File No. 202152

Re Sadiq

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Muhamad Asghar Sadiq

2024 CIRO 48

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: August 16, 2022 and November 2, 2022 in Toronto, Ontario
Decision: November 2, 2022
Reasons for Decision: April 24, 2024

Hearing Panel:
John Lorn McDougall, KC, Chair
Brigitte J. Geisler, Industry Representative
Timothy J. Pryor, Industry Representative

Appearances:
Alan Melamud, Senior Enforcement Counsel
Muhamad Asghar Sadiq (absent)

REASONS FOR DECISION

INTRODUCTION

¶ 1 This case concerns a dealing representative, Muhamad Asghar Sadiq ("Respondent") employed by a member of the MFDA, Sterling Mutuals Inc. ("Sterling Mutuals"). He was registered in Ontario as a dealing representative and a designated branch manager on February 24, 2010.

¶ 2 The Respondent was also registered in Alberta as a dealing representative with Sterling Mutuals on March 25, 2014.

¶ 3 At all material times the Respondent conducted business in the Mississauga, Ontario area.

¶ 4 On January 9, 2019, the Respondent resigned from Sterling Mutuals and is not currently registered in the securities industry in Canada in any capacity.

¶ 5 The Notice of Hearing (NOH) dated September 14, 2021, was held by the Hearing Panel to have been appropriately served on the Respondent in accordance with Rules 4.2(1)(b), (d) and 4.8(1) of the MFDA Rules of Procedure. The Order has been reproduced below:

> **WHEREAS** on September 14, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 (the "Notice of Hearing") in respect of a disciplinary proceeding commenced against Muhamad Asghar Sadiq (the "Respondent") which shall take place before a hearing panel of the Central Regional Council (the "Hearing Panel");
>
> **AND WHEREAS** in accordance with s. 19.13 of MFDA By-Law No. 1, the first appearance in this hearing

was held by teleconference before a public representative of the Central Regional Council of the MFDA (the "Chair of the Hearing Panel") on November 22, 2021;

AND WHEREAS the Respondent did not attend the first appearance and did not serve or file a Reply to the Notice of Hearing;

AND WHEREAS counsel for Staff attended the first appearance by videoconference and made submissions to the Chair of the Hearing Panel concerning scheduling and other procedural matters;

IT IS HEREBY ORDERED THAT:

1. The issue of the adequacy of service on the Respondent is reserved to the full Hearing Panel to be determined on the date set for the hearing of this matter on its merits.

2. Subject to any further order of the Hearing Panel, the hearing of this matter on its merits shall take place electronically by videoconference on April 12, 2022, commencing at 10:00 a.m. (Eastern), or as soon thereafter as the matter can be heard.

DATED this 22nd day of November 2021.

"John Lorn McDougall"
Chair

¶ 6 The Hearing on the Merits was held on August 16, 2022, and, at Staff's request, a further hearing was held on November 2, 2022. This will be further discussed in what follows.

¶ 7 The Respondent did not file a Reply in this proceeding as he was required to do, was not represented by counsel at the Hearing or otherwise represented and did not participate in the Hearing at all. In fact, there was no evidence that he ever spoke to the MFDA representatives.

THE ALLEGATIONS

¶ 8 In the NOH, the MFDA alleged that the Respondent violated the Bylaws, Rules or Policies of the MFDA as follows:

Allegation #1: Between March 2011 and October 2016, the Respondent failed to use due diligence to learn and accurately record or intentionally misrepresented the essential facts relative to at least 11 clients, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2: Between August 2014 and June 2015, the Respondent submitted supporting documents to the Member in connection with loan applications of at least 4 clients, which the Respondent knew or ought to have known contained false, incorrect, or misleading information, contrary to MFDA Rule 2.1.1.

Allegation #3: Between March 2011 and July 2015, the Respondent failed to ensure that the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 10 clients were suitable for the clients, in keeping with the clients' risk tolerances, investment knowledge, and ability to withstand the potential costs and investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4: Between March 2011 and July 2015, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, costs, and features of the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 11 clients, thereby failing to ensure that the leverage investment strategy and underlying investments were suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #5: Between August 2014 and August 2018, while registered as a dealing representative of a Member, the Respondent engaged in securities related business on behalf of another Member that the Respondent was not registered with, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #6: Between October 2016 and August 2018, the Respondent misappropriated or failed to account for monies received from 7 clients and 1 individual, contrary to MFDA Rule 2.1.1.

