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: Ricardo John Cavalli

Heard: October 2, 2013 in Edmonton, Alberta
Reasons for Decision: November 6, 2013

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, Q.C.	Chair
Patricia Kloepfer	Industry Representative
Marc Albert	Industry Representative

Appearances:

Maria L. Abate	)	For the Mutual Fund Dealers Association of Canada
Ricardo John Cavalli	)	In attendance by teleconference; not represented by Counsel

I. INTRODUCTION

1. By Notice of Hearing dated March 1, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") made two allegations against Ricardo John Cavalli, (the "Respondent") the first of which read as follows:

> **Allegation #1:** From January 2006 to July 2009, the Respondent engaged in securities related business that was not carried on for the account of and through the facilities of the Member by selling, recommending, facilitating the sale, or making referrals in respect of the sale of three different exempt securities to clients and other individuals outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2, and 2.1.1.

2. This Panel was informed as of September 27, 2013, that as a result of an Agreed Statement of Facts, (1) Allegation #2 was withdrawn, (2) the Respondent admitted the facts in the Agreed Statement of Facts, (3) those facts constitute misconduct under MFDA Rules 1.1.1, 2.4.2, and 2.1.1 for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to Section 24.1 of the MFDA By-law No.1, and (4) the hearing would proceed on October 2, 2013 on the issue of penalty only and in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

3. The hearing was convened before this Panel on October 2, 2013 in the presence of Enforcement Counsel, certain members of the public and by prior agreement, the Respondent, who was self-represented, attended by telephone.

4. Enforcement Counsel advised that MFDA was seeking by way of penalties, a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity over which the MFDA has jurisdiction, a fine in the range of $300,000, and an award of costs of $7,500.

5. The relevant agreed facts are set out below.

II. AGREED FACTS

6. From March 30, 1995 to May 14, 2010, the Respondent was registered as a mutual fund salesperson and Branch Manager in Alberta and British Columbia for PFSL Investments Canada Ltd. ("PFSL"). At the material time, the Respondent resided in Spruce Grove, Alberta.

7. On May 14, 2010, the Respondent was terminated by PFSL as a result of the activities described herein.

8. The Respondent is not currently registered in the securities industry in any capacity. The Respondent states that he is currently unemployed.

9. The Respondent has not previously been the subject of disciplinary proceedings.

10. On or about April 7, 2010, Staff of the MFDA ("Staff") received a complaint from a PFSL client alleging that the Respondent was engaging in outside business activities with clients by selling, recommending, facilitating the sale, or making referrals in respect of the sale of exempt securities that were not being sold through the facilities or for the account of his Member. Staff forwarded a copy of the complaint to PSFL.

11. In response to the complaint, Staff and PFSL commenced investigations into the Respondent's activities which revealed that the Respondent had been selling, recommending, facilitating the sale or making referrals in respect of the sale of the following exempt securities:

i. FRPL Finance Ltd. ("FRPL");
ii. Prodo Energy Inc. ("Prodo"); and
iii. Focused Money Solutions Inc. ("Focused Money").

12. None of the exempt securities had been approved by PFSL for sale by its Approved Persons, including the Respondent.

FRPL Finance Ltd. ("FRPL")

13. FRPL carries on business as a real estate investment trust ("REIT"). FRPL described its primary business as developing, acquiring and operating resort based real estate for ultimate

disposition in a timeshare format and related activities. FRPL cites its secondary business as acquiring, holding and disposing of property of all kinds and ownership interests in other assets.

14. The offering memorandum prepared in connection with the FRPL offering described the securities offered as Series 1 and Series 2 First Mortgage Bonds secured by resort property or property that would be developed into a resort.

15. During the course of the investigation, Staff determined that between January 2006 and June 2007, the Respondent received a total of $185,760 in commission relating to the distribution of FRPL securities. The Respondent personally invested in excess of $100,000 in FRPL securities on March 7, 2007.

