter of the Respondent of July 16, 2010 in which

he provided a list of clients who purchased Edgeworth products. The list contained eight names when, it was submitted, that at the time the Respondent was aware that 24 of his clients had purchased Edgeworth products. On September 14, 2010, on the basis of the known facts at the time, the Member disciplined the Respondent. A fine of $16,100 was imposed together with an administration fee of $5,000. The letter of discipline also advised that if the Respondent had any further information, he should supply it to the Member immediately. It was submitted that in September 2010, the Respondent was aware that he had sold Edgeworth products to more than eight clients (a total of 24) and that his commissions far exceeded $16,100.

47. The investigation by the Member and by the MFDA continued after September 2010. It was submitted that the Respondent only disclosed further names of the list of 24 clients after he became aware that the investigations had knowledge of other clients. In a meeting of May 16, 2011 with MFDA investigation staff, the Respondent admitted to selling non-approved products to eight clients at a time when the investigators learned that he had a file containing the records of Edgeworth transactions of his clients. Shortly after that meeting, the Respondent disclosed another eight names which, it was submitted by the MFDA staff, was only done because the Respondent became aware during the meeting of May 16, 2011 that the investigators were aware of Edgeworth clients beyond the list of eight.

48. It was submitted that a similar occurrence took place in August and September 2011. In August 2011, the MFDA obtained from Edgeworth a list of 24 clients of the Respondent who had purchased Edgeworth products. It was submitted that only after the Respondent became aware that the MFDA had this information did he finally advise the Member of the correct total number of clients affected. This was done on September 12, 2011, almost a year and a half after the investigation had begun in June 2010. It was submitted that the full disclosure coming after so much time had passed and after numerous requests had been made of the Respondent for information, clearly demonstrated that the Respondent was interfering with the investigation and in so doing failed to observe high standards of ethics and conduct.

49. The MFDA submitted with respect to Allegation #2 that MFDA Rules 1.1.2 and 2.5.1 were breached. Rule 1.1.2 requires an Approved Person to engage in securities related business in accordance with the relationship that the Approved Person and the Member have chosen to govern their relationship (in this case that of principle and agent) and that the Respondent has

violated this agreement. By doing so, the Respondent prevented the Member from meeting its own obligations in accordance with MFDA Rule 2.5.1. It was submitted that the position of the Respondent in his reply that these rules are of no application to the facts of this case are without merit.

50. It was submitted that Allegation #3 was substantiated by the conduct of the Respondent when, on two occasions, he requested Sentinel to list Edgeworth products. On both occasions his request was denied, yet notwithstanding those denials he sold the product. It was submitted that this is a violation of Rule 2.1.1 and that it is conduct unbecoming or detrimental to the public interest. In response to the Respondent's reply that Allegation #3 was simply "unnecessary", it was submitted that it is not correct to consider violations to be unnecessary simply by virtue of a Notice of Hearing having multiple allegations and possible rule violations, such as the four listed against the Respondent in this matter. At the discretion of staff, standard of conduct violations can be prosecuted separately or in conjunction with other violations.

51. MFDA staff made extensive reference in its written and oral submissions to numerous previous decisions of tribunals and courts dealing with securities regulation violations. Reference was made to authorities that underscore the importance of the prohibition against off-book trading in MFDA Rule 1.1.1(a) because the rule protects the interest of clients, and it also protects the interest of the Members and Approved Persons. We will not outline in detail the various decisions relied on by the MFDA but we will return to them in the Analysis and Decision part of this present decision. The underlying theme of the MFDA submissions was that the engaging in off-book trading and the failure to cooperate fundamentally undermines the ability of the Member and the MFDA to monitor Approved Persons and to put at risk members of the public, as well as the Member and other Approved Persons. The violations of the rules by an Approved Person, which the MFDA submits it has clearly established in the present case, is a serious one that goes to the heart of the regulatory regime of the MFDA.

The Respondent's Submissions

52. The Respondent made specific submissions with respect to each of the four allegations. However, there were some overarching themes that were present throughout the argument. Perhaps the most prevalent was that all of the information that is presently known about the

Respondent's clients who dealt with Edgeworth, and all of the information concerning the Respondent's conduct, was known on August 25, 2011 when Sentinel imposed, with the knowledge of MFDA, the 90-day suspension upon the Respondent. The information included knowledge about the number of participants, commissions, agency agreements and an invoice to Edgeworth from the Respondent for $52,500. It is the Respondent's position that the penalty of a 90-day suspension in August 2011, should have brought the matter to an end. The continuation of the investigation by the MFDA, and the formal Notice of Hearing containing the four allegations dated August 13, 2012, was another "kick at the can" and is tantamount to double jeopardy or abuse of process.

53. The second theme in the Respondent's submissions, not unrelated to the first, was that the investigation by the MFDA was somewhat faulty. It was argued that the May 16, 2011 meeting by the MFDA investigators with the Respondent concerned mainly the suitability of the Edgeworth investments and only somewhat tangentially touched upon the issue of off-book transactions. It was also suggested in argument that the MFDA investigators were not forthcoming with the Respondent in the meeting because while they had in their possession a list of 16 clients they only questioned him about the eight clients that he had previously revealed and two others. The suggestion in the submissions was that the interviewers should have confronted the Respondent on May 16, 2011 with the complete information that they had concerning the Respondent's clients and their dealings with Edgeworth. When he was asked specifically about clients Mr. & Mrs. D, there was no suggestion that he was trying to hide information or that he was caught off guard by the question.

54. It was also suggested that the MFDA could have obtained from Edgeworth a complete list of clients much sooner than it actually did, which was in August of 2011. This was emphasized in the submissions particularly since the Respondent signed a letter directed to Edgeworth in August 2010 asking Edgeworth to provide all information to Mr. Chouinard, Sentinel's Compliance Officer. And further if Sentinel and MFDA were concerned about the Edgeworth investments, it was submitted that the letter sent to clients in January 2010 could have been clearer and specific to Edgeworth investments rather than not mentioning Edgeworth by specific name and, it was submitted, was ambiguous as a result.

55. As previously stated in this decision, the Respondent admitted to Allegation #1. It was

submitted that this admission was made on June 23, 2010 and has not changed since that time. He did engage in off-book business and it is not disputed that it is a violation of Rule 1.1.1(a).

56. It was submitted that Allegation #2 is based on the same set of facts that was already admitted to in Allegation #1. Also, it was argued that Rule 2.5.1 addresses the obligation of the Member and not the Approved Person. It was asked: "How could Mr. Comeau be in violation of an obligation on a Member?" Also, it was submitted that there would be no reasonable expectation for a Member to oversee investments which the Approved Person was not supposed to make in the first place. In summary, it was submitted that Allegation #2 is really the same as Allegation #1 or, alternatively, it has absolutely no application in this case because it relates to a review or an opportunity to a Member to oversee activities of a representative that the representative is not allowed to do in any event.

57. Similar submissions were made with respect to Allegation #3. It was argued that because the Respondent suggested to Mr. Chouinard, on two occasions, that Edgeworth products be approved by Sentinel, it does not change the essence of the violation that he has admitted to in Allegation #1. It was argued that from the outset (on June 23, 2010), the Respondent admitted that he was in breach of the rules by trading off-book. It was argued that the mere fact that he had suggested to Sentinel that the products should be listed adds nothing to the core allegation. He never denied knowledge about the rules and the conversations with Mr. Chouinard do not exacerbate the wrongdoing admitted by the Respondent.

58. The Respondent readily recognized in his submissions, and at the outset of the hearing, that Allegation #4 (given that he admitted to Allegation #1) is the most serious of the allegations. It alleges that the Respondent purposely and willfully obstructed and misled both the Member and the MFDA. This allegation was strenuously challenged.

59. The Respondent made reference to Mr. Houmphanh's testimony to the effect that the Respondent cooperated at all stages. Also, even in August 25, 2011, after all the facts were known, Mr. Chouinard must still have been of the view that the Respondent cooperated otherwise, under Sentinel's own disciplinary policy, the Respondent would have been terminated; rather, he was given a 90-day suspension with the right to return to Sentinel to work as an agent and an Approved Person. Notwithstanding this implicit finding of cooperation, and a

lengthy delay by MFDA, in August 2012 it was alleged that the Respondent had been uncooperative in the investigation.

60. The submissions made reference to a number of factors that were relied upon to demonstrate that the Respondent was cooperating with the investigation fully. First, immediately after the interview with Mr. Houmphanh on June 23, 2010, the Respondent provided the list of clients of which he was aware. It was submitted that he was always under the belief that the information was going to be made available by Edgeworth. In light of that belief, it was submitted that there would be no reason for him to mislead Sentinel or the MFDA when he expected that the full story would be forthcoming from Edgeworth.

61. Second, it was pointed out that on July 12, 2010 the Respondent was genuinely confused concerning his legal obligations to disclose names of clients and his possible liability under the *Privacy Act*. He asked for advice from Mr. Houmphanh as to whether he should be consulting a lawyer but Mr. Houmphanh was neutral on the question.

62. Third, and this was emphasized as perhaps the most compelling factor, the Respondent signed a letter to Edgeworth authorizing it to release to Sentinel "all information concerning any transactions, which I participated in with your organization". This letter, which was very broad in its terms, followed telephone calls that the Respondent had said were made to Edgeworth asking for detailed information concerning clients he had referred. This, it was submitted, was the strongest evidence of the Respondent's willingness to cooperate and it was done in August 2010 before any penalties were imposed upon him by Sentinel. It was submitted that the Respondent would not intentionally withhold information after directing Edgeworth to provide all information to Sentinel since if he knew there were 24 clients he also knew that Sentinel, and ultimately MFDA, would become aware of the 24 clients from information provided by Edgeworth.

63. The submissions also made reference to other steps taken by the Respondent to cooperate. More particularly, after the May 16, 2011 interview, in a letter dated May 20, 2011 he provided another eight names (in addition to those initially provided on July 16, 2009) and his Maximizer notes. It was argued that this was the best information he could command at the time and, again, it was asked why would he lie about it fully knowing that he had authorized

Edgeworth to provide all information.

64. The Respondent also made submissions to the effect that he has already incurred a severe penalty and that in recommending Edgeworth products he believed he was acting in the best interests of his clients. Reference was made to Mr. Chouinard's letter of August 31, 2010 to MFDA in which he outlined his belief that Mr. Comeau "truly believed that he was offering a genuine service to his clients and was at all times conscience (sic) of their well being". While it was acknowledged that these submissions are perhaps more appropriate at the penalty phase of the hearing, it was also submitted that they pointed to the culpability or lack of it of the Respondent. It was also pointed out that there was no financial benefit to the Respondent to recommend Edgeworth products because the commissions payable on the approved product sold by Sentinel were identical.

Rebuttal Submissions by MFDA Staff

65. Ms. Abate, on behalf of the MFDA staff, made a number of short rebuttal arguments. First, she reminded the Panel that there is an obligation on Approved Persons to provide information, as completely and as fully as possible. Reference was made to MFDA By-law #1, Section 22.1 which outlines the obligations of an Approved Person in an investigation. It was submitted that the obligation to cooperate and the obligation to obtain material and present documents, if requested by the MFDA, rests with the Respondent; thus, the Respondent's arguments that the MFDA should have sought out the information from Edgeworth directly are without merit.

66. The MFDA staff also submitted that the responsibilities of Sentinel, as a Member, and the MFDA, as the regulatory body, cannot be conflated. The MFDA must ensure that Members conduct investigations into allegations of misconduct. Thus, the filing of the METS Event was required of Sentinel and the follow-up communications with MFDA concerning the investigation. The second obligation of the MFDA is to conduct its own investigation. It was submitted that the MFDA does not advise Members how to discipline its Approved Persons. It was argued that such actions are an internal matter similar to how an employer would discipline an employee but a regulatory body may still intervene to impose greater discipline. It was pointed out that the MFDA does not approve or disapprove discipline imposed by Members but

in its capacity to oversee Members is advised about investigations and their outcome.

67. In response to the Respondent's concerns, expressed in his submissions, about the delay between August 2011 and the formal Notice of Hearing a year later, it was submitted that regulatory bodies generally take considerable time to bring matters to a disciplinary hearing.

D. ANALYSIS AND DECISION

General

68. The evidence and the submissions in the hearing focused on whether the Respondent was in breach of the MFDA Rules as set out in the four allegations. However, largely because of the previous discipline imposed on the Respondent by the Member, some of the evidence and submissions can be construed as relating to appropriate penalty. Nevertheless, the hearing was split between liability and penalty and the present decision is concerned only with whether there was a breach (liability) and the issue of penalty will be determined later by this Panel after hearing further submissions from the parties, and perhaps further evidence.

69. We will first address an underlying theme of the Respondent's submissions, which are outlined above. It was argued that the MFDA investigation after September 2011, the formal allegations against the Respondent, and the hearing in this matter were, in effect, unnecessary and a "waste of time". The underlying premise of this argument is that in August 2011, Sentinel, in its capacity as an MFDA Member, imposed for the second time penalties on the Respondent. The penalty was a 90-day suspension to begin on September 1, 2011. It was argued that since the MFDA was aware of the penalty, and particularly since Sentinel's Compliance Officer communicated with the MFDA prior to imposing the penalty, that to continue the investigation and now seek greater penalties in effect amounts to double jeopardy, or abuse of process. In short, the Respondent's position is that in August 2011 both the Member and the MFDA were aware of all of the facts pertaining to the Respondent's off-book trading and that the penalty imposed at that time should have brought finality to the issue.

70. The regulatory regime of the MFDA contemplates separate and distinct roles for the MFDA and the Member. The Member is subject to regulation by the MFDA, as are Approved

Persons. While the policies and disciplinary rules of a Member may be similar to that of the MFDA, they are quite distinct. While it is hoped that the interests of the MFDA and any particular Member are the same with respect to controlling Approved Persons in a relationship with the Member, it would be the rare situation where they are completely identical. Indeed, the respective interests might be quite different. A Member may wish to minimize discipline of an Approved Person because it may be to its financial benefit to do so. Such a situation may be where a high performing agent seriously breached MFDA Rules and By-laws but a Member may be reluctant to impose significant penalties because of the impact it would have on its business.

71. In the present case, the MFDA was acting well within its mandate to continue the investigation of the Respondent after the Member imposed the 90-day suspension on August 26, 2011. Moreover, it was not improper for the MFDA to allege violations of the rules and By-laws, and bring them to a hearing for resolution, even though the alleged violations were based on the same set of facts known to the Member when it imposed its discipline in August 2011. The mandate and the responsibility of the MFDA is met only after it conducts its own investigation and makes its own determination as to whether, in its view, there were breaches of its rules and By-laws.

72. The position of the Respondent is that the MFDA was in effect party to the discipline imposed by the Member in August 2011. The explanation of the MFDA witness was that while the MFDA supervises a Member and is interested in how a Member may deal with apparent infractions by an Approved Person, the MFDA does not direct what action should be taken even though it is expected to be advised of that action as part of the Member's obligation. This is what occurred in the present case.

73. We do not find that the continued investigation and the resulting four allegations brought by the MFDA amount to double jeopardy or an abuse of process. The MFDA was acting within its authority and its distinct responsibility which is separate and different from that of the Member. There is no evidence that the MFDA represented to the Respondent that no further action would be taken, although perhaps it could have been indicated earlier that an ongoing investigation was continuing. While we do not find that the actions of the Member in penalizing the Respondent with a 90-day suspension in August 2011 brought the matter to finality or brings the current allegations to finality, we do recognize that the penalties already received by the

Respondent will be a relevant factor to be taken into account by this Panel when it determines the appropriate penalties to be imposed upon the Respondent.

Allegation #1

74. MFDA Rule 1.1.1(a) prohibits an Approved Person from engaging in securities related business in any form that is not carried on for the account of the Member through the facilities of the Member, and in accordance with MFDA By-laws and Rules. Rule 1.1.1(a) provides:

> *1.1.1 Members. No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:*
>
> > *a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than: (not applicable in this case)*

75. The courts and numerous previous tribunals recognize that rules similar to Rule 1.1.1(a) are fundamental to regulatory regimes which are designed to enhance investor protection and strengthen public confidence in the Canadian financial industry. In *Re Westgard*, MFDA File No. 200937 (July 15, 2010) the Hearing Panel described the purpose of Rule 1.1.1(a) as follows:

> *MFDA Rule 1.1.1(a) creates a regime whereby an Approved Person is only permitted to sell investment products that have first been approved for sale by the Member (following appropriate product due diligence) and which are sold through the facilities of the Member (thereby ensuring the trading activity is subject to appropriate review and supervision). By limiting the authority of an Approved Person to trade only in securities approved for sale by the Member and through the facilities of the Member, MFDA Rule 1.1.1(a) protects primarily the interest of Member clients, but also the interests of Members and Approved Persons. (Para. 30)*

Similarly in *Re Thompson*, [2004] I.D.A.C.D. No. 49 (August 3, 2004) the Hearing Panel said the following with respect to a similar provision:

> *This provision is for the protection of the investors, as well as Member firms. When a transaction is done off the books, the Association Member loses the ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor. (Para. 60)*

76. The Respondent acknowledged that he did breach MFDA Rule 1.1.1(a) when he engaged in off-book trading of the Edgeworth products. He acknowledged it before this Panel, as well as

to the Member and to the MFDA in the course of their respective investigations. Independent of his acknowledgment, we find that the evidence clearly established that the Respondent did carry on a securities related business not for the account of the Member (Sentinel) and not through its facilities. While an agent for Sentinel he developed an association with Edgeworth Properties and advised no fewer than 24 of his clients to purchase Edgeworth securities. Edgeworth products were not approved by the Member, and the Respondent received in total approximately $79,000 in commissions and fees from the sale of the products. It is our conclusion that the Respondent did breach Rule 1.1.1(a) when he engaged in securities related business that was not carried on for the account and through the facilities of the Member.

77. As previously stated, the Respondent acknowledged that he did breach Rule 1.1.1(a) by facilitating the sale of Edgeworth products. In his testimony and in his submissions he attempted to minimize the breach by saying that his motives were always to act in the best interests of his clients. It was his testimony that he believed that Edgeworth products were superior to the comparable product listed by Sentinel at the time. While harm or benefit to a client or clients is a factor considered by tribunals in assessing penalty, it does not justify or minimize the breach of this important rule. Off-book trading shields the Approved Person from regulatory scrutiny and oversight. The seriousness of the infraction is because the regulation and oversight designed to protect the investment public and the Member is frustrated.

Allegation #2

78. MFDA Rule 1.1.2 requires Approved Persons to comply with the By-laws and rules as they relate to the Member or the Approved Person. Rule 2.5.1 imposes upon each Member the responsibility for establishing policies to ensure that its business is carried out in accord with the By-laws, rules, policies and legislation. The respective rules provide as follows:

> *1.1.2 Compliance by Approved Persons. Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1(c)(i) or (ii) shall comply with the By-laws and Rules as they relate to the Member or such Approved Person.*
>
> *2.5.1 Member Responsibilities. Each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.*

79. The Respondent's submissions with respect to the allegation that he had breached these two rules was that this allegation is really one and the same as Allegation #1. The alternative submission was that it has no application in this case because it relates to the Member's obligation to oversee activities of a representative that, because off-book trading was involved in the present case, the Approved Person was not allowed to do in any event.

80. It is difficult not to conclude that a finding of a breach of Rule 1.1.1(a) also constitutes a breach of Rule 1.1.2. The Respondent is correct in that the facts relied upon in support of the alleged breach are identical to those that support the breach contained in Allegation #1. Nevertheless, it is our finding that there was a separate breach based on the same acts because the Respondent did not comply with rules as they relate to the Member or Approved Person. While a separate violation, we do agree that the conduct involved was one and the same and this is a factor to be taken into account in determining appropriate penalty.

Allegation #3

81. MFDA Rule 2.1.1 is aimed at establishing unethical standard of conduct for Members and Approved Persons. It says:

> *2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:*
>
> *(a) deal fairly, honestly and in good faith with its clients;*
> *(b) observe high standards of ethics and conduct in the transaction of business;*
> *(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and*
> *(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.*

Similar to our finding with respect to Allegation #2, a finding of a breach of Rule 1.1.1(c) almost inevitably constitutes a breach of Rule 2.1.1(c). It clearly is detrimental to the public interest to engage in off-book trading that, by definition, limits regulatory control by both the Member and the MFDA. Thus, we find that the Respondent's actions which support a finding of a breach of Rule 1.1.1(c) are also a breach of Rule 2.1.1(c).

82. Again, we are cognizant that it is the same set of facts that lead to a finding of a breach of all three rules outlined in Allegations Nos. 1, 2 and 3. In its submissions, the MFDA argued that because the Respondent sought on two occasions to have Edgeworth products approved by Sentinel, that exacerbates the extent of his wrongdoing. Given the fact that the Respondent from the very outset (on June 23, 2010) acknowledged that he breached MFDA rules by engaging in off-book trading, it is difficult to conclude that the wrongdoing was made greater by virtue of the fact that he sought to have the Edgeworth products listed. There never was a question about the Respondent's knowledge that the products were not listed and that he should not have been selling them.

Allegation #4

83. MFDA Rule 2.1.1, previously reproduced in paragraph 81 above, sets out a standard of conduct for each Member and Approved Person. For ease of reference, we will reproduce it once again. It states:

> *2.1.1 Standard of Conduct. Each Member and each Approved Person of a Member shall:*
>
> *(a) deal fairly, honestly and in good faith with its clients;*
> *(b) observe high standards of ethics and conduct in the transaction of business;*
> *(c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and*
> *(d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.*

84. The MFDA in Allegation #4 alleges that the Respondent breached Rule 2.1.1 by interfering with the Member's investigation of his activities and by making statements to the Member which he knew to be misleading, incorrect or inaccurate at the time. It also alleges that he disposed of documents relevant to the matters under investigation. The allegation is that the Respondent's actions breached Rule 2.1.1 because they demonstrate that he did not observe high standards of ethics. In its submissions the MFDA also argued that the Respondent's conduct was unbecoming and detrimental to the public interest.

85. It is this allegation that resulted in the two days of testimony before the Panel and in the

extensive recitation of the evidence contained in Part B of this decision. The Respondent admitted Allegation #1 and, because Allegations #2 and #3 were based on the same set of facts as Allegation #1, the admission of the core facts also related to those two allegations. However, the Respondent vigorously challenged Allegation #4. While it was MFDA's position that the Respondent did not cooperate with the investigation conducted by the Member, or by the MFDA, it was the Respondent's position that at every step of both investigations he cooperated and did precisely what was asked of him.

86. The Panel's task is to determine which of these two positions prevails. If the Respondent's position is accepted, there is no breach of Rule 2.1.1. On the other hand, if MFDA's interpretation of the facts is accepted, there is a breach of the rule. The fundamental or core facts are not really in dispute. With very few exceptions, there is a lengthy and detailed paper trail outlining every step of the investigation and containing virtually all the communications between the Respondent and the Member, and the Respondent and the MFDA, and the Member and the MFDA. What is in dispute is the inference to be drawn from those basic facts and the credibility of the Respondent since he testified that it was always his intention to cooperate with the investigation. While the testimony of the Respondent with respect to his subjective intention and state of mind is important for this Panel to consider, it is not determinative. His testimony must be weighed against the objective facts and the Panel must determine, based on the civil standard of proof, whether the Respondent did breach Rule 2.1.1 by failing to cooperate with the investigation, more specifically by interfering with the ability of the Member to conduct a reasonable supervisory investigation and by making misleading, incorrect or inaccurate statements to the Member. The burden of proof is on the MFDA but it is a civil standard of proof, which does not require certainty or proof beyond a reasonable doubt; rather, the civil standard imposes a balance of probabilities test or, in more common language, does the fact-finder (the Panel) find that what is alleged "more likely than not" happened. It is to this difficult determination that we now turn.

87. The Panel has carefully and extensively reviewed the evidence in this matter and has determined that between June 23, 2011 and August 10, 2011 the Respondent was asked on numerous occasions for information about referrals of clients to buy Edgeworth products. The details of each of these requests are contained in the outline and summary of the evidence in Part B of this decision. We will summarize some of the requests:

(1) On June 2, 2010, the Branch Manager asked for a written statement detailing the events which led to the Saskatchewan Financial Services Commission ruling. The Respondent testified that he viewed this request narrowly as applying only to the matters that were in issue before the Commission and only supplied that limited information.

(2) On June 23, 2010, the Respondent admitted that he did refer some of his clients to Edgeworth. However, he said that "he understood that there was no referral agreement set up between Edgeworth" and him. In fact, at the time there were agreements between Edgeworth and the Respondent.

(3) On July 6, 2010, in a meeting with the Branch Manager the Respondent was given until July 12, 2010 to detail "all the events and what clients the Approved Person has referred to Edgeworth Investment Mortgage Corporation. Jack Comeau will also include a confirmation of the exact commission amount paid to Comeau Financial Inc. …". This request unambiguously asked for *all* Edgeworth information.

(4) On July 13, 2010, Sentinel's Compliance Officer requested of the Respondent "all clients' names which he referred to Edgeworth". This was the second request within days to provide all clients' names.

(5) On July 19, 2010, again Sentinel's Compliance Officer wrote to the Respondent saying, "Jack, it is important that we have knowledge of any and all referral fees paid to yourself on these individuals' pieces of business. Edgeworth will not give this information to me due to confidentiality. I would therefore request that you contact Edgeworth and have them supply the details to yourself and that you forward them to me no later than August 3, 2010".

(6) On September 14, 2010, at the time Sentinel imposed the penalty of fine and costs, the Respondent was told in writing to provide "any information" that became available to him subsequent to that time.

88. The Respondent on August 20, 2010 provided in writing to Sentinel the names of eight of his clients that he referred to Edgeworth. This occurred nearly two months after the investigation by Sentinel began and after several unambiguous requests for total disclosure were made to the Respondent. Also, on August 20, 2010 the Respondent only disclosed commissions of $16,100 when in fact the commissions would have been far in excess of that with respect to the eight clients he named, and far in excess of that with respect to another 16 clients that were later revealed but not named on August 20, 2010.

89. It is very difficult for this Panel to conclude that the Respondent was fully cooperating with the Member's investigation. In his testimony he disclosed that he had a file, transferred from being a physical paper file to an electronic file in July 2010, of his dealings with Edgeworth. The file was not produced in evidence and we must be careful not to draw too many inferences from that fact. Nevertheless, in his testimony the Respondent did not indicate that it was a partial file; thus, it is difficult for us to understand why as late as August 20, 2010 the Respondent would not have been in a position to provide to the Member the full details of all of his business on his clients' behalf with Edgeworth.

90. The most compelling evidence in favour of the Respondent is his letter of August 25, 2010 to Edgeworth asking that it provide to the Member all the details of the transactions between the Respondent's clients and Edgeworth. In his submissions, the Respondent urged that this was near to absolute proof that he was cooperating with the investigation. After careful consideration, we find that the letter of August 25, 2010 does not outweigh the probative value of the preponderance of the other evidence which, in our view, clearly points toward non-cooperation. The non-co-operation includes slowness in providing information and providing inaccurate information because of its lack of full disclosure. Moreover, it was the Respondent's responsibility to provide the information requested to Sentinel and it would have been more effective for him to obtain the information from Edgeworth directly and provide it to Sentinel. He should have known that it was highly unlikely for Edgeworth to accede to Mr. Chouinard's earlier request because there was no established relationship between Sentinel and Edgeworth and privacy concerns would be quite obvious.

91. If the authority given by the Respondent to Edgeworth had been done in late June or early July (because it was clear that his own records were not capable of producing a full picture of his

clients' Edgeworth investments) the evidentiary weight the Panel might place on the August 25, 2010 letter would be greater. However, when the letter was written a considerable period of time had passed and the Respondent was aware that Edgeworth had resisted providing the information to the Member. Also, he testified that he had had telephone contact with Edgeworth. We know that Edgeworth did not comply with the Respondent's request in the August 25, 2010 letter and only provided the information to the MFDA in August 2011, after receiving an order from the Alberta Securities Commission. In light of all these facts, weighed against the apparent resistance of the Respondent to give a full accounting of the Edgeworth investments, we find that the August 25, 2010 letter does not outweigh the quite compelling evidence of the failure of the Respondent to fully cooperate with Sentinel's investigation.

92. Allegation #4 only alleges uncooperative behavior by the Respondent with respect to the Member's investigation and makes no mention of the MFDA investigation. Nevertheless, there is significant evidence of the Respondent being less than forthright with the MFDA investigators. In the meeting of May 16, 2011 he was asked about "the total number of persons that invested in Edgeworth based on your recommendations…" to which he responded, "Eight". (See para 31 above). He also understated his commissions from Edgeworth products and misstated the true state of affairs with respect to a referral agreement or agreements he had with Edgeworth. This was done in the May 16, 2011 meeting. The Respondent's explanation was that he believed he was only being questioned about the information that had been before the Saskatchewan Financial Services Commission. It is hard for the Panel to accept that explanation given the numerous open-ended questions that were put to him about the full extent of Edgeworth products that he referred to his clients.

93. On May 17, 2011, the day following the interview with the MFDA investigators, the Respondent was requested to provide more detailed information concerning the Edgeworth exempt product purchases. It will be recalled that this request followed a discussion in the May 16, 2011 meeting in which the investigators named two other clients who were not on the original list of eight provided by the Respondent. In response to the May 17, 2011 request, the Respondent provided eight more names, for a total of 16.

94. On August 10, 2011, Sentinel advised the Respondent that it re-opened its investigation and invited the Respondent to a meeting. Mr. Chouinard, Sentinel's Compliance Officer, in the

invitation letter indicated that he wanted to discuss in detail the contents of the MFDA letter of the same date and asked the Respondent to "bring in all material". It was only on September 12, 2011 that for the first time the Respondent disclosed fully the list of 23 clients (one name was omitted in error) to the MFDA. At no time prior to this date, over the preceding 14 months while the respective investigations were being conducted, did the Respondent fully disclose the extent of his business with Edgeworth products.

95. The conclusion of the Panel with respect to Allegation #4 is that the evidence goes beyond meeting the balance of probabilities test in establishing that the Respondent did not cooperate either with the investigation of the Member or with the investigation of the MFDA. There is a positive obligation placed on Members and Approved Persons to the MFDA by virtue of section 22.1 of the By-law. It is not alleged that the Respondent breached By-law section 22.1 and we make no finding in respect of the By-law. It is our conclusion, however, that the Respondent did breach MFDA Rule 2.1.1 by his failure to cooperate with the investigation conducted by the Member. He interfered with the investigation and was misleading in some of his responses to direct inquiries. As such, he did not observe high standards of ethics and conduct in the transaction of his business, his conduct was unbecoming and it was detrimental to the public interest, and thus a breach of MFDA Rule 2.1.1.

96. Allegation #4 also makes reference to disposing of documents that were relevant to the matters under investigation. It is our conclusion that the Respondent did not dispose of information for the purposes of interfering with the investigation. Clearly he did dispose of a written physical file but we accept his testimony that the contents of that file were saved in electronic form. We cannot help but observe that if the electronic file in its entirety had been made available to the Member in June or July of 2010 the resolution of the issues surrounding the Respondent's conduct would likely have occurred much sooner and without the investigations and other extensive efforts that did occur.

Conclusion

97. In summary, for the foregoing reasons, we find that each of the four allegations set out in the Notice of Hearing have been proved. More specifically:

(1) The Respondent breached MFDA Rule 1.1.1(a) by engaging in securities related business that was not carried on for the account and through the facilities of the Member.

(2) The Respondent breached MFDA Rule 1.1.2 by engaging in off-book transactions and thereby interfering with the Member's ability to supervise the Respondent.

(3) The Respondent breached MFDA Rule 2.1.1(c) in that he engaged in conduct unbecoming of an Approved Person by selling off-book products.

(4) The Respondent breached MFDA Rule 2.1.1 in that he interfered with a reasonable supervisory investigation and made misleading and inaccurate statements thus he failed to observe high standards of ethics and conduct in the transaction of business.

DATED this 30th day of July , 2013.

"Daniel Ish"
Daniel Ish, Q.C.,
Chair

"Elaine Bradley"
Elaine Bradley,
Industry Representative

"Greg Wiebe"
Greg Wiebe,
Industry Representative

DM 347913 v2