Allegation #7: From about September 2016 to January 2019, the Respondent recommended to 1 client and 1 individual that they open and invest money through an investment account with a Futures Commission Merchant in the U.S., and managed or provided instructions in connection with the trading in the account, thereby engaging in securities related business outside the Member, contrary to the Member's Policies and Procedures, MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2, and the terms of the Respondent's registration as a dealing representative.[1]

Allegation #8: Between August 2, 2018 and December 5, 2018, the Respondent engaged in personal financial dealings with a client by providing the client with monies to pay her investment loan payments, which gave rise to a conflict or potential conflict of interest that the Respondent did not disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

THE PARTICULARS

¶ 9 The particulars are annexed hereto as Appendix "A" and form part of these Reasons for Decision.

REASONS ON THE MERITS AND PENALTY

MERITS

¶ 10 Some background is needed to understand the sequence of events which led to the November 2, 2022, order (the "Order") of the Panel. The Order is also annexed to these Reasons for Decision as Appendix "B."

¶ 11 The original hearing on the Merits was set for April 12, 2022 at the initial appearance. At the request of Staff an adjournment to August 16, 2022, was granted. The Panel was aware that no Reply had been filed and that no contact had been made with the Respondent. He was thought by some of his former clients to have returned to his homeland, Pakistan. There apparently was subsequent contact with him there by several of the former clients. The Respondent is a naturalized citizen of Canada and there was no evidence that he ever surrendered his Pakistani citizenship.

¶ 12 At the August 16, 2022 hearing, as the Respondent did not appear, either in person or by a representative and had not been heard from by Staff, the Panel was asked to make an order, pursuant to MFDA Procedural Rule 4.2(1)(b). That order ruled that the Respondent had been adequately served substitutionally and that such service was valid.

¶ 13 MFDA Procedural Rule 4.2 is as follows:

> 4.2 Manner of Service – Notice of Hearing
>
> 1) A Notice of Hearing shall be served by one of the following methods:
>
> a) by personal service on the Respondent;
>
> b) by registered and ordinary mail or by courier with confirmation of delivery to the Respondent's last known address as recorded in the Corporation's records or in the records of any securities commission with which the Respondent is or was registered;
>
> c) by providing it to the Respondent's counsel or agent, with the consent of the counsel or agent; or
>
> d) by any other means, with the consent of the Respondent or by order of the Hearing Panel.

¶ 14 Having made the Procedural Rule 4.2 order, the provisions of MFDA Rule 7.3.4 became applicable. It is as follows:

> 7.3.4 Failure to Reply or Attend
>
> If a Member or person summoned before a hearing of a Hearing Panel by way of Notice of Hearing, fails to:

[1] Allegation 7 was withdrawn by Staff at the Hearing on November 2, 2022.

a) serve a reply in accordance with Rule 7.3.2; 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 at the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without further notice to and in the absence of the Member or person, and the Hearing Panel may accept the facts alleged by the Corporation in the Notice of Hearing as having been proven by the Corporation and may impose any of the penalties described in Rule 7.4.1.

7.4.1 Power of Hearing Panels to Discipline

7.4.1.1 Approved Persons

A Hearing Panel shall have power to impose upon an Approved Person or any other person under the jurisdiction of the Corporation 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;

if, in the opinion of the Hearing Panel, the person:

a) has failed to carry out any agreement with the Corporation;

b) 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;

c) has failed to comply with the provisions of any By-law or Rules of the Corporation;

d) has engaged in any business conduct or practice which such Hearing Panel in its discretion considers unbecoming or not in the public interest; or

e) is otherwise not qualified whether by integrity, solvency, training, or experience.

¶ 15 Shortly before the commencement of the August 16, 2022, hearing, Staff filed five new affidavits made by former clients of the Respondent, each of which appended extensive exhibits to explain the extent of their losses. These losses suffered by the former clients described in the NOH were summarized at paragraphs 56 and 57 as follows:

56. Collectively, all the clients at Sterling Mutuals and Shaw Financial described above experienced losses of appropriately $449,596. These investment losses have caused significant financial hardship for the clients.

57. The Respondent earned at least $71,000 in commissions from his recommendations to clients to engage in the Leveraged Investment Strategy at Sterling Mutuals.

¶ 16 The issue confronting the Panel at that point was whether the provisions of Rule 7 applied, deeming the

Allegations and particulars as proven, once accepted by the Panel, with the result that there would be no need for further evidence.