16. On or about March 8, 2010, and in connection with a restructuring process, FRPL proposed and subsequently appointed the Respondent as one of three Trustees for FRPL subject to approval by the FRPL Board of Directors. As a Trustee of FRPL, the Respondent's powers and authorities included, but were not limited to the following: acting for, voting on behalf of and representing the Trust as a holder of the LP units and other securities of the Trust; maintaining records and providing reports to unit holders; supervising the activities and managing the investments and affairs of the Trust and effecting payments of distributions from the Trust to unit holders.

17. The Respondent did not disclose his appointment as Trustee to PFSL.

18. On April 7, 2010, a PFSL client advised Staff that the Respondent was a Trustee of FRPL and that the Respondent was recommending investments in FRPL to clients.

Prodo Energy Inc. ("Prodo")

19. During the course of PFSL's investigation of the Respondent's activities, PFSL identified Prodo as an exempt security which the Respondent had recommended to client ST. The Respondent also had personal investments in Prodo.

20. In April 2007, shortly after client ST had retired and had received a financial package

from her employer, the Respondent presented client ST with an opportunity to invest in Prodo. The Respondent described Prodo as an energy company which sought out older and no longer productive oil and gas wells and attempted to obtain any residual oil and gas. As the wells were already in existence, Prodo did not need to fund the drilling and exploration of the wells, which resulted in substantial savings for the company.

21. On August I7, 2007, the Respondent brought a subscription agreement for Prodo to client ST's home for completion. Client ST signed the subscription agreement in order to facilitate her investment of approximately $52,000 in Prodo. The Respondent was identified on the subscription agreement as the person who witnessed client ST's signature of the subscription agreement.

22. The subscription agreement and the Private Issuer Eligibility Certificate identified client ST as a "close business associate of a director, executive officer, founder or control person of the Issuer". During an interview with Staff, client ST stated that she was not a close business associate of anyone at Prodo and believed this description applied to the Respondent's relationship with Prodo.

23. On August 23, 2007, client ST redeemed a total of $50,000 from her PFSL client account by way of seven small transactions for a total amount of $50,000.

24. On September 21, 2007, client ST used the redemption proceeds to purchase 50 shares of Prodo.

25. During the course of Staff's investigation, the Respondent denied receiving any referral or finder's fees from Prodo for directing investors to them.

26. Subsequently, Prodo advised Staff that the Respondent had been paid approximately $25,000 in referral fees for directing approximately 15 investors to Prodo and assisting Prodo in raising $500,000 in the early part of 2007.

27. On June 8, 2011, Prodo provided an updated list of investors who were referred to them by the Respondent and, where available, copies of commission cheques paid to him. According

to Prodo's records, the Respondent referred 27 investors to Prodo and received a total of $78,468 in referral fees.

Focused Money Solutions Inc. ("Focused Money")

28. On May 8, 2011, the Alberta Securities Commission ("ASC") received a complaint against the Respondent from client VJ. The complaint alleged that the Respondent had facilitated an investment by client VJ in an investment product offered by Focused Money. The ASC referred client VJ's complaint to the MFDA.

29. On November 16, 2011, Staff interviewed client VJ. Client VJ advised that in December 2005 her husband had passed away and that shortly thereafter, in March 2006, the Respondent attended at her home with the proceeds of her husband's life insurance policy. The Respondent advised client VJ that the life insurance proceeds could be re-invested into her existing mutual fund accounts, but client VJ indicated that she was not prepared to consider reinvestment at this time.

30. Sometime later, at a telephone meeting between client VJ and the Respondent, client VJ advised the Respondent that she was thinking of investing in real estate. After the passage of some time, client VJ decided that she would not invest in real estate and contacted the Respondent to seek other investment opportunities. The Respondent recommended that she invest in Focused Money.

31. Client VJ further advised Staff that the Respondent explained Focused Money as a low-risk investment into American life insurance products and that it would generate simple interest at a rate of 10% per annum.

32. On March 11, 2009, client VJ invested $125,125 into the Focused Money Life Settlements No. 2 LP. The Private Placement Subscription Agreement lists the Respondent as the agent responsible for the sale of the product to client VJ.

