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: Jeffrey Gordon Cox

Heard: December 17, 2015 in Winnipeg, Manitoba
Reasons for Decision: April 8, 2016

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Sherri Walsh	Chair
Daniele Ayers	Industry Representative
Greg Wiebe	Industry Representative

Appearances:

David Babin	)	Counsel for the Mutual Fund Dealers Association of Canada
	)	
Jeffrey Cox	)	Not present either in person or through a representative
	)	

1. By Notice of Hearing dated June 17, 2015 the Mutual Fund Dealers Association of Canada ("MFDA") alleged that the Respondent committed the following violations of the By-laws, Rules or Policies of the MFDA:

> **Allegation #1**: Between October 1, 2012 and August 6, 2013, the Respondent misappropriated at least $274,600 from at least 11 clients and 23 individuals, thereby failing to deal honestly and in good faith with the clients, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

PROCEDURAL HISTORY

2. The procedural history of this matter for the period from the time the Notice of Hearing was issued on June 17, 2015 to November 24, 2015 the date of this Panel's Order regarding Staff's disclosure obligations is set out in detail in this Panel's Reasons for Decision dated February 16, 2016.

3. In brief, during that period the Respondent, notwithstanding having been duly served with the Notice of Hearing and notice of the dates of various appearances, did not file a Reply to the Notice of Hearing and did not attend any appearance before this Panel whether in person or through a representative.

4. The Respondent did, however, send a number of email communications to Staff during that period in which he made it clear that he was not intending to engage in the MFDA discipline process in any manner whatsoever.

5. Following the hearing of Staff's motion regarding its disclosure obligations, this Panel found that the Respondent had clearly waived his right to disclosure. However, given the significance of the allegations in this matter and the fact that the Respondent was self-represented, Staff was ordered to write one final letter to the Respondent advising him that if he failed to avail himself of his right to receive disclosure the Hearing on the Merits would nonetheless proceed.

6. Staff sent the Respondent that letter on November 30, 2015.

7. This matter was originally scheduled to be heard on December 3, 2015, however, this Panel granted Staff's request for an adjournment to December 17, 2015, by Order dated December 3, 2015

8. Pursuant to that Order, Staff sent the Respondent a letter on December 3, 2015 advising him of the adjournment. The letter went on to say that if he failed to attend the hearing either in person or by way of a representative, the Hearing Panel may:

> a) Proceed with the Hearing on the Merits in your absence;
> b) Proceed without providing you with copies of the documents that Staff intends to rely on during the Hearing on the Merits;
> c) Accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven;
> d) Impose any of the penalties permitted by s.24.1.1 of MFDA By-law No. 1 including one or more of the following: a reprimand, a suspension or permanent prohibition of your authority to conduct securities related business for a Member of the MFDA, and a monetary fine; and
> e) Order you to pay all or part of the costs of the investigation and the disciplinary hearing in this matter without further notice to you, pursuant to s.24.2 of MFDA By-law No.1.
>
> Letter from Staff dated December 3, 2015.

9. The Respondent replied to Staff the next day by email stating that he did not wish to sell investments again.

10. On December 15, 2015, Staff sent the Respondent an email repeating the advice it had set out in its letter of December 3, 2015, as quoted above.

11. The Respondent replied to Staff the same day by email stating that he would not be attending the Hearing because, he said, as he has repeatedly told Staff, he did not care about getting a securities licence again.

Hearing on the Merits – December 17, 2015

12. The Respondent did not attend the Hearing on the Merits on December 17, 2015 either in person or through a representative.

13. At the outset of the hearing, Staff made a motion to proceed in the Respondent's absence.

14. By the time of the hearing, the Respondent had not filed a Reply as required by Rule 8 of the MFDA Rules of Procedure nor had he ever attended any of the appearances held before this Panel.

15. Staff submitted, therefore, that pursuant to MFDA Rules of Procedure 7.3, 8.4 and 13.5(1) this Panel had the jurisdiction to proceed with the hearing in the absence of the Respondent. In further support of that submission, Staff cited a number of authorities where a Hearing Panel proceeded in the Respondent's absence either because the Respondent had failed to attend the appearances or had failed to file a Reply: *Raymond Brown-John (Re),* [2005] MFDA Pacific Regional Council, File No. 200502; *James Vilfort (Re)*, [2010] MFDA Central Regional Council, File No. 201021; *Luigi Ciardullo (Re)*, [2013] MFDA Central Regional Council File No. 201226**;** *Paul Yoannou (Re)*, [2013] MFDA Central Regional Council File No. 201235; *Leslie McIntosh (Re),* [2013] Prairie Regional Council File No. 201208; and *Arnold Tonnies (Re),* [2005] MFDA Central Regional Council File No. 200503.

16. Rule 7.3 of the Rules of Procedure provides:

> Where a Respondent fails to attend the hearing on the date and at the time and location specified in the Notice of Hearing, the Hearing Panel may:
>
> a) proceed with the hearing without further notice to and in the absence of the Respondent; and

b) accept the facts alleged and conclusions drawn by the corporation in the Notice of Hearing as proven, and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

17. Similarly, Rule 8.4 of the Rules of Procedure provides:

> Where a Respondent fails to serve and file a Reply in accordance with the requirements of Rules 8.1 and 8.2, the Hearing Panel may do any one or more of the following:
>
> a) proceed with the hearing without further notice to and in the absence of the Respondent; and
>
> b) accept the facts alleged and conclusions drawn by the corporation in the Notice of Hearing as proven, and impose any of the penalties and costs described in sections 24.1 and 24.2 respectively of MFDA By-law No. 1.

18. Rule 13.5(1) provides:

> (1) Where a Respondent, having been served with a Notice of Hearing, fails to attend the hearing of the proceeding on its merits, the Hearing Panel may proceed in accordance Rule 7.3 [sic].

19. Pursuant to the provisions of these Rules, therefore, the Panel granted Staff's motion to proceed in the Respondent's absence.

20. Further, because the Respondent did not file or serve a Reply and did not attend the hearing in these proceedings it was open to this Panel pursuant to the same Rules to accept the facts alleged and conclusions drawn by the Corporation in the Notice of Hearing, as proven.

21. Nonetheless, to ensure an accurate and complete record for the purposes of the Hearing on the Merits, Staff filed the Affidavit of Alan Currie sworn December 11, 2015 to prove the allegations in the Notice of Hearing.

22. We admitted this evidence relying on the authority of Rule 13.4 of the Rules of Procedure which allows for the evidence of a witness or proof of a particular fact or document to be given by sworn statement unless an adverse party reasonably requires the attendance of the witness.

23. Staff also provided us with a number of decisions regarding similar circumstances, where a Respondent did not attend a Hearing on the Merits to address allegations relating to misappropriations, where the Panel accepted evidence by way of affidavit. (See: *Brown-John, supra,* and *Mark Lindsay (Re),* [2011] MFDA Central Regional Council File No. 201040.)

24. Staff pointed the Hearing Panel as well to Rule 1.6 of the Rules of Procedure which allows a Panel to admit as evidence any testimony, document, or other thing including hearsay which it considers to be relevant to the matters before it. Staff again provided us with authorities which supported the acceptance of hearsay as admissible evidence in similar cases. (See: *Brown-John, supra; McIntosh, supra; Tonnies, supra;* and *Stephan Headley (Re)*, [2006] MFDA Central Regional Council File No. 200509.)

25. Mr. Currie was also called at the hearing to testify in person for the purpose of being able to elaborate on the evidence set out in his Affidavit and to answer any questions posed to him by the Hearing Panel.

26. Based on the cases provided to us by Staff and the authority granted by Rules 13.4 and 1.6 of the Rules of Procedure, this Panel admitted Mr. Currie's Affidavit evidence.

27. We granted Staff's request to maintain the confidentiality of the Respondent's victims by referring to them in our written Reasons by their initials only and we granted Staff's request that the exhibits to Mr. Currie's Affidavit be marked as confidential and kept separate from the public record, in accordance with Rule 1.8 of the Rules of Procedure.

28. Finally, the Panel granted Staff's request to exercise our discretion under Rule 11.3 of the Rules of Procedure to waive the requirements of providing the Respondent with the witness list.

29. With respect to this last request, the Panel was satisfied that the Respondent had been given sufficient notice of the evidence that Staff intended to rely upon at the Hearing and had been made aware of the conclusions and facts that would be put to this Panel, consistent with the requirements of fairness, such that the Hearing could proceed.

JURISDICTION

30. The Respondent was registered in Manitoba as a mutual fund sales person and member of the MFDA from January 15, 2010 to June 28, 2013.

31. Although the Respondent resigned from the MFDA in 2013, section 24.1.4 of MFDA By-law No. 1 confers jurisdiction on this Panel to discipline the Respondent after he ceased to be a registered member of the MFDA, for activities carried out during the period in which he was an Approved Person.

32. Specifically, section 24.1.4 of By-law No. 1 provides:

> *Jurisdiction*
>
> *(a) Former Members.* For the purposes of Sections 20 to 24 inclusive, any Member, Approved Person or other person subject to the jurisdiction of the Corporation shall remain subject to the jurisdiction of the Corporation notwithstanding that such member has ceased to be a Member, Approved Person or other person subject to the jurisdiction of the Corporation.
>
> *(b) Limitation.* No proceedings shall be commenced pursuant to Section 20.1 against a former Member or person referred to in Section 24.1.4(a) unless a Notice of Hearing has been served upon such Member or person no later than five years from the date upon which such member or person ceased to be a Member or held the relevant position with the Member, respectively.

33. Based on the provisions of this section and the fact that the Respondent was served with a Notice of Hearing on June 17, 2015, the Panel was satisfied that we had jurisdiction to proceed with the Hearing.

THE ALLEGATION

34. For ease of reference, the Allegation set out in the Notice of Hearing is repeated below:

> **<u>Allegation #1</u>**: Between October 1, 2012 and August 6, 2013, the Respondent misappropriated at least $274,600 from at least 11 clients and 23 individuals, thereby failing to deal honestly and in good faith with the clients, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

FACTUAL FINDINGS

35. The provisions of Rules 7.3, 8.4 and 13.5 would have permitted us to make findings based solely on the facts and conclusions set out in the Notice of Hearing. Nevertheless, as stated above, Staff tendered into evidence the detailed affidavit of Alan Currie and further called Mr. Currie to testify with respect to any additional information required by the Panel.

36. We find that the facts alleged in the Notice of Hearing have been established by the evidence of Mr. Currie both as set out in his affidavit and his testimony at the Hearing with the following exception.

37. We find that between October 1, 2012 and June 28, 2013 the Respondent misappropriated at least $235,630 from 26 clients and other individuals. For the reasons set out later in this decision, our findings as to the number of individuals from whom the Respondent misappropriated funds and the total amount of funds the Respondent misappropriated differed from what was alleged in the Notice of Hearing. As our reasons indicate this did not, however, affect our finding that the Respondent misappropriated substantial amounts of money from a significant number of individuals.

38. With this noted exception, therefore, we are satisfied that the facts alleged in paragraphs 1-41 of the Notice of Hearing have been proven on a balance of probabilities, save for the exception noted above. The Notice of Hearing is attached as Appendix "A" to these Reasons. We give a brief summary as follows.

Client Complaints

39. At the time of the circumstances set out in the Notice of Hearing, the Respondent was registered in Manitoba as a mutual fund sales person with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life"), a Member of the MFDA.

40. On July 12, 2013, Sun Life filed a METS event indicating it had received complaints from several of the Respondent's mutual fund and non-mutual fund clients. The complainants stated that the Respondent had been soliciting cash payments and electronic fund transfers for alleged short term investments or deposit vehicles on the promise of extremely high rates of return, which investments did not in fact take place.