¶ 17 The Panel was of the view that because the MFDA Rules and Procedure provide an explicit procedure for dealing with the situation before it, the preferred, if not obligatory procedure was to apply Rule 7 and deem them as being proven and deem the NOH and the particulars as proven.

¶ 18 However, although Staff was not able to provide any authority for not applying Rule 7 in this situation, Mr. Melamud mounted a vigorous argument in support of his submission that the affiants should be heard. The Panel decided to reserve on the question of whether or not to admit the affidavits in evidence until after we had heard the testimony. For that purpose, a hearing was set for November 2, 2022, and the matter was then adjourned.

¶ 19 Somewhat confusingly, shortly before the November 2, 2022 hearing, Staff filed lengthy submissions in support of its argument that the Allegations had been proven, something that the Panel had already concluded at the August 16, 2022, hearing. Consequently, we saw no reason to consider the "evidence" advanced from the former clients again on November 2, 2022, unless the oral testimony contained something that suggested that there was a reason to doubt that the provisions of Rule 7 accepting the allegations and Particulars could be properly applied in this instance.

¶ 20 Staff, during the argument made on August 16, 2022, had asked for a more lengthy than usual delay, intimating it was needed because other agencies of government were considering the matter and additional time was needed. This did not surprise the Panel given the egregious facts of this case. We therefore agreed to the November 2, 2022 date for the resumption of the Hearing.

¶ 21 After a review of the affidavits, the Panel found that there was nothing in them that in any way cast doubt on our prior conclusion that the Respondent was responsible for those losses as alleged in the NOH and Particulars.

¶ 22 In the event, on November 2, 2022, Staff decided not to call any of the affiants. Instead, he gave the Panel a substantial oral review of the contents of the affidavits which were largely concerned with how the former clients had been misled and/or swindled as alleged in the NOH and Particulars and how their financial losses had been incurred.

PENALTY

¶ 23 Counsel for the MFDA in his written brief made the following submission with which the Panel is in full agreement. It is worth quoting in full and is as follows:

> The Respondent has caused significant damage to the integrity of the capital markets. The ability of mutual fund dealers to facilitate the participation of the public in the capital markets requires that investors trust mutual fund dealers with their money and the advice of their Approved Persons. The Respondent's misconduct, from the recommendation and implementation of an unsuitable investment strategy to his misappropriation of and failure to account for clients' monies, undermines this trust, harming the reputation of the mutual fund industry and the capital markets and investor confidence more broadly. As stated by the Hearing Panel *in Ayala (Re)*:
>
> *A fundamental purpose of regulation of the securities industry in Canada is the protection of the investor who has entrusted his or her investment to a Member or Approved Person. At the top of the regulatory objectives is that of ensuring that such investment advisors do not appropriate their clients' funds for their own purposes, ever. That objective must be secured, for without it there can be no viable investment business. Any conduct that derogates from that most important principle must be dealt with in the most severe fashion. People who fail to adhere to this absolute rule cannot be allowed to continue in the industry as they constitute threats not only to their clients but the securities industry as a whole.* [2]

¶ 24 The behaviour of the Respondent was so egregious that the severest sanction available to us, a permanent ban from the mutual fund business in Canada (which is in effect a ban from participation in the

[2] *Ayala (Re)*, 2017 LNCMFDA 237 at para. 11

Canadian securities market) was considered by the Panel. We had no hesitation whatsoever in imposing the permanent ban and we are hopeful that he will never be readmitted to participation in the Canadian securities markets of any nature.

¶ 25 The Respondent's conduct appeared to be to select clients who were unsophisticated and easily misled. He recommended instruments that were likely to fail and misled them throughout the process. Simply put, the Respondent's conduct wasn't simply professional misconduct, it could be characterized as criminal behaviour. However, the Respondent fled the jurisdiction of the Canadian criminal courts.

¶ 26 The Respondent's process allowed him to extract the maximum amount from each of the clients over the interval before the failures occurred. It was clear to the Panel that the Respondent chose the selected clients out of a pool of his clients knowing that and intending that the investments were doomed to fail, that way enabling him to extract the maximum amount from each of them over the interval before the failures occurred. Further he managed the failures in such a way that they occurred over a relatively short period and allowed him to escape from the jurisdiction of the Canadian courts before the authorities were alerted to his misconduct.