33. Client VJ's investment had a maturity date of January 4, 2029 and would purportedly generate a monthly income of $1,041.67 starting on January 5, 2009. In fact, client VJ received

interest payments for a period of over one year until they stopped arriving in April 2010.

34. On April 1, 2010, client VJ received a letter from Focused Money advising that they would be discontinuing payments. The letter advised that the discontinuance of payments was a result of the receivership of one of Focused Money's American service providers and that, in the interim, Focused Money was investigating the possible sale of some assets to obtain the capital required to continue to make payments and to minimize losses.

35. Exempt distribution reports filed with the British Columbia Securities Commission ("BCSC") by Focused Money identified 1439818 Alberta Inc. as having received commissions totalling approximately $36,817 in relation to the distribution of Focused Money securities.

36. A corporate profile report for 14398180 Alberta Inc. lists the Respondent's spouse as a Director and the Respondent's home address as the company's registered office. The report also lists Alternative Money Solutions ("AMS") as an associated registration to 14398180 Alberta Inc. under the Partnership Act. During the course of Staff's investigation, the Respondent admitted that he was the President of AMS.

37. On December 23, 2009, the ASC issued a Notice of Hearing against Focused Money for allegedly making misleading or untrue statements to Alberta investors and for behavior contrary to the public interest. On that same date, the ASC also issued an Interim Cease Trade Order (ICTO) against securities of Focused Money. The ICTO was extended on January 6, 2010. On February 22, 2010, the ASC, considering it to be in the public interest, further extended the ICTO until submissions have been provided to the Hearing Panel and the opportunity to consider them and rule on any further disposition that could be made.

PFSL's Policies and Procedures

38. PFSL's policies and procedures prohibited its Approved Persons from, among other things, selling any investments other than "mutual fund products specifically authorized for sale by PFSL."

39. From 2005 to 2008, the Respondent signed PFSL's annual Branch Manager Certification

Form indicating that he had read and was familiar and in compliance with the policies and procedures of the Member regarding outside business activities.

40. On March 19, 2009, the Respondent also completed an online form with attestations regarding his compliance with the policies and procedures of the Member, including outside business activities and referral or finder's fees.

Investigations

41. In August 2010, Staff commenced its investigation of the Respondent's activities.

42. On February 11, 2011, during the course of an interview with Staff, the Respondent was questioned as to whether he had received referral fees or other forms of compensation for directing investors to Prodo. The Respondent denied selling or making referrals in respect of Prodo and denied receiving any compensation in respect of such sales or referrals.

43. On May 18, 2001, Staff advised the Respondent that it had received information from Prodo confirming that the Respondent had referred investors to Prodo. Staff wrote to the Respondent requesting that he disclose the number of investors he had referred to Prodo, the amounts of their investments, and the commissions or fees he had received for making such referrals. Staff also requested that the Respondent disclose the same information in respect of any other companies to which he may have referred investors.

44. Contrary to the Respondent's statements during his interview with Staff, the Respondent now acknowledged by email dated May 30, 2011 that he was aware of six individuals who had invested in Prodo and stated that he did not "have records that indicate what they [Prodo] sent to me". The Respondent denied making referrals in respect of any investments other than Prodo.

45. By the time the Respondent made this statement, Prodo had paid the Respondent approximately $78,468 in referral fees for directing 27 investors to Prodo.

46. Additionally, by the time the Respondent made this statement, the Respondent had been paid a total of $185,760 in commissions relating to the distribution of FRPL's securities and had

facilitated client VJ's investment in Focused Money. By this time, Focused Money had also paid 1439818 Alberta Inc., the company owned by the Respondent's spouse, $36,817 in relation to the distribution of Focused Money securities.

47. In total, the Respondent received $301,045 in compensation in relation to his involvement in sales or referrals of the FRPL, Prodo and Focused Money exempt securities to clients and other individuals.

48. As far as Staff is aware, FRPL, Prodo and Focused Money are arm's length entities to the Respondent and there was no existing relationship between the Respondent and FRPL, Prodo or Focused Money prior to January 2006. After January 2006, the Respondent's relationship to FRPL, Prodo and Focused Money was one of product salesperson.

49. While the Respondent received $301,045 in compensation in relation to his involvement in sales or referrals of the FRPL, Prodo and Focused Money exempt securities to clients and other individuals, he states that he invested all of the compensation and commissions he earned in the said products, which have not subsequently produced any significant financial benefit for the Respondent. The Respondent states that he is presently in financial distress.

Misconduct Admitted

50. By engaging in the conduct described above, the Respondent admits that from January 2006 to July 2009, he engaged in securities related business that was not carried on for the account of and through the facilities of the Member by selling, recommending, facilitating the sale, or making referrals in respect of the sale of three different exempt securities to client and other individuals outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2 and 2.1.1.

III. SUBMISSIONS MADE BY ENFORCEMENT COUNSEL FOR MFDA

51. MFDA noted that the authority to discipline Approved Persons, to determine penalties and to award costs is provided by Sections 21, 22.1, 24.1.1, 24.1.4 and Section 24.2.of the MFDA By-law No. 1.

52. MFDA submitted that the Respondent had admitted to the following:

i. He violated MFDA Rule 1.1.1 which governs acceptable business structures for Approved Persons and Members;
ii. His participation in the sale of exempt market investment products and the sale of the said exempt market products was not carried on for the account of the Member or through the facilities of the Member;
iii. From January 2006 to July 2009, he participated in the sale of three exempt products outside of the Member, namely FRPL Finance Ltd., Prodo Energy Inc. and Focused Money Solutions Inc., none of which had been approved for sale by the Respondent's Member, PFSL;
iv. He violated MFDA Rule 2.4.2 governing referral arrangements and his activities did not fall into the permitted categories of MFDA Rule 2.4.2(b);
v. Between January 2006 and June 2007, he received $185,760 in commissions relating to the distribution of FRPL securities and personally invested in excess of $100,000 in such securities during that time;
vi. He referred 27 investors to Prodo for which he received $78,468 in referral fees.
vii. He received commissions totaling approximately $36,817 in relation to the distribution of Focused Money through his numbered company 1439818 Alberta Inc. and that he had earned commissions fees and compensation of approximately $301,045 relating to his involvement in the sale or referral of the said products;
viii. He invested all of the compensation and commissions earned through the sales or referrals into the said products which has not produced any significant financial benefit resulting in his own personal current financial distress;
ix. He breached MFDA Rule 2.1.1. which governs the appropriate standard of conduct for Approved Persons and that on becoming aware of MFDA's investigation into his activities he attempted to hamper the investigation by providing misleading statements and information in relation to the extent of his participation in and compensation from the sale and referral of the said products; and
x. He engaged in securities related business that was not carried on for the account and through the facilities of the Member by selling, recommending or facilitating the sale of exempt market investment products.

53. MFDA submitted that MFDA Rule 1.1.1(a) prohibits an Approved Person from engaging in securities related business in any form that is not carried on for the account of the Member through the facilities of the Member and in accordance with MFDA By-laws and rules, often referred to as the prohibition against selling securities "off book".

54. MFDA submitted that this rule is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry. The rule establishes a regime whereby an Approved Person is permitted to sell only investment products which have been first approved for sale by the Member and sold through the facilities of the Member, thereby ensuring the trading activity is subject to appropriate product due diligence, review and supervision.

55. Enforcement Counsel also referred this Panel to certain case authorities in relation to the consideration of penalty in this case. The first was the passage in *Re Thomson*, referencing the Conduct and Practices Handbook course offered by the Canadian Securities Institute ("CSI") which reads as follows:

> "*Consideration for the financial integrity and moral responsibilities of one's firm are essential to the business dealings of the Registered Representative…[T]he standard is clear that in that an RR must not trade in securities other than through the firm employing the RR, and the firm must have knowledge and give consent for these business dealings…[S]uch activities done by a registered representative employee without the knowledge of the member firm may expose the member firm to vicarious liability for the actions of its employee. This provision is for the protection of the investors, as well as member firms. When the transaction is done off the books, the Association member loses the ability to supervise the transaction and to take responsibility for the suitability of the transaction for the investor." Re Thomson* [2004] I.D.A.C.D. No. 49 (Pacific District Council) at paras. 56-60.

56. Enforcement Counsel also referred to the decision of the Prairie Regional Council in *In the Matter of Arnold Tonnies* ("*Tonnies*") for the following propositions of law:

i. Sanctions imposed in the securities regulatory context should be protective and preventative, intended to be exercised to prevent likely future harm to the capital markets (at pp. 21-22);

ii. General deterrence is an appropriate consideration in making orders that are both protective and preventative. A penalty must reaffirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry (at pp. 22);

iii. In exercising its discretion to impose a penalty, a hearing panel should take into account the following considerations:

(a) The protection of the investing public;
(b) The integrity of the capital markets;
(c) Specific and general deterrence;
(d) The protection of the MFDA's membership; and
(e) The protection of the integrity of the MFDA's enforcement processes.

iv. Other factors that hearing panels frequently consider include the following:

(a) The seriousness of the allegations proved against the Respondent;
(b) The Respondent's past conduct, including prior sanctions;
(c) The level of the Respondent's activity in the capital markets;
(d) Whether the Respondent recognizes the seriousness of the improper activity;
(e) The harm (or potential harm) suffered by investors as a result of improper activity; and
(f) Previous decisions made in similar circumstances (at p. 23).

IV. THE RESPONDENT'S SUBMISSIONS

57. The Respondent's written submissions contained the following responses in relation to penalty:

i. PFSL terminated the Respondent immediately after he advised he was seeking a new sponsor;

ii. PSFL filed the original complaint which permitted it to retain his book of business that he built up over 20 years;

iii. Had he not notified PSFL that he was seeking a new sponsor, the Respondent suspects he would not have been terminated;

iv. The Alberta Insurance Council and ASC declined to investigate complaints they received about his conduct;

v. The complaint of one of his clients was motivated by revenge for the Respondent's failure to return funds she lost from investing in exempt markets;

vi. The Respondent was motivated by a desire to help persons including himself who were adversely affected by the market collapse and loss of their retirement savings;

vii. The Respondent reinvested the monies he earned from the Exempt Market Funds, except for the taxes, and lost that and most of his retirement savings;

viii. He has calculated his own personal financial loss at $580,000 which is much more than the penalty sought by MFDA;

ix. The Respondent had broken no laws;

x. The Respondent's conduct amounted to nothing more than a breach of contract with PFSL;

xi. The Respondent's conduct was merely an error of judgment;

xii. The Respondent has been a responsible family man who attends church, donates to charities and volunteers to non-profit organizations;

xiii. The Respondent is aged 63, suffers from heart disease aggravated by stressful situations, glaucoma and spinal stenosis and also now suffers from depression due to the events following the complaint;

xiv. His health prevents him from performing physical work;

xv. He has little income and is selling all his assets;

xvi. If his license is revoked, he will have no future means to repay a fine;

xvii. Most other professional bodies would impose a fine only for a first offence; and

xviii. His letter to PFSL in 2009 submitted with his written submission indicates that he wished to resign from his position of Branch Manager.

58. The Respondent made additional oral submissions at the date of the hearing which include the following:

i. The Member never made the MFDA rules apparent to him or his co-workers;
ii. The Member never advised him to read the MFDA Rules;
iii. The Respondent committed the acts in question not for selfish gain, but due to the culture of the multilevel marketing system;
iv. The onus was not on the Respondent to warn the investors of the risks of trading in these securities – they should have known the risks involved;
v. In most cases, the clients were adamant that they wanted these other investments;
vi. The Respondent believed the representations of the companies who manufactured these securities;
vii. The Respondent disputed that he had no remorse since he had a nervous breakdown and further contemplated suicide subsequent to the complaint;
viii. The Respondent would repay the money to the clients if he had it;
ix. It did not cross his mind that he was breaking any rules; and
x. The Respondent is as much a victim as his clients and did not bring these events on himself.

59. On questioning from this Panel, the Respondent conceded that:

i. He has made no repayments to his clients of any lost funds, partial or otherwise;
ii. He has not since read the MFDA Rules or retaken any of the courses required of an Approved Person; and
iii. He had been in the position of Branch Manager between January 2006 and July 2009 and had in that interval supervised four or five mutual fund sales representatives, which this Panel infers were mutual fund Approved Persons.

60. At the conclusion of the Respondent's submissions, this Panel was informed that certain of the members of the public in attendance were investor clients of the Respondent and wished to make submissions pertinent to the penalty.

61. This Panel concluded it had the authority pursuant to 1.3 and 1.5 Rules of Procedure under its general powers to consider such proposed submissions. Accordingly, it directed that a short adjournment be taken during which time Enforcement Counsel would interview those

individuals, ensure they were persons directly affected by the Respondent's conduct, solicit the substance of their desired representations and when the hearing reconvened, convey the same to this Panel on their behalf.

62. Enforcement Counsel then submitted that three such individuals present desired this Panel to appreciate the extent of their significant financial repercussions. One such individual lost the sum of $437,000. Another lost the sum of $300,000 and a third lost the sum of $50,000. Further, these individuals were entering the later decades of their lives, such that their prime earning years were much behind them. In addition to those direct financial losses, they will suffer increased debt loads, diminished quality of life, in some instances having to rely on social assistance and government programs for financial support, or having to work past the expected date for retirement. Moreover, they all suffer an ongoing fear of re-entering the market as a result of the loss of trust reposed in their financial advisor that he would not direct them into inadvisable investments.

63. In response, the Respondent indicated that he understood the feelings of those investors, but noted that he was as much a victim as were they of the investor fraud committed by the companies who issued the securities in question.

64. The Respondent also indicated that he well knew the identities of certain of those investors present at the hearing. He stated that he had had numerous communications with them prior to the hearing in which they either stated that they did not hold him responsible or made drastic comments alluding to personal threats against him. He contended that these and other investors should also bear some responsibility for their losses.

65. Following consideration of the agreed Statement of Facts and the submissions before it, this Panel confirms that Allegation #1 has been proven to its full satisfaction.

V. DECISION AS TO PENALTIES

66. Prior to arriving at its conclusion as to penalties, this Panel reviewed the factors appropriate for penalty outlined in the *Tonnies* case, and listed above at paragraph 56 in light of the facts in this case. Factors favoring the Respondent were that he had no prior disciplinary

history with MFDA; he entered into an agreed Statement of Facts to save the MFDA the time and expense of proceeding to a full hearing; and that he has suffered an emotional and professional toll as a result of the consequences of his conduct.

67. Against the mitigating factors, this Panel concluded that there were aggravating factors demonstrative of the fact that even up to the date of the hearing, the Respondent has acquired very little, if any, insight into the gravity of his conduct.

68. First, his representations included statements indicating that the Respondent feels the blame for the consequences of his actions lies with others, including the investor clients themselves, the Member, the companies who offered the securities which he recommended to his clients, and the culture of one particular sector of the financial industry.

69. Second, despite the fact that the Respondent had been registered for 15 years prior to his termination and at some of the material times had the role of Branch Manager who supervised at least four or five mutual fund Approved Persons, he professed to have no knowledge of the MFDA Rules and asserted that the Member never informed him of the Rules or read them to him.

70. Third, in order to be registered as a Branch Manager, the Respondent would have to meet the regulatory proficiency requirements which require a combination of experience and training that would include an understanding of MFDA rules. Accordingly, this Panel rejects the contention that the Respondent was at once a Branch Manager of the Member and yet unfamiliar with the MFDA Rules in the years prior to, and during, his tenure in that position.

71. While the Respondent presented his letter of resignation as Branch Manager to the Primerica Compliance Department as of November 17, 2009 seemingly as a mitigating factor, this Panel rejects it for such purpose firstly as it post-dated the misconduct in Allegation #1 and secondly because there is no indication that it was proffered in connection with such conduct. Instead, the Panel concluded that the fact that the Respondent held the position of Branch Manager during some of the material times was an aggravating factor as he knew, or should have known, that such status would have instilled additional trust in him as a competent and reliable financial advisor.

72. This Panel rejects the implications of the Respondent's representations that he has no present understanding that the MFDA Rules are designed for the protection of the investing public; the integrity of the capital markets; specific and general deterrence; the protection of the MFDA's membership; and the protection of the integrity of the MFDA's enforcement processes. It further rejects the contention that such absence of understanding is due to any act or omission of the Member.

73. Moreover, this Panel rejects the Respondent's contention that the Member's complaint against his conduct was motivated by the desire to take control of "his" client list or that any of his clients were motivated by revenge or any other improper considerations.

74. This Panel concludes that the Respondent must have been well aware that his failing to disclose to the Member his conduct at any time between 2005 and 2007 was wrong, and was intentionally committed for his own personal financial gain of $301,045 without regard to the harm to his own clients, the Member, the investing public, and the integrity of the capital markets. Otherwise, this Panel concludes that the Respondent would have no reason to suppress the fact of his activities to the Member, at all, or over the extended period of time that he did so.

75. This Panel considers as an aggravating factor the primary fact that the Respondent seems not to recognize, even at this date, the seriousness of his improper activity or the extent of the harm suffered by investors as a result. He does not even at this date accept without qualification that he was the direct perpetrator of the recommendations he deliberately withheld from the Member. He does not grasp that the withholding of disclosure of his wrongful conduct deprived the investor clients, the Member and the Respondent himself from the protection and benefit of the guidance of the Member which could have avoided or reduced the loss to all concerned. He continued to the time of the penalty submissions to deflect responsibility for the consequences onto others involved in the transactions.

76. This Panel finds as a further aggravating factor the fact that the Respondent hampered the investigation by providing false and incomplete information to the investigators which made his original conduct even more egregious.

77. This Panel is not satisfied that the remorse the Respondent expressed demonstrates sufficient understanding of the nature and extent of his misconduct, centred as it was primarily on his own personal, financial and professional losses, and only fleetingly in respect of the losses to the investor clients. Instead, the above-listed aggravating factors led this Panel to conclude that the Respondent would continue to present a risk to potential investors, Members and the capital markets, were he permitted to continue to operate in such markets.

78. For these reasons, this Panel is satisfied that a permanent prohibition is necessary for the specific deterrence of this Respondent and for general deterrence of any mutual fund Approved Persons who might be inclined to risk engagement in similar conduct.

79. This Panel is also satisfied that a fine of $300,000 is appropriate firstly, since it reflects the benefits received by the Respondent, which was a factor referenced with approval by the hearing panel in the *Re: James Woloshen* decision. Further, a fine in this amount demonstrates to the Respondent and to others that his conduct was a serious violation of the MFDA Rules and caused significant harm to a number of investors leaving financial consequences that will impact their lives substantially.

80. Finally, this Panel is satisfied that the costs award of $7,500 is consistent with the awards in similar cases.

81. In summary, after consideration of all the submissions of Enforcement Counsel and the Respondent, this Panel concluded that the following penalties were appropriate in this case:

i. A permanent prohibition of the Respondent's authority to conduct securities related business in any capacity over which the MFDA has jurisdiction;
ii. A direction that the Respondent pay a fine of $300,000 for engaging in securities related business as described in Allegation # 1 and hampering the investigation into that conduct; and
iii. A direction that the Respondent pay to the MFDA $7,500 for costs of the investigation.

DATED this 6th day of November, 2013.

"Shelley L. Miller"

Shelley L. Miller, Q.C.,
Chair

"Patricia Kloepfer"

Patricia Kloepfer,
Industry Representative

"Marc Albert"

Marc Albert,
Industry Representative

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