41. Following receipt of the complaints, Sun Life commenced an investigation which included interviewing both the Respondent and the people who were identified as individuals from whom the Respondent misappropriated funds.

42. In his interview with Sun Life, the Respondent stated that:

- he was using methamphetamine at the material times but had been clean for a week at the time of his interview;
- he kept a list of those to whom he owned money;
- he did not keep a log of how much he had taken from each client or how much he had paid back to them at any point prior to the interview;
- he had taken the following amounts from the following clients under false pretenses:

    i. between $80,000 and $85,000 from client MB;
    ii. $4,500 from GK and MK who were Sun Life Insurance clients;
    iii. $20,000 from client SK;
    iv. $4,000 from JA, who was a Sun Life insurance client;
    v. $5,000 from DS, who was a Sun Life insurance client;
    vi. $10,000 from clients MT and IT;
    vii. $5,000 from RK, who was a Sun Life insurance client;
    viii. $3,000 from DL, who was a Sun Life insurance client;
    ix. $40,000 from his sister JM, who was a Sun Life insurance client;
    x. $17,000 from his father, client DC;

xi. $2,500 from his aunt, client ET;
xii. $2,000 from client CM;
xiii. $25,000 from CS, who was a Sun Life insurance client;
xiv. $2,500 from CM, who was a Sun Life insurance client;
xv. $3,000 from CSS, who was a Sun Life insurance client;
xvi. between $30,000 and $40,000 from SH, who was a Sun Life insurance client
xvii. $1,500 from MH, who was a Sun Life insurance client;
xviii. a combined $5,000 from JLC who was a Sun Life insurance client, and his son GC, who was not a Sun Life client; and

- he took money from people that he had a relationship with and whom he knew trusted him; and
- he was involved in gambling and was a "big gambler".

43. Following his interview the Respondent contacted Sun Life to indicate that he had also taken:

- $4,000 from BH who was a Sun Life Insurance client; and
- $6,000 from RT who was a Sun Life Insurance client.

Respondent's Communications with Staff

44. Although MFDA Staff made various requests of the Respondent to interview him, the Respondent refused to be interviewed. He advised Staff that he was not concerned about the possibility of facing penalties that would include a prohibition on his ability to conduct securities related business in the future.

45. He did, however, provide responses to Staff's email requests for specific information regarding the complaints received from Sun Life. In an email dated August 25, 2013, the Respondent told Staff that:

- it was impossible for him to answer Staff's questions accurately because most of his activities were conducted under intense pressure or under the influence of methamphetamine;
- he had taken between $87,000 and $92,000 from client MB;
- he had taken $12,000 from client SK's TFSA to present the appearance of paying her back and owed her upwards of $30,000;
- he did not remember exactly how much he had taken from SH but estimated that it was close to $30,000 with an additional $20,000 being taken from her spouse EH;

- he admitted that he perpetrated a fraud on client MB and that he spent the money on drugs and gambling;
- he did not repay client MB but instead withdrew funds from her other investments to make it look like she was being repaid;
- he used the funds taken from SK, SH and EH to gamble and purchase methamphetamine;
- he also took funds as follows:

    a. $4,500 from BH, who was a Sun Life insurance client; and
    b. $7,000 from GK and MK, who were Sun Life insurance clients;
    c. $5,000 from clients AR and VR;
    d. $19,000 from his father, client DC, plus an additional $40,000 in loans from his father that remained unpaid;
    e. $1,000 from MH, who was a Sun Life insurance client;
    f. $4,000 from JA, who was a Sun Life insurance client;
    g. $5,000 from DS, who was a Sun Life insurance client;
    h. $10,000 from clients MT and IT;
    i. $3,500 from his aunt, client ET;
    j. $3,500 from CSS, who was a Sun Life insurance client;
    k. $5,000 from RK, who was a Sun Life insurance client;
    l. $3,000 from DL, who was a Sun Life insurance client;
    m. $3,100 from client CM;
    n. $2,000 from CM, who was a Sun Life insurance client;
    o. a combined $5,000 from JLC who was a Sun Life insurance client, and his son GC, who was not a Sun Life client; and
    p. $3,000 from CC, who was a Sun Life insurance client;
    q. $5,000 from BM, who was a Sun Life insurance client;
    r. $1,858 from CK, who was a Sun Life insurance client;
    s. $950 from CB, who was a Sun Life insurance client;
    t. $5,500 from RT, who was a Sun Life insurance client;
    u. $40,000 from his sister JM, who was a Sun Life insurance client.

46. The Respondent noted, however, both in his interview with Sun Life and in his email communications with Staff that he did not keep accurate records of the amounts he misappropriated and was going from his own recollection.

47. Sun Life did a full investigation and prepared a full report based on interviewing the Respondent, the individuals who were affected and reviewing any documentation those individuals were able to provide.

48. At the Hearing on the Merits Mr. Currie testified that he reviewed Sun Life's investigation report and the supporting documentation in order to satisfy himself as to the accuracy of the information set out in the report, which information he then included in his Affidavit.

49. Mr. Currie's Affidavit identified that as the result of giving funds to the Respondent, the following individuals suffered the net losses set out in the tables below. Mr. Currie explained that the reference to "amounts repaid" refers to monies that the Respondent repaid to the individuals affected.

Mutual Fund Clients

No.	Client	Date Range	Amount Misapprop-riated	Amount Repaid	Net Loss
1.	MB	Nov 2012 – Mar 2013	$80,966	$7,628	$73,337
2.	ET	Mar 20, 2013 – Apr 29, 2013	$3,000	$1,000	$2,000
3.	MT and IT	May 6, 2013 – May 10, 2013	$10,000	N/A	$10,000
4.	AR and VR	Apr 20, 2013 – Apr 26, 2013	$5,000	N/A	$5,000
5.	CM	Mar 28, 2013	$2,000	N/A	$2,000
6.	SH	Oct 2013 – May 2013	$6,331	$700	$5,631
7.	EH	Jan 2013 – May 2013	$16,439	N/A	$16,439
8.	DC	Feb 19, 2010 – Sep 12, 2012	$26,000	N/A	$26,000
9.	BM	Apr 2013	$5,000	N/A	$5,000
10.	RR	Jul 29, 2013	$460	N/A	$460
11.	SK	Oct 2012 – Jun 12, 2013	$18,950	$5,700	$13,250
TOTAL			**$174,146**	**$15,028**	**$159,117**

Insurance Clients

No.	Client	Date Range	Amount Misapprop-	Amount Repaid	Net Loss

No.	Client	Date Range	Amount Misapprop-riated	Amount Repaid	Net Loss
			riated		
12.	JA	Nov 2012 – May 2013	$7,650	$4,400	$3,220
13.	JLC and GC	May 2013	$5,000	N/A	$5,000
14.	RK	May 6, 2013 – May 10, 2013	$5,000	N/A	$5,000
15.	GK and MK	Apr 17, 2013 – Date Unknown	$6,500	$395	$6,105
16.	DL	Apr 11, 2013	$3,000	N/A	$3,000
17.	CM	Apr 15, 2013 – Jul 13, 2013	$3,927	$2,325	$1,602
18.	JM	Nov 2012 – May 24, 2013	$25,784	$3,400	$22,384
19.	DS	May 2, 2013 – May 6, 2013	$5,000	N/A	$5,000
20.	CS	May 20, 2013 – Jul 3, 2013	$19,000	N/A	$19,000
21.	CSS	May 2013	$3,0000	$150	$2,850
22.	RT	Apr 4, 2013	$5,000	$500	$4,500
23.	PT	Jul 29, 2013 – Aug 15, 2013	$600	N/A	$600
24.	BH	Mar 21, 2013 – Mar 28, 2013	$3,560	$300	$3,260
25.	MH	Jun 10, 2013	$1,000	N/A	$1,000
26.	CK	Jul 27, 2013 – Jul 30, 2013	$1,838	N/A	$1,838
27.	EM	Jul 27, 2013 – Jul 30, 2013	$1,440	N/A	$1,440
28.	JR	Aug 6, 2013	$840	N/A	$840
29.	SS	Jul 26, 2013	$600	N/A	$600
TOTAL			**$98,739**	**$11,470**	**$87,239**

50. At the hearing Staff explained that the individual identified as “GC” in Mr. Currie’s Affidavit is the individual identified as “GCP” in the Notice of Hearing.

51. The total amount of monies identified in Mr. Currie’s affidavit as having been misappropriated by the Respondent was $272,885.00.

52. At the hearing, Staff acknowledged that this amount differed from the amount alleged to have been misappropriated by the Respondent set out in the Notice of Hearing.

53. While this Panel accepted the evidence contained in Mr. Currie's Affidavit with respect to the calculations of monies misappropriated by the Respondent, we expressed concern about whether all of the amounts identified were properly the subject of these proceedings.

54. Specifically, with respect to the calculations relating to client DC, the evidence was that the Respondent took monies from DC between February 2010 and September 2012. The Panel determined that because this period was not identified in the timeframe set out in Allegation #1 in the Notice of Hearing it could not be said that the Respondent had received proper notice of the allegations relating to DC.

55. Accordingly, in our view, fairness required that the misappropriation alleged to have occurred regarding DC could not be considered by the Panel in these proceedings.

56. Further, although as noted above, an Approved Person remains subject to the jurisdiction of the MFDA even after such an individual ceases to be an Approved Person, the Panel was of the view that our jurisdiction did not extend to consider any activities carried out by the Respondent after he ceased to be registered as an Approved Person.

57. Accordingly, the Panel did not consider any amounts of money or acts of misappropriation which were alleged to have occurred after June 28, 2013 when the Respondent ceased to be a member of the MFDA. Those activities related to the following clients: CK, EM, JR, SS, PT, CS, CM and RR. For the sake of clarity, we note that all of the monies alleged to be misappropriated from: CK, EM, JR, SS, PT and RR were taken after the Respondent ceased to be registered. With respect to CS and CM, only some of the monies were misappropriated after the Respondent ceased to be registered.

58. Enforcement Counsel agreed that the amounts that were allegedly misappropriated after the Respondent cased to be registered should not be counted towards the total amount of monies

that were misappropriated. He did submit, however, that the evidence of the fact that the Respondent continued to take money from individuals after he ceased to be registered supported Staff's contention that even after the Respondent revealed himself to his employer and resigned, he continued to engage in misconduct and should therefore be considered ungovernable and unsuitable to be registered in the future.

59. The evidence set out in Mr. Currie's Affidavit calculated that the Respondent misappropriated at least $272,885.00. When the amounts related to monies misappropriated by the Respondent after he ceased to be registered, and the monies alleged to have been misappropriated before the period identified in the Notice of Hearing are subtracted from that total, we find the amount misappropriated by the Respondent equaled at least $235,630.00.

60. We use the term "at least" because, as Mr. Currie explained, some of the amounts were estimated because they were based on cash transactions which were unable to be verified by external documentation other than the respective individual's recollections. We note that the numbers are also more conservative than the numbers identified by the Respondent in his email communication with Staff in 2013.

61. With respect to the number of individuals from whom the Respondent misappropriated funds, Mr. Currie's Affidavit referred to 33 people. As noted above, however, the Panel was only prepared to consider the evidence with respect to 26 of those individuals either because the evidence related to conduct which was not included in the period set out in Allegation #1 in the Notice of Hearing or because the evidence related to conduct which occurred after the Respondent ceased to be registered.

62. We are satisfied on the totality of the evidence including the facts set out in paragraphs 1-41 of the Notice of Hearing (Appendix "A") and the evidence of Alan Currie that the Respondent misappropriated funds from clients and other individuals. The evidence demonstrated that the Respondent targeted people whom he knew would trust him, with the deliberate intention to steal money from them. To some of the individuals, the Respondent presented a story that had to do with high rates of return for short term promissory notes. To others, the Respondent told them

they were buying shares of Sun Life that he would then resell at a profit. None of the stories were true. Once the Respondent received monies from the individuals, instead of using the money to invest in promissory notes or Sun Life investments, he used the monies to buy methamphetamine and to gamble.

63. The evidence demonstrated the Respondent did repay some amounts to certain of his victims but even where that is true that does not affect our finding that the Respondent set out to steal money from individuals, most of whom were his clients, in the manner alleged in the Notice of Hearing.

LIABILITY DETERMINATION

64. The Notice of Hearing alleges that by misappropriating monies from clients the Respondent has failed to deal honestly and in good faith with clients and has engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1. That Rule provides:

> **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.

65. We find on the basis of the evidence set out above that the Respondent's dealings with clients and other individuals, relating to the misappropriation of funds, constitutes a clear violation of MFDA Rule 2.1.1.

66. As Staff submitted at the Hearing in its final argument, the MFDA body of case law in this area has been very clear and consistent that the soliciting of funds by an Approved Person and the failure to account for or repay those funds constitutes misappropriation and is a breach of

Rule 2.1.1. See: *Earl Crackower,* [2005] MFDA Central Regional Council, File No. 200506; *Brown-John, supra*; *Vilfort, supra*.

67. Staff submitted that by violating the trust of his clients and stealing their monies the Respondent has breached the most fundamental obligation that he had as an Approved Person.

68. We agree.

69. As the Panel in *Breckenridge* stated:

> MFDA Rule 2.1.1 sets out the standard of conduct expected of Approved Persons. The Rule is designed to protect the public interest by requiring Approved Persons to adhere to a high standard of ethical conduct. The Rule articulates the most fundamental obligations of all registrants in the securities industry.
>
> *Kenneth Breckenridge (Re)*, [2007] MFDA Central Regional Council, File No. 200718 at para.71

70. Staff further submitted that the Respondent's conduct violated each of the subsections of Rule 2.1.1 because the evidence demonstrated that the Respondent:

- did not deal fairly, honestly and in good faith with his clients (contrary to 2.1.1 (a));
- failed to observe high standards of ethics and conduct in the transaction of business by soliciting funds and by trying to use the veneer of the legitimacy of Sun Life to succeed in soliciting those funds (contrary to 2.1.1 (b));
- engaged in business conduct that was both unbecoming and detrimental to the public interest by exploiting the trust that clients placed in the Respondent as an Approved Person to the detriment of those clients and the sole benefit of the Approved Person (contrary to 2.1.1 (c)); and
- was of a character and business repute that was inconsistent with the standards of the mutual fund industry (contrary to 2.1.1 (d)).

71. We agree with Staff's submissions in this regard and find that the Respondent has breached each subsection of Rule 2.1.1. We find that the Respondent knowingly engaged in a course of conduct that violated the trust and interests of a large number of individuals and took advantage of individuals whom he knew trusted him. His actions amount to an egregious breach of his responsibility as an Approved Person in the mutual fund industry.

PENALTY

72. If in the opinion of a Hearing Panel, an Approved Person has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA, a Hearing Panel can impose any of the penalties set out in section 24.1.1(a)-(f) of MFDA By-law No. 1.

73. Staff proposed the following penalties:

- a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- a fine in the amount of $272,085.00 pursuant to section 24.1.1(b) of MFDA By-law No. 1; and
- costs in the amount of $10,000.00 pursuant to section 24.2 of MFDA By-law No. 1.

Factors Concerning The Appropriateness Of The Proposed Penalty

74. The primary goal of securities regulation is protection of the investor: *Pezim* v *British Columbia (Superintendent of Brokers)*, [1994] 2 SCR 557 at paras.59 and 68; *Breckenridge, supra,* para.74.

75. Other goals include capital market efficiency and ensuring public confidence in the system. *Pezim, supra*, at para.59

76. The role a Hearing Panel performs when imposing sanctions in furtherance of the above goals was described by the Panel in *Tonnies* as follows:

> … [T]he role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 of the Act. We are here to restrain, as best we can future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient.
>
> *Tonnies*, *supra,* at para.45 citing the Ontario Securities Commission in *Re Mithras Management Ltd. et al* (1990), 13 O.S.C.B. 1600 at 1610

77. In determining whether a penalty is appropriate, a Hearing Panel should consider:

- the protection of the investing public;
- the integrity of the securities market;
- specific and general deterrents;
- the protection of the governing body's Membership; and
- the protection of the integrity of the governing body's enforcement processes.

Tonnies supra, at para.46

78. Hearing Panels frequently refer to additional factors which should be considered when determining an appropriate penalty as set out by the Panel in *Breckenridge*. These include:

- the seriousness of the allegations proved against the respondent;
- the respondent's experience in the capital markets;
- the level of the respondent's activity in the capital markets;
- the harm suffered by investors as a result of the respondent's activities;
- the benefits received by the respondent as a result of the improper activity;
- the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and

- previous decisions made in similar circumstances.

Breckenridge, supra, at para.77

79. The MFDA Penalty Guidelines are an additional resource that a Hearing Panel may consult when determining the appropriateness of the penalty to be imposed. Those Guidelines are intended to provide the basis upon which a Hearing Panel's discretion can be exercised consistently, in like circumstances. The introduction to the Penalty Guidelines under the heading *Purpose of the MFDA Penalty Guidelines*, states:

> *Range is Guideline Only*
>
> The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

80. In cases involving the type of misconduct in this case, the Penalty Guidelines recommend consideration of the following penalties and factors:

BREACH	PENALTY TYPE & RANGE	SPECIFIC FACTORS TO CONSIDER
Standard of Conduct (Rule 2.1.1) (Guidelines, p.27)	• Fine: Minimum of $5,000 • Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Director's Course or Canadian Investment Funds Course). • Suspension. • Permanent prohibition in egregious cases.	1) Nature of the circumstances and conduct. 2) Number of individuals affected. 3) Whether the conduct is likely to bring the individual, the Member or the mutual fund industry into disrepute.

81. With all of these considerations in mind, having regard to the goal of securities regulation and the factors a Panel should consider in furtherance of that goal, we find that the most effective way to protect the public and preserve the integrity of the securities market from future harm at the hands of the Respondent, is to permanently prohibit the Respondent from any ability to

conduct securities related business while in the employ of or associated with any Member of the MFDA.

82. We find that ordering a permanent prohibition in this case is consistent with the penalty range set out in the Penalty Guidelines and with the findings of other decisions made by Regional Councils of the MFDA involving similar circumstances.

83. As the Panel in *Ogalino* stated:

> The overriding concern of the MFDA is the protection of the investor. The investor must be protected from an Approved Person who would misappropriate … client's funds. Because theft from a client is so egregious and detracts so gravely from the public trust, which is essential to the very survival of the investment industry, there can be no appropriate penalty less than banishment from the industry.
>
> *Ogalino*, 2014 CanLII 14242

84. We find that the proven misconduct in this case is an example of the most serious type of conduct in which an Approved Person can engage. The Respondent deliberately targeted individuals with whom he had established a relationship of trust and exploited that trust solely for his own benefit and to the detriment of the individuals.

85. Further, we do not see the Respondent's lack of disciplinary history as a circumstance of mitigation.

86. In this regard, we agree with the following comments of the Panel in *Ogalino*:

> Jurisprudence is consistent that when determining a penalty a Hearing Panel must take into account circumstances of mitigation. If one could conceive of a circumstance which could mitigate the extreme penalty for misappropriation, no such circumstance had been shown in this case. While Hearing Panels usually consider the fact that a respondent has no disciplinary history as a circumstance of mitigation, we do not accept that, in this case, it can derogate from the necessity that this respondent be removed from the industry.
>
> *Ogalino, supra,* at para.16

87. Staff cited a number of authorities to the Panel regarding similar circumstances where the Hearing Panel ordered a permanent prohibition and the payment of a fine which matched the amount which was misappropriated. Those cases include: *Crackower, supra*; *Brown-John, supra; Vilfort, supra; Lindsay, supra,* and *Ciardullo, supra*.

88. We agree with the submission of Staff that in addition to a permanent prohibition the Respondent's breach of section 2.1.1 should attract a significant fine.

89. In cases of misappropriation, MFDA Hearing Panels have held that the quantum of a fine should generally be set equal to the amount of funds that was misappropriated from clients. (See: C*rackower, supra*, at para.11)

90. We agree with this approach and find that it is consistent with the goals of general and specific deterrence. Accordingly, having determined that the Respondent misappropriated at least $235,630.00, we find that a fine in the amount of $240,000.00 is appropriate in this case.

91. We also find that the MFDA is entitled to recover its costs. We order that the Respondent pay costs in the amount of $10,000.00, pursuant to section 24.2 of MFDA By-law No. 1.

92. In summary, therefore, based on the totality of the evidence we find that the Respondent misappropriated at least $235,630.00 from 26 clients and other individuals, contrary to the requirements of MFDA Rule 2.1.1.

93. Accordingly, we impose the following penalties:

- a permanent prohibition on the authority of the Respondent to conduct securities related business while in the employ of or associated with any Member of the MFDA, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- a fine in the amount of $240,000.00 pursuant to section 24.1.1(b) of MFDA By-law No. 1; and

- costs in the amount of $10,000.00 pursuant to section 24.2 of MFDA By-law No. 1.

DATED this 8th day of April, 2016.

"Sherri Walsh"
Sherri Walsh
Chair

"Daniele Ayers"
Daniele Ayers
Industry Representative

"Greg Wiebe"
Greg Wiebe
Industry Representative

DM 473376 v1

"Appendix A"

Notice of Hearing

File No. 201515

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: Jeffrey Gordon Cox

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") in the hearing room at the MFDA offices, located at 800 - 6th Avenue S.W., Suite 850, Calgary, Alberta on September 17, 2015 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Jeffrey Gordon Cox (the "Respondent"). The Hearing on the Merits will take place in Winnipeg, Manitoba at a time and venue to be announced.

DATED this 17th day of June, 2015.

"Sarah Rickard"

Sarah Rickard
Director of Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5143
Facsimile: 416-361-9781
Email: corporatesecretary@mfda.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between October 1, 2012 and August 6, 2013, the Respondent misappropriated at least $274,600 from at least 11 clients and 23 individuals, thereby failing to deal honestly and in good faith with the clients, and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From January 15, 2010 to June 28, 2013, the Respondent was registered in Manitoba as a mutual fund salesperson (now known as a dealing representative) with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.

2. At all material times, the Respondent conducted business at a Member branch located in Winnipeg, Manitoba.

3. The Respondent resigned from the Member on June 28, 2013 and is not currently registered in the securities industry in any capacity.

Misappropriation from Clients

4. Between October 1, 2012 and August 6, 2013, the Respondent misappropriated approximately $274,600 from:

(a) 11 clients of the Member whose accounts were serviced by the Respondent; and

(b) 23 individuals consisting of 21 insurance clients whose accounts were serviced by the Respondent and 2 individuals who were not mutual fund or insurance clients serviced by the Respondent.

5. The Respondent misappropriated the monies, in most instances, by purporting to sell or facilitate the sale of short term (30 to 90 day) promissory notes bearing high rates of interest (between 8% and 20%). In most cases, the Respondent led the clients and individuals to believe that they were investing in a Member product with names such as the “Sun Life Gratuity Double Up” program or the “Spring Forward with Sun Life Employee Sponsorship Program”.

6. Between October 1, 2012 and August 6, 2013, the Respondent misappropriated $142,678 from the following 11 clients:

<table>
<tr><th>No.</th><th>Client</th><th>Amount Misappropriated</th><th>Amount Repaid</th><th>Balance Owing</th></tr>
<tr><td>1.</td><td>MB</td><td>$80,966</td><td>$7,628</td><td>$73,337</td></tr>
<tr><td>2.</td><td>ET</td><td>$3,000</td><td>$1,000</td><td>$2,000</td></tr>
<tr><td>3.</td><td>MT</td><td rowspan="2">$10,000</td><td rowspan="2">N/A</td><td rowspan="2">$10,000</td></tr>
<tr><td>4.</td><td>IT</td></tr>
<tr><td>5.</td><td>AR</td><td>$5,000</td><td>N/A</td><td>$5,000</td></tr>
<tr><td>6.</td><td>CM</td><td>$2,000</td><td>N/A</td><td>$2,000</td></tr>
<tr><td>7.</td><td>SH</td><td>$6,331</td><td>$700</td><td>$5,631</td></tr>
<tr><td>8.</td><td>DC</td><td>$28,000</td><td>$2,000</td><td>$26,000</td></tr>
<tr><td>9.</td><td>BM</td><td>$5,000</td><td>N/A</td><td>$5,000</td></tr>
<tr><td>10.</td><td>RR</td><td>$460</td><td>N/A</td><td>$460</td></tr>
<tr><td>11.</td><td>SK</td><td>$18,950</td><td>$5,700</td><td>$13,250</td></tr>
<tr><td colspan="2">TOTAL</td><td>$159,707</td><td>$17,028</td><td>$142,678</td></tr>
</table>

7. The Respondent did not use any of the monies he received from the 11 clients to purchase investments for their accounts and instead diverted the monies to bank accounts under his name or control and used the monies for his own purposes.

Clients MB to BM

8. The Respondent represented to clients MB, ET, MT, IT, AR, CM, SH, DC, and BM that he had been authorized to present the clients with an opportunity to invest in a series of short term notes provided by the Member that were only available to friends and family of Member representatives. The Respondent led the clients to believe that they were investing in the Member programs outlined in paragraph 5 above.

9. In each case, the Respondent told the clients that the promissory notes would return approximately 20% over a period of time ranging from six weeks to three months. The opportunity was presented to each client as being a limited time offer and required the client to pay cash in order to purchase the investment products.

10. In each case, the clients were issued promissory notes by the Respondent, evidencing the terms of the purported investments. The promissory notes were handwritten by the Respondent, often on Member letterhead.

11. Two clients redeemed mutual funds held in accounts with the Member in order to invest in the purported promissory notes offered by the Respondent. Client SH redeemed $2,000 of mutual funds. Client DC (the Respondent's father) redeemed $9,000 of mutual funds.

12. Clients MB, ET, SH and DC received payments from the Respondent as described in paragraph 6 above. The Respondent led the clients to believe these payments were interest that had been generated by their purported investments. The funds used for the alleged interest payments were either the client's own funds or funds that had been provided by other investors.

Client RR

13. On July 29, 2013, the Respondent contacted client RR to inform her that he had resigned from the Member in order to become an independent broker. The Respondent informed client RR that he held 20 shares of the Member that had a current price of $33.62 each, but the shares had not yet vested and therefore remained priced at $23.98 per share. The Respondent offered to sell the shares to client RR and then resell them on her behalf for a profit of $192.

14. Client RR provided the Respondent with $460 in cash. The Respondent did not provide a promissory note to client RR. On August 5, 2013, client RR submitted a complaint to the Member.

Client SK

15. Client SK was a longtime friend of the Respondent. In or about October 2012, the Respondent approached client SK regarding an investment that he led her to believe would offer a 20% return. The Respondent led client SK to believe that she was investing in short term promissory notes provided by the Member, but that each Member representative was limited to a maximum amount of interest that could be paid out to investors. According to the Respondent, the investment was structured such that, for every $800 invested, client SK would receive $150 of interest.

16. Between October and December 2012, client SK invested $4,800 in cash with the Respondent. In or about early 2013, client SK's initial investment was returned to her together with $900 in interest payments.

17. Between March and June 2013, client SK invested a further $13,250 in the scheme presented by the Respondent. On July 6, 2013, client SK received $12,528.68 from the Respondent as repayment of the principal of her investment. The alleged principal repayment was actually an unauthorized redemption of client SK's own monies from her Tax Free Savings Account.

Misappropriation From Insurance Clients

18. Between October 1, 2012 and August 6, 2013, the Respondent misappropriated $128,121 from the following 21 individuals, each of whom was an insurance client serviced by the Respondent:

No.	Client	Amount Misappropriated	Amount Repaid	Balance Owing
1.	JA	$5,540	$484	$5,056
2.	JLC	$2,000	N/A	$2,000
3.	CC	$3,000	N/A	$3,000
4.	EH	$18,239	$1,800	$16,439
5.	RK	$5,000	N/A	$5,000
6.	GK	$6,500	$395	$6,105
7.	MK			
8.	DL	$3,000	N/A	$3,000
9.	CM	$1,602	N/A	$1,602
10.	JM	$48,391	$3,400	$44,991
11.	DS	$5,000	N/A	$5,000
12.	CS	$19,000	N/A	$19,000
13.	CSS	$3,000	$150	$2,850
14.	RT	$5,000	$500	$4,500
15.	PT	$600	N/A	$600
16.	BH	$3,560	$300	$3,260
17.	MH	$1,000	N/A	$1,000
18.	CK	$1,838	N/A	$1,838
19.	EM	$1,440	N/A	$1,440

No.	Client	Amount Misappropriated	Amount Repaid	Balance Owing
20.	JR	$840	N/A	$840
21.	SS	$600	N/A	$600
TOTAL		**$135,150**	**$7,029**	**$128,121**

19. The Respondent used the monies he received from the 21 individuals (i.e., his insurance clients) for his own purposes, without the knowledge or authorization of these individuals.

JA to PT

20. The Respondent led JA, JLC, CC, EH, RK, GK, MK, DL, CM, JM, DS, CS, CSS, RT, and PT to believe that they were investing in short term promissory notes, with similar terms and rates of returns to those that he offered to the (mutual fund) clients.

21. In each case, the individuals were issued promissory notes by the Respondent, evidencing their investments, and the terms of the purported promissory notes. Most were handwritten by the Respondent, often on Member letterhead.

22. JA, EH, GK, JM, CS and RT received payments from the Respondent as described in paragraph 18 above. The Respondent led the individuals to believe these payments were interest that had been generated by their purported investments. The funds used for the alleged interest payments were either the individual's own funds or funds that had been provided by other investors.

BH

23. BH was an insurance client. Between March 21, 2013 and March 28, 2013, the Respondent contacted client BH and asked to borrow money for the following reasons:

(a) a co-worker had lost the Respondent's briefcase with cash in it;

(b) the Respondent's bank had frozen his account and he was unable to access funds for an unknown corporate client's investments; and

(c) the Respondent, while continuing to attempt to access funds for his unknown corporate client, had reached out to his parents who were unable to provide additional funds.

24. Between March 21, 2013 and March 28, 2013, BH transferred $3,560 to the Respondent. The Respondent repaid $300 to BH between April 13, 2013, and April 20, 2013. The Respondent kept and used the remainder of the monies for his own benefit.

MH

25. In early 2013, the Respondent contacted MH to offer him an opportunity to invest a minimum of $5,000 in one of the aforementioned 20% short term promissory notes. MH turned the Respondent down. On June 10, 2013, the Respondent contacted MH a second time stating that the minimum investment had been lowered to $1,000 and the term of the promissory note had been reduced to seven days.

26. On June 10, 2013, MH transferred $1,000 to the Respondent. The Respondent provided a personal cheque to client MH in the amount of $1,420 on July 3, 2013, which was rejected by MH's bank because there were insufficient funds in the Respondent's bank account.

CK and EM

27. Between July 27, 2013 and July 30, 2013, the Respondent contacted CK and EM to inform them that he had resigned from the Member in order to become an independent broker. The Respondent informed CK and EM that held 72.5 and 60 shares of the Member, respectively, that had a current price of $33.62 each, which had not yet vested and therefore remained priced at $28.98 per share. The Respondent offered to sell the shares to CK and EM. CK agreed to buy 72.5 shares for a price of $1,838, with a guaranteed return of $2,555. Likewise, EM agreed to purchase 60 shares for $1,440, with a guaranteed return of $2,046.

JR

28. The Respondent contacted JR on or about August 6, 2013. The Respondent communicated to JR that the Respondent required $840 in additional premiums to increase client JR's insurance coverage for the remainder of the year. JR transferred the Respondent $840 on the same day.

29. The Respondent admits that there was no alteration made to JR's insurance policy held through the Member that required the $840 payment. The Respondent kept and used the monies for his own benefit, thereby misappropriating the monies.

SS

30. On July 26, 2013, the Respondent contacted SS and informed her that he was able to extend to her an opportunity to invest in what he described as the 'Daystar Financials Double Down Program'. The Respondent led SS to believe that she would be able to invest in a four day promissory note with a 100% rate of return.

31. SS provided the Respondent with $600 on the same day. The Respondent provided a personal cheque to client MH in the amount of $1,200 as security, and provided her with a hand written promissory note.

Misappropriation from Non-Member Individuals

GCP

32. GCP is the son of insurance client JLC. The Respondent led GCP to believe that he was able to offer an opportunity to invest in short term promissory notes, with similar terms and rates of returns to those that he offered to the (mutual fund) clients.

33. GCP provided the Respondent with $3,000 by way of electronic transfer, in exchange for a 90 day handwritten promissory note bearing a 20% interest rate.

34. The Respondent did not use any the monies he received from GCP to purchase investments on his behalf, and instead diverted the monies to bank accounts under his name or control and used the monies for his own purposes.

SK

35. SK was the daughter of a client whose mutual fund account was serviced by the Respondent.[1] On May 18, 2013, the Respondent contacted SK by telephone to speak with her father (the client). SK informed the Respondent that her father needed to make a redemption in his mutual fund account in order to pay for dental work. The Respondent informed SK that her father's account was required to have a minimum balance in order to make the redemption, and it was $300 short of that required balance. SK electronically transferred the Respondent $300 on the same day.

36. On June 4, 2013, the Respondent contacted SK to inform her that the Member had authorized the redemption, but that a further $500 was required to meet the minimum balance needed to proceed with the redemption. SK electronically transferred $500 to the Respondent on the same day.

37. The Respondent used the monies he received from SK for his own purposes.

Member Response

38. At all material times, the Member was not aware of, and had not approved for sale, any of the purported investments offered by the Respondent to the 11 clients and 23 individuals. None of the monies relating to the purchase, or partial repayments, of any of the purported investments were processed for the accounts or through the facilities of the Member.

[1] The client was not affected by the Respondent's conduct described in this Notice of Hearing.

39. The Member conducted an investigation into the misconduct of the Respondent, and reimbursed all of the clients and individuals. During interviews with the Member, as part of its investigation, many of the clients and individuals stated that they implicitly trusted the Respondent and had known him for many years prior to providing him with their funds which the Respondent ultimately misappropriated.

40. The Respondent admits that he was addicted to methamphetamines and used the monies he received from the 11 clients and 23 individuals, in part, to fund his drug addiction.

41. By misappropriating at least $274,600 from at least 11 clients and 23 individuals, the Respondent failed to deal honestly and in good faith with clients, and engaged in conduct unbecoming an Approved Person, contrary to MFDA Rule 2.1.1.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;

- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000.00 per offence; and

(ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

(c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;

(d) revocation of the authority of such person to conduct securities related business;

(e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

(f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve** a **Reply** on Enforcement Counsel and **file** a **Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
Prairie Regional Office
Suite 860, 800 – 6th Avenue S.W.
Calgary, AB T2P 3G3
Attention: David Babin
Fax: (403) 266-8858
Email: dbabin@mfda.ca

A **Reply** shall be **filed** by:

(a) providing 4 copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

(b) transmitting 1 copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or

(c) transmitting 1 electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfda.ca.

A **Reply** may either:

(i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or

(ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

(a) to **serve** and **file** a **Reply;** or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.