¶ 27 Setting the sanctions to be applied in most cases is about two kinds of deterrence: deterrence for all members of the industry from repeating the misbehaviors of the Respondent and deterrence for the Respondent himself. The latter is basically irrelevant in this case for two reasons.

¶ 28 The first is that it is obvious from the manner of his exit from Canada with the spoils from his misbehaviour that he could never have intended to re-enter the industry in this country. Everything he did was directed to seeking refuge in Pakistan where he would be safe from pursuit by Canadian authorities. The second is that there has not been any monetary punishment – quite the opposite, he has profited substantially from his misconduct. In that regard, we hope that steps will be taken so that if the Respondent returns to Canada in the future, which as a Canadian citizen he is entitled to do, he will be met by an attempt to enforce this monetary award at the border. That is itself a kind of deterrence.

¶ 29 In Popovitch (Re)[3] the hearing panel wrote the following in respect of a leveraging strategy coupled with a return of capital funding device of the investment (ROC funds):

> The Respondent failed abysmally in fulfilling his disclosure obligations in relation to SM, WC and PC and MH. This is particularly so when the leveraging strategy was combined with investments, almost exclusively, in ROC Funds.
>
> A key selling point for ROC Funds is that they pay consistent monthly distributions at seemingly attractive rates. They seem attractive investments, on the surface, if the anticipated distributions exceed the monthly borrowing costs incurred to finance those investments. Without adequate explanation, the strategy is too readily perceived as successful as long as the distributions continue to exceed the borrowing costs.
>
> However, as already described, ROC Funds are often unable to earn a true profit or return equal to or greater than the anticipated distribution payout. This means, among other things, that:
>
> a) The distributions may be funded, in whole or in part, by the return of the investor's own capital. Without adequate explanation, the investor may assume that the distributions represent true profits. Put another way, the investor may not understand that the investment has declined in value, or the extent of that decline;
>
> b) The value of the investment may decline to a point at which the investor would no longer be able to fully repay the loan even with the sale of the complete investment; and
>
> c) As the unit value of the ROC Fund declines, the fund company may be compelled to reduce the monthly distributions, undermining the investor's ability to continue to meet his or her loan obligations or, at the very least, reducing or undermining the rationale for the leveraging strategy in the first place.

[3] *Popovich (Re)*, 2015 LNCMFDA paras. 178-180

¶ 30 The hearing panel in Re Karas[4], a case factually similar to the present one, made the following point about the dangers inherent in a leveraged investment strategy:

> 41. The Leverage Investment Strategies implemented by the Respondent or the other mutual fund salespersons assigned to the accounts were not suitable for the clients having regard to the clients' "Know-Your-Client" information and financial circumstances, including but not limited to:
>
> a) the ability of the clients to afford the costs associated with the investment loans, regardless of the performance of the investments purchased and without relying on anticipated income or gains from the investments;
>
> b) the ability of the clients to withstand investment losses without jeopardizing their financial security if the Leverage Investment Strategy did not perform as represented; and
>
> c) the clients' age, investment objectives and personal financial circumstances.
>
> 42. The particulars of the 18 clients that implemented the Leverage Investment Strategy based upon the Respondent's recommendations are described below.
>
> 43. In almost all cases, the Respondent personally recommended the final loan in the series of investment loans obtained by the 18 clients. As a result, the Respondent was responsible for ensuring that the clients' total debt at the time of the final leverage investment recommendation was not excessive.
>
> 44. We think that for a leveraged investment to be suitable for a client, at the very least, the client must be capable of affording the expense of carrying the loan in the event that distributions become insufficient to do so. At the most basic, consideration of the ratio of debt obligations to income and the ratio of total investment debt to net worth are very relevant and important.

¶ 31 In his final oral submissions on November 2, 2022, Mr. Melamud asked for a fine of at least $500,000 calculated on the loss the clients at Sterling Mutual and Shaw Financial Services suffered, which was $432,076. In addition, there were losses by other classes of clients by other proven allegations of at least $128,426 and $76,000 US. It is highly likely that there may well have been additional client losses.

¶ 32 The Panel quickly agreed that the threshold amount specified by Staff, $500,000, was not nearly enough to deter similar activity in the future.

¶ 33 We believe that members of the financial industry and the Canadian public at large, would share the Panel's view that recovering anything from a Pakistani citizen in Pakistan in respect of a Canadian regulatory fine would be unlikely in the extreme. Given the circumstances, the quantum of the fine would only be significant for general deterrence purposes.

¶ 34 Fortunately, the Panel had the benefit of written and oral submissions from Staff in respect to quantum and by reference to several cases which involved fines for losses of $750,000 or more which is the amount of the fine we ultimately selected on November 2, 2022[5].

¶ 35 In setting the amount of the fine we restricted our review to only those cases that involved a leveraged investment such as the one the Respondent created, or more correctly, the illusion of one.

¶ 36 While the Panel carefully considered all of the leveraged investment strategy cases cited by Staff, one stood out more as an exemplar for us to follow in the present case. That case was *Re Karas* [6]. It also was an undefended case where the Respondent misrepresented or failed to appropriately explain the features of the leveraged investments which he recommended for 18 clients and recommended and facilitated the implementation of an unsuitable leveraged investment strategy for 7 clients. The total losses were in excess of $1 million. The fine was $750,000.

¶ 37 With the *Karas* decision being so close on the facts and disposition, but with the loss significantly

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[4] *Karas* (Re) 202015 LMC-MFDA paras. 41-44

[5] See Appendix B 'The Order'

[6] *Karas* (Re) 202015 LMC-MFDA para. 26

greater than the $109,684.68, which is the net loss after recoveries from insurers in the present case, it satisfied our requirement that the fine in this case would be regarded as a credible disposition by the financial community. We therefore fixed the fine at $750,000.

¶ 38 To repeat the Order with respect to Sanctions, which the Panel delivered on November 2, 2023, was as follows:

a) a permanent prohibition from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member;

b) a fine in the amount of $750,000; and

c) costs in the amount of $49,662.50.

Dated at Toronto, Ontario this 24 day of April 2024.

"John Lorn McDougall"

John Lorn McDougall, KC, Chair

"Brigitte J. Geisler"

Brigitte J. Geisler, Industry Representative

"Timothy J. Pryor"

Timothy J. Pryor, Industry Representative

Appendix A
Notice of Hearing
File No. 202152

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: Muhamad Asghar Sadiq

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the "Hearing Panel") of the Mutual Fund Dealers Association of Canada (the "MFDA") on November 22, 2021 at 10:00 a.m. (Eastern) or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Muhamad Asghar Sadiq (the "Respondent"). Members of the public who would like to listen to the teleconference should contact hearings@mfda.ca to obtain particulars.

DATED this 14th day of September, 2021.

"Michelle Pong"
Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
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 March 2011 and October 2016, the Respondent failed to use due diligence to learn and accurately record or intentionally misrepresented the essential facts relative to at least 11 clients, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2: Between August 2014 and June 2015, the Respondent submitted supporting documents to the Member in connection with loan applications of at least 4 clients, which the Respondent knew or ought to have known contained false, incorrect, or misleading information, contrary to MFDA Rule 2.1.1.

Allegation #3: Between March 2011 and July 2015, the Respondent failed to ensure that the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 10 clients were suitable for the clients, in keeping with the clients' risk tolerances, investment knowledge, and ability to withstand the potential costs and investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4: Between March 2011 and July 2015, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, costs, and features of the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 11 clients, thereby failing to ensure that the leverage investment strategy and underlying investments were suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #5: Between August 2014 and August 2018, while registered as a dealing representative of a Member, the Respondent engaged in securities related business on behalf of another Member that the Respondent was not registered with, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #6: Between October 2016 and August 2018, the Respondent misappropriated or failed to account for monies received from 7 clients and 1 individual, contrary to MFDA Rule 2.1.1.

Allegation #7: From about September 2016 to January 2019, the Respondent recommended to 1 client and 1 individual that they open and invest money through an investment account with a Futures Commission Merchant in the U.S., and managed or provided instructions in connection with the trading in the account, thereby engaging in securities related business outside the Member, contrary to the Member's Policies and Procedures, MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2, and the terms of the Respondent's registration as a dealing representative.

Allegation #8: Between August 2, 2018 and December 5, 2018, the Respondent engaged in personal financial dealings with a client by providing the client with monies to pay her investment loan payments, which gave rise to a conflict or potential conflict of interest that the Respondent did not disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

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 Beginning February 22, 2005, the Respondent was registered in the securities industry.

¶ 2 From February 24, 2010 to January 4, 2019, the Respondent was registered in Ontario as a dealing representative with Sterling Mutuals Inc. ("Sterling Mutuals"), a Member of the MFDA.

¶ 3 On February 24, 2010, Sterling Mutuals designated the Respondent as a branch manager.

¶ 4 From March 25, 2014 to January 4, 2019, the Respondent was registered in Alberta as a dealing representative with Sterling Mutuals.

¶ 5 On January 9, 2019, the Respondent resigned from Sterling Mutuals, and is not currently registered in the securities industry in any capacity.

¶ 6 At all material times, the Respondent conducted business in the Mississauga, Ontario area.

The Member's Policies and Procedures

¶ 7 At all material times, Sterling Mutuals' policies and procedures provided that prior to recommending a leveraged investment strategy, Approved Persons must learn the essential facts relative to each client. The policies and procedures further set out the following criteria to determine suitability:

a) clients should have a medium risk tolerance or higher;

b) clients must have at a minimum "good" investment knowledge and experience;

c) the total of all monthly debt payments, including any investment loans, should not exceed 35% of a client's gross income before tax; and

d) the leveraged amount should not exceed 50% of the client's liquid net worth and 30% of the client's net worth.

¶ 8 Sterling Mutuals' policies and procedures also required that Approved Persons only recommend leveraged investing based on a balanced presentation of the potential risks and rewards to the client.

¶ 9 Finally, at all material times, Sterling Mutuals' policies and procedures:

a) required that its Approved Persons be aware of the possibility of conflicts of interest with clients, and that where such conflicts or potential conflicts of interest arise, the Approved Person disclose it

to Sterling Mutuals so that it can be addressed with the exercise of responsible business judgment influenced only by the best interests of the client; and

b) prohibited its Approved Persons from engaging in the sale of any investments that would be considered securities under the applicable legislation, or selling or advising on such investments through any entity other than Sterling Mutuals.

The Leveraged Investment Strategy

¶ 10 At all material times, clients MSK, KH, AK, FT, RS, KM, NK, SDD, PR, and NJ were clients of Sterling Mutuals whose accounts were serviced by the Respondent.

¶ 11 Between March 2011 and June 2015, in the accounts of those 10 clients, the Respondent recommended and/or implemented a leveraged investment strategy involving the borrowing of money to invest in return of capital mutual funds ("ROC Funds") (collectively, the "Leveraged Investment Strategy"),[1] which he failed to ensure was suitable for the clients having regard to their personal and financial circumstances. Specifically, each of the clients followed the Leveraged Investment Strategy and applied for and obtained investment loans, the proceeds from which were invested in ROC Funds, as follows:

Client	Loan Amount	Date of Loan Application
MSK	$100,000	March 7, 2011
KH	$50,000	March 14, 2011
AK	$50,000	March 16, 2011
FT	$50,000	April 8, 2011
RS	$50,000	May 17, 2011
KM	$100,000	May 19, 2011
NK	$200,000	August 2, 2014
SDD	$200,000	May 23, 2015
PR	$100,000	May 25, 2015
NJ	$250,000	June 16, 2015

Inaccurate KYC Information

¶ 12 The Respondent failed to use due diligence to learn the essential facts relative to each of the 10 clients for whom he recommended and/or implemented the Leveraged Investment Strategy. The Respondent did not ask the clients any questions about their investment knowledge and experience or their risk tolerance.

¶ 13 To facilitate the Leveraged Investment Strategy, the Respondent failed to use due diligence to learn or accurately record or intentionally misrepresented the clients' Know-Your-Client ("KYC") information on their account opening documents, net worth statements, and loan applications (collectively, the "Leveraged Account Documents"). Instead, the Respondent recorded the KYC information in a manner that made it appear as though his recommendations were suitable for the clients. The Respondent recorded the clients' investment knowledge as good, when their investment knowledge was limited or none, recorded the clients' risk tolerance as predominantly high, when their risk tolerance was substantially lower, and significantly overstated their annual income and net worth.[2]

¶ 14 The Respondent did not review the KYC information with the clients when having them execute the Leveraged Account Documents, rather the Respondent provided the documents to the clients and indicated where they needed to sign.[3]

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[1] The Respondent made recommendations to 8 of the 10 clients. With respect to clients MSK and FT, the recommendation was made by another individual, but the Respondent implemented the leveraged investment strategy in their accounts as the responsible Approved Person.

[2] With respect to clients MSK and FT, the Respondent signed account documents that similarly inaccurately recorded the two clients' KYC information without meeting or speaking with the clients.

[3] See footnote 2.

¶ 15 By inaccurately recording the 10 clients' KYC information in the Leveraged Account Documents,[4] the Respondent increased the likelihood that the lending institutions would approve the clients' investment loans or that Sterling Mutuals would approve the implementation of the Leveraged Investment Strategy in the clients' accounts.

¶ 16 In addition to the Leveraged Account Documents, from February 2014 to October 2016, the Respondent also had all 10 clients complete additional account opening documents in connection with non-leveraged accounts and KYC update forms. In each case, the Respondent continued to inaccurately record or misrepresent the clients' investment knowledge, risk tolerance, annual income, and net worth on these additional documents.

Submission of False Supporting Documents to Support Leverage Loans

¶ 17 In addition to failing to accurately record or misrepresenting the clients' KYC information as described above, the Respondent also submitted supporting financial documents in respect of 4 clients, NK, SDD, PR, and NJ, which the Respondent knew or ought to have known contained false, incorrect, or misleading information. These documents included T4 and other pay statements, property tax statements, investment statements, and bank statements. These documents either overstated the value of the clients' assets or purported to show assets the clients did not actually own.

¶ 18 By providing the false supporting financial documents, the Respondent increased the likelihood that the lending institutions would approve the clients' investment loans or that Sterling Mutuals would approve the implementation of the Leveraged Investment Strategy in the clients' accounts.

Failed to Use Due Diligence to Ensure Suitability of Recommendations

¶ 19 The Respondent failed to ensure that the Leveraged Investment Strategy that he recommended and implemented in the accounts of 10 clients was suitable for the clients having regard to the clients' KYC information and, in particular, the following:

a) the ability of the clients to afford the costs associated with the investment loans regardless of the performance of the investments and without relying on anticipated income or gains from the investments;

b) the ability of the clients to withstand investment losses without jeopardizing their financial security if the Leverage Investment Strategy did not perform as represented; and

c) the clients' essential relevant facts, including:

   (i) low tolerance for risk;

   (ii) limited or no investment knowledge;

   (iii) annual income; and

   (iv) net worth.

¶ 20 While the annual income and net worth that the Respondent recorded for the clients made it appear that they had sufficient resources to engage in leveraged investing, the clients' actual annual incomes and net worth resulted in total debt service ratios ("TDSR") and loan to net worth ratios ("LNWR") that exceeded the thresholds of 35% and 30%, respectively, set out in Sterling Mutuals' policies and procedures as follows:

Client	Loan	TDSR	LNWR
MSK	$100,000	57.43%	83.33%
KH	$50,000	57.11%	267.39%
AK	$50,000	67.19%	267.39%
FT	$50,000	100.94%	41.67%
RS	$50,000	18.13%	48.08%
KM	$100,000	71.55%	63.29%

[4] See footnote 2.

NK	$200,000	35.52%	296.21%
SDD	$200,000	96.73%	200.00%
PR	$100,000	62.42%	65.14%
NJ	$250,000	114.41%	1,477.63%

¶ 21 The Respondent knew or ought to have known that the investment loans were excessive having regard to the resulting debt servicing obligations that would be imposed on the clients and the potential for the clients' obligations to repay the investment loans to erode a substantial portion, or potentially all, of the clients' net worth in the event the strategy did not perform as the Respondent represented that it would.

¶ 22 All 10 clients who implemented the Leveraged Investment Strategy relied entirely upon the distributions generated by the ROC Funds to pay all of the costs of servicing their investment loans. Many, if not all, of the clients did not have the means to cover the costs of servicing the investment loans in the event the Leveraged Investment Strategy did not perform as the Respondent represented that it would.

¶ 23 Most of the clients had limited or no investment knowledge, such that they did not understand or appreciate the potential risks of the Leveraged Investment Strategy before agreeing to implement it in their accounts. In addition, most of the clients had low investment risk tolerances, such that the leveraged investment strategy generally exceeded the level of risk that the clients were willing to assume.

¶ 24 In addition, the Respondent led the clients to believe, through his representations and omissions (set out at paragraphs ¶ 26 and ¶ 28 below), that the Leveraged Investment Strategy was a safe and secure manner of investing.

Misrepresented or Failed to Adequately Explain the Features and Risks of Recommendations

¶ 25 From March 2011 to June 2015, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features, and costs of the Leveraged Investment Strategy that he recