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

IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA

Re: Stanley Wayne Parke

Heard: May 3, 2012 in Calgary, Alberta
Reasons for Decision: June 20, 2012

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Alan V. M. Beattie	Chair
Richard Sydenham	Industry Representative
Patricia Kloepfer	Industry Representative

Appearances:

David Halasz	)	Enforcement Counsel, For the Mutual Fund
	)	Dealers Association of Canada
Stanley Wayne Parke	)	In Person
	)	

1. INTRODUCTION

1. This Hearing Panel ("the Panel") was convened pursuant to a Notice of Settlement Hearing dated April 23, 2012, to consider whether, pursuant to Section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement (the "Settlement Agreement") entered into between staff of the MFDA and Stanley Wayne Parke (the "Respondent").

2. At the commencement of the Hearing, Staff Enforcement Counsel advised that 10 days notice of the Settlement Hearing is prescribed in Rule of Procedure 15.2 and that only nine days notice was given. Counsel applied for alteration of the time line by the Panel, pursuant to Rule 1.5. The Respondent being in agreement, and there having been no indication of any other party intending to attend the Hearing, the Panel approved the abridgement of the time for service requirement.

3. At the commencement of the Hearing, the Panel granted a motion by Staff Enforcement Counsel to move the proceedings "in camera". Upon acceptance by the Panel of the Settlement Agreement the "in camera" order would be lifted.

4. The Panel members had, prior to the Hearing, reviewed the Settlement Agreement. All quoted passages herein from the Settlement Agreement and the Submissions of Staff contain the paragraph numbers from those documents.

2. SETTLEMENT AGREEMENT

5. The Settlement Agreement includes the following agreed facts:

AGREED FACTS

Registration History

6. The Respondent was registered as a mutual fund salesperson in the provinces of Alberta and Saskatchewan with Sun Life Financial Investment Services (Canada) Inc. ("Sun Life") from December 2002 to December 2009.

7. Sun Life became a member of the MFDA on February 14, 2002.

8. Prior to Sun Life, the Respondent was registered as a mutual fund salesperson with Sun Life Financial Advisory Services Inc. from August 1999 to December 2002. Sun Life Financial Advisory Services Inc. was granted membership in the MFDA on December 7, 2001 and then amalgamated with Hub Capital Inc. effective December 28, 2002. The amalgamated entity carried on business as Hub Capital Inc. In December 2002, at or around the same time as the amalgamation, the Respondent transferred to Clarica Investco Inc., which was subsequently acquired by Sun Life.

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

Securities Related Business

10. At all material times, ExtremeSpeed Inc. ("EXS")[1] was a company that held itself out as a developer and vendor of internet related hardware. The Respondent knew the founder and principal of EXS, one GP, from prior business dealings unrelated to EXS. EXS was a private company. It was not a reporting issuer and its shares did not trade publicly on an exchange.

11. In or about late 2002, while the Respondent was registered as an Approved Person with Sun Life, GP approached the Respondent and asked him to assist some original shareholders of EXS in selling some or all of their shares to new investors and to assist EXS generally in expanding its shareholder base. In exchange, the Respondent would receive a commission or finder's fee of 25 cents for every EXS share that was sold.

12. Between November 2002 and 2006, the Respondent sold or facilitated the sale of EXS shares to at least 59 individuals, 13 of whom were clients of Sun Life (these 59 individuals are hereinafter referred to singly or collectively as the "Investor" or "Investors").

[1] EXS may also have been known as "Silvercrest Internet Services Inc."

13. The Respondent sold or facilitated the sale of the EXS shares through his company, 763810 Alberta Ltd. ("Share Co."). The Respondent sold the Investors shares in Share Co., and then used the proceeds from the sale of the Share Co. shares to purchase a specified number of EXS shares for the beneficial ownership of each Investor. To accomplish this, the Investors entered into either an "Agreement of Purchase and Sale of Shares" or a "Bare Trust Agreement", both of which were signed by the Respondent on behalf of Share Co.

14. Under the terms of the Agreement of Purchase and Sale of Shares, Share Co. was the vendor and the Investor was the purchaser of EXS shares. The Agreement provided that the Investor purchased shares in Share Co. for a specified sum and that the proceeds from the sale of those shares were to be allocated to purchase a specified number of EXS shares for the Investor.

15. Under the terms of the "Bare Trust Agreement", Share Co. was the "Bare Trustee", the Investor was the "Beneficial Owner" and the EXS shares were the "Trust Property". The Investor directed Share Co. to purchase and hold a specified number of EXS shares as trustee for the Investor. The Respondent signed both of these types of documents on behalf of Share Co.

16. Share Co. acquired at least 276,550 EXS shares as follows: (a) 136,550 shares on or about October 10, 2003; and (b) 140,000 shares on February 15, 2004.

17. The Respondent claims that he knew some of the original EXS shareholders from prior business dealings with them. The Respondent represented to prospective investors that EXS was a sound investment by pointing out to them, among other things, the reputations of the original EXS shareholders. The Respondent provided most of the Investors with a brochure about EXS and showed them a piece of EXS hardware.

18. It appears that, in total, there were 83 known shareholders of EXS. Of those 83

shareholders, 59 (the Investors) purchased their EXS shares through Share Co.[2] At least 13 of the Investors were clients of Sun Life. Those 13 clients purchased a total of at least $135,000 of EXS shares, as follows:[3]

Client	Amount Invested
RD and JD	$5,000
BG and MG	$20,000
BP	$70,000
DP	Undetermined
HS	Undetermined
HT and RT	$20,000
WH Ltd.	$10,000 to $13,000
RM and VM	$10,000
GM	Undetermined
13 Clients	**$135,000**

19. The Respondent states that he received approximately 100 cheques from the Investors to purchase shares in EXS that he deposited into a bank account belonging to Share Co.

20. The Respondent claims that he disbursed 50% of the monies provided to him by the Investors to the five or six original EXS shareholders from whom Share Co. acquired EXS shares and the other 50% to EXS.

21. The Respondent claims that the compensation or finder's fee to which he was entitled for selling EXS shares was paid to him in the form of EXS shares valued at approximately $25,000.[4] The Respondent did not disclose this compensation to Sun Life.

22. In addition to selling or facilitating the sale of EXS shares to the Investors, the Respondent also attended an EXS shareholder meeting and some EXS shareholder events as the representative of the Investors. Share Co. was described as "[the Respondent's] holding company of investors". The Respondent also delivered two memos in August

[2]On September 16, 2009, the Alberta Securities Commission issued a warning letter to the Respondent with respect to his participation in the sale of EXS shares through Share Co. The Alberta Securities Commission warned the Respondent, among other things, that the sale of the EXS shares had occurred without a determination by the Respondent whether the private issuer exemption was available to permit the sale of the EXS shares and without consideration of the 50 shareholder limit applicable to the exemption.

[3] The total amount invested in EXS by clients and other individuals is unknown to Staff.

[4] The Respondent states that his total investment in EXS shares was worth $51,000, which consisted of the shares he received as compensation as well as additional investments of monies.

and September 2003 to "All [EXS] Investors", which instructed the Investors on the delivery process for EXS share certificates.

23. In or around early 2006, the Respondent states that he ceased his involvement with EXS when he was told by EXS that his services were no longer required and he was directed by EXS to return all EXS documents and records in his possession to EXS.

24. In or around March 2009, one of the Investors (who was not a client of Sun Life) complained to the Alberta Securities Commission concerning his investment in EXS. This Investor stated that his complaint was shared by a number of the other Investors.

25. Neither Sun Life nor MFDA Staff are aware of any complaints filed by clients of Sun Life relating to the Respondent's sale of EXS shares.[5]

26. To the best of the Respondent's knowledge, the Investors have lost the entirety of their investment in EXS. The Respondent states that he too has lost the entirety of his investment in EXS.

27. The Respondent did not disclose the existence of Share Co. to Sun Life. The Respondent also never disclosed to Sun Life that he had sold or facilitated the sale of EXS shares to clients and other individuals through Share Co. or that he received any commissions from EXS for his activities.

28. EXS and Share Co. were not investment products known to or approved by Sun Life for sale by its Approved Persons, including the Respondent. The sales of the EXS shares by the Respondent were not carried on for the account or through the facilities of Sun Life.

Mitigating Factors

29. The Respondent has not been the subject of a previous MFDA disciplinary proceeding.

[5] MFDA Staff is aware that a non-client complained to the Alberta Securities Commission after he was unable to recoup the money he had invested in EXS.

The Respondent's Representations

30. The Respondent regrets the contravention of MFDA Rules described in this Settlement Agreement.

CONTRAVENTIONS

31. The Respondent admits that between November 2002 an d 2006, the Respondent engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling or facilitating the sale of shares in a private company to 59 individuals, 13 of whom were clients of the Member, through another company owned or controlled by the Respondent, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

TERMS OF SETTLEMENT

32. The Respondent agrees to the following terms of settlement:

a. the Respondent shall pay a fine in the amount of $10,000 pursuant to section 24.1.1(b) of MFDA By-Law No. 1;

b. the Respondent shall pay costs of $5,000, pursuant to section 24.2 of MFDA By-Law No. 1;

c. the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with, a Member of the MFDA for a period of 10 years, pursuant to section 24.1.1(e) of MFDA By-Law No. 1;

d. the payment by the Respondent of the fine and costs in subparagraphs a. and b. above shall be made to and received by MFDA Staff in certified funds as follows:

    I. $5,000 (fine) upon entering into the settlement agreement;
    II. $5,000 (fine) on or before July 3, 2012; and
    III. $5,000 (costs) on or before September 4, 2012;

e. if the Respondent fails to make any of the payments described in subparagraph d. above, then the Respondent;

I. shall immediately be permanently prohibited from conducting securities related business while in the employ of, or associated with, a Member of the MFDA; and

II. the Respondent shall pay an additional fine of $10,000, which together with any outstanding balance of fine and costs, shall immediately become due and payable to the MFDA; and

f. the Respondent shall attend at the settlement hearing in person.

STAFF COMMITMENT

33. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-Laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contravention described in Part V of this Settlement Agreement, subject to the provisions of Part IX below (*"Failure to Honour Settlement Agreement"*). Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contravention set out in Part V whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out (above). The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein (*"Agreed Facts"*) and consents to the making of an Order in the form attached…

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the (order), will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

3. SUBMISSIONS OF STAFF OF THE MFDA

6. Staff Enforcement Counsel submitted written Submissions and a Book of Authorities. He referred to the facts as set out in the Agreed Facts (above) and to the admissions by the Respondent to the allegations of misconduct as also set out in the Settlement Agreement. The Submissions follow:

Law

2. Listed below are the sections of the MFDA By-law, Rules, and Rules of Procedure that are applicable to this matter:

MFDA Rule 1.1.1(a)	Business Structures - Members
MFDA Rule 2.1.1	Standard of Conduct
Section 24.1.1 of MFDA By-law No. 1 (the "By-law")	Power of Hearing Panels to Discipline
Section 24.2 of the By-law	Costs
Section 24.4 of the By-law	Settlement Agreements
Rules 14 and 15 of the MFDA Rules of Procedure	Settlement Agreements and Settlement Hearings

General principles regarding acceptance of settlements

6. Hearing Panels have acknowledged that the role of a Hearing Panel at a Settlement Hearing is not the same as the role of a Hearing Panel at a contested hearing. An MFDA Hearing Panel has described the differences in the Hearing Panel's mandate as follows:

> *In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. As has been said:*
>
> > *"The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."*

Professional Investments (Kingston) Inc., [2009] MFDA Central Regional Council, Reasons for Decision dated March 24, 2009, MFDA File No. 200836, at p. 8.

See also: *Sterling Mutuals Inc.*, [2008] MFDA Central Regional Council, Reasons for Decision dated August 21, 2008, MFDA File No. 200820, at p. 9.

7. Settlements advance the objective of protecting the public by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

British Columbia Securities Commission v. Seifert, [2007] B.C.J. No. 2186 at paras. 44 to 45 (B.C.C.A.)

8. MFDA hearing panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

(a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;

(b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;

(c) Whether the settlement agreement addresses the issues of both specific and general deterrence;

(d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future; and

(e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

Professional Investments (Kingston) Inc., Supra at p. 9

General principles regarding the appropriateness of the penalty

9. The primary goal of securities regulation is investor protection.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 per Iacobucci J. at paras. 59, 68.

10. Factors that Hearing panels frequently consider when determining whether a proposed penalty is appropriate include the following:

(a) The seriousness of the allegations proved against the Respondent;
(b) The Respondent's past conduct, including prior sanctions;
(c) The Respondent's experience and level of activity in the capital markets;
(d) Whether the Respondent recognizes the seriousness of the improper activity;
(e) The harm suffered by investors as a result of the Respondent's activities;
(f) The benefits received by the Respondent as a result of the improper activity;
(g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
(h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
(i) 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;
(j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
(k) Previous decisions made in similar circumstances.

Headley, [2006] MFDA Ontario Regional Council, Reasons for Decision dated February 21, MFDA File No. 200509, at pp. 25-26

11. An additional source that may be taken into account when determining the appropriate penalties are the MFDA Penalty Guidelines. The Penalty Guidelines are intended to assist Hearing Panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. As stated in the introduction to the Penalty Guidelines under the heading "Purpose Of The MFDA Penalty Guidelines":

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.

12. The MFDA Penalty Guidelines recommend the following penalties for the misconduct alleged in this matter (pp. 14 and 27):

• Securities Related Business: minimum fine of $10,000; write or rewrite an appropriate industry course; period of increased supervision; suspension; and permanent prohibition; and

• Standard of Conduct: minimum fine of $5,000; write or rewrite an appropriate industry course; period of increased supervision; suspension; permanent prohibition.

Application of factors and principles to the present case

13. Staff has taken the applicable factors set out above into account in reaching its Settlement Agreement with the Respondent, as follows:

(a) Nature of the Misconduct

14. The Respondent's engaging in securities related business outside the Member is a serious offence. Unbeknownst to the Member, the Respondent facilitated the sale of shares in a private company (EXS) to 59 individuals (the "Investors"), 13 of whom were clients of the Member, through a company the Respondent owned or controlled. The Investors lost the entirety of their investments in EXS, including at least $135,000 invested by the clients.

15. MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. MFDA Rule 1.1.1(a) creates a regime whereby an Approved Person is only permitted to provide investment advice about and 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 the interests of both Member clients and individuals who might be approached to make unauthorized investments, as well as the interests of Members and Approved Persons.

Thomson, [2004] I.D.A.C.D. No. 49 (Pacific District Council) at paras. 58 to 60

16. Staff submits that the proposed penalty, which includes a fine and a prohibition against the Respondent from being employed in the mutual fund industry for a significant amount of time, reflects the seriousness of the misconduct admitted to by the Respondent.

(b) The Respondent's recognition of the seriousness of his misconduct

17. The Respondent states that he regrets the contraventions of MFDA Rules described in the Settlement Agreement.

18. The Respondent has cooperated with Staff throughout the course of Staff's investigation and also in this proceeding by admitting to his misconduct and entering into the Settlement Agreement.

19. The Respondent has accepted responsibility for his misconduct and has avoided the necessity of the MFDA incurring further time and expense conducting a full hearing of this matter on the merits.

(c) The Respondent's past conduct and level of activity in the capital markets

20. The Respondent has been registered in the mutual fund industry since 1999, and has no disciplinary history with the MFDA.

21. On September 16, 2009, the Alberta Securities Commission (ASC) issued a warning letter to the Respondent with respect to his participation in the sale of EXS. The ASC warned the Respondent, among other things, that the sale of the EXS shares had occurred without a determination by the Respondent whether the private issuer exemption was available to permit the sale of the EXS shares and without consideration of the 50 shareholder limit applicable to the exemption.

22. The Respondent is not registered in the Securities industry in any capacity.

(d) Client harm

23. To the best of the Respondent's knowledge, the Investors lost the entirety of their investment in EXS.

24. One of the Investors (who was not a client of Sun Life) complained to the Alberta Securities Commission concerning his investment in EXS. This Investor stated that his complaint was shared by a number of the other Investors. Neither Sun Life nor MFDA Staff are aware of any complaints filed by clients of Sun Life relating to the Respondent's sale of EXS shares.

(e) Benefits received by the Respondent

25. The Respondent was compensated by way of a finder's fee for selling EXS shares to the Investors. He received compensation worth $25,000 paid to him in the form of EXS shares. The Respondent invested additional monies in EXS for a total investment in EXS of $51,000. Along with the other Investors, the Respondent states that he has lost the entirety of his investment.

(f) Previous decisions made in similar circumstances

26. Hearing Panels have imposed sanctions within a reasonable range of those sought in the present case.

Nathan Hersh Disenhouse [2010] Hearing Panel of the Central Regional Council, Reasons for Decision dated July 8, 2010, MFDA File No. 200927

Melvin Robert Penny [2009] Hearing Panel of the Atlantic Regional Council, Reasons for Decision dated May 13, 2009, MFDA File No. 200831

Luc Mark Andre Laverdiere [2010] Hearing Panel of the Pacific Regional Council, Reasons for Decision dated May 12, 2010, MFDA File No. 200936

Robert Michael Smylski [2007] Hearing Panel of the Prairie Regional Council, Reasons for Decision dated July 13, 2007, MFDA File No. 200707

Alden M. Kaley [2009] Hearing Panel of the Atlantic Regional Council, Reasons for Decision dated September 28, 2009, MFDA File No. 200911

Ben Alden Kaley [2009] Hearing Panel of the Atlantic Regional Council, Reasons for Decision dated January 23, 2010, MFDA File No. 200923

Roderick Iain McLeod [2010] Hearing Panel of the Central Regional Council, Reasons for Decision dated July 27, 2010, MFDA File No. 200926

Brian Edward Mark Nerdahl [2010] Hearing Panel of the Central Regional Council, Reasons for Decision dated July 15, 2010, MFDA File No. 200806

Martin Horvath [2009] Hearing Panel of the Ontario Regional Council, Reasons for Decision dated November 11, 2009, MFDA File No. 200919

(*Counsel reviewed the pertinent circumstances of the cases*.)

Conclusion

27. The proposed penalties reflect the seriousness of the Respondent's misconduct and are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

28. Staff submits that the proposed sanctions will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, improve overall compliance by mutual fund industry participants, and foster public confidence in the securities industry.

29. Having regard to all of the foregoing considerations, Staff submits that the proposed penalties are reasonable and proportionate having regard to the conduct of the

Respondent and the circumstances of this case.

4. REASONS FOR DECISION

7. In the Settlement Agreement the Respondent admits to the Contraventions set out at p. 7 above. The admitted misconduct by the Respondent was serious but not as egregious as the misconduct in some of the above cases.

8. In the *Laverdiere, Smylski, McLeod, Nerdahl* and *Horvath* decisions, permanent prohibitions were imposed together with fines varying from $5,000 to $20,000 and costs varying from $2,500 to $5,000.

9. Several cases bear some similarity to the present case. In *Laverdiere* the respondent, 27 years of age, facilitated investment by six investors (including non-clients) of at least USD $133,953 that was invested in a purported foreign exchange investment connected to a larger U.S. fraud. There was no way to expect recovery of the investors' investments. There was no evidence the respondent profited or was party to the underlying fraud. He had no past disciplinary history. He was no longer registered in the securities industry any capacity. The respondent admitted the facts and at the commencement of the hearing counsel for the respondent advised that the respondent did not oppose the penalty proposed by MFDA Staff. The panel referred to a settlement agreement between the principal of the foreign exchange investment and the British Columbia Securities Commission in which the principal admitted that he illegally traded and distributed approximately $34 million worth of the securities. The panel referred to the respondent knowingly having breached the Member's Internal Expressed Policies and Procedures as well as the standards expected of an approved person in the Canadian Mutual Funds Industry. Although the difference in the misconduct of the Respondent in the present case and the misconduct of Laverdiere could be considered a fine distinction, we are prepared to accept that the ten year suspension of the Respondent, at age 64, is tantamount to a permanent prohibition and is within the reasonable range of penalties.

10. One of the above cases in which a ten year suspension was imposed is *Disenhouse*. In that case the respondent sold an off-book security to 18 investors (11 of whom were clients of the Member) for a total investment of $760,000. Investor recovery was uncertain. The

respondent earned $8,320 in commissions or referral fees. The respondent was a shareholder in the company which was the sole shareholder of the company whose debentures were bought by the investors. Disenhouse did not reveal that circumstance to the investors or the Member which had no knowledge of the respondent's involvement in the sale of the debentures. The respondent in that case also admitted to related misconduct (e.g. pre-signed blank trading forms). In addition to the ten year suspension, the respondent agreed to pay a fine of $15,000 and costs of $5,000. The fine and costs in the present case are in line with that fine and costs and both cases involve a ten year suspension.

11. In *Smylski*, where a permanent prohibition was imposed, the respondent made 62 sales totalling $2,440,640 Cad and 7 sales totalling $172,500 USD. Each of the securities was purportedly sold pursuant to an exemption under the *Securities Act (Alberta)*; that was a misrepresentation. There was a fine of $5,000. We consider the circumstances of that case more egregious than the circumstances in the present case.

12. In *Nerdahl* the respondent facilitated loan investments by 22 clients of the Member totalling $390,000 in an off-book investment. Several of the clients had redeemed investments in their accounts to finance the loan investments. The respondent also facilitated the participation of 7 individuals, one of whom was a client of the Member, in a charitable donation program. Donations were made of at least $24,105 and the respondent was entitled to receive commissions of approximately 17%. The respondent had sought permission of the Member regarding the charitable donation program and was refused; he continued recommending and facilitating participation by clients in the charitable donation program. There is no evidence of monies being received back by the investors. The respondent was terminated by the Member. The respondent agreed to a permanent prohibition, a fine of $5,000 and costs of $3,000.

13. We accept that a serious response was required for all the reasons advanced by the MFDA (above). Some mitigating affect can be considered: the fact that the Respondent had no previous disciplinary record and cooperated with the MFDA in its investigation and the Hearing. Nonetheless a serious disciplinary response is required having regard to the protection of the investing public, the integrity of the security markets, specific and general deterrence, the protection of the MFDA's membership and the protection of the integrity of the MFDA's enforcement processes.

14. We view all aspects of the Settlement Agreement as falling within "a reasonable range of appropriateness" (*Professional Investments*, p. 10 above).

15. We confirm our decision declared at the conclusion of the Hearing that the penalties agreed upon between the MFDA and the Respondent are to be imposed, as follows:

(a) the Respondent shall pay a fine in the amount of $10,000 pursuant to section 24.1.1(b) of MFDA By-Law No. 1;

(b) the Respondent shall pay costs of $5,000, pursuant to section 24.2 of MFDA By-Law No. 1;

(c) the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with, a Member of the MFDA for a period of 10 years, pursuant to section 24.1.1(e) of MFDA By-Law No. 1;

(d) the payment by the Respondent of the fine and costs in subparagraphs a. and b. above shall be made to and received by MFDA Staff in certified funds as follows:

  (i) $5,000 (fine) upon entering into the settlement agreement;
  (ii) $5,000 (fine) on or before July 3, 2012; and
  (iii) $5,000 (costs) on or before September 4, 2012;

(e) if the Respondent fails to make any of the payments described in subparagraph d. above, then the Respondent;

  (i) shall immediately be permanently prohibited from conducting securities related business while in the employ of, or associated with, a Member of the MFDA; and
  (ii) the Respondent shall pay an additional fine of $10,000, which together with any outstanding balance of fine and costs, shall immediately become due and payable to the MFDA.

16. At the conclusion of the Hearing we signed an Order confirming the foregoing.

DATED this 20th day of June, 2012.

"Alan V. M. Beattie"
Alan V. M. Beattie, Q.C,
Chair

"Richard Sydenham"
Richard Sydenham,
Industry Representative

"Patricia Kloepfer"
Patricia Kloepfer,
Industry Representative

Doc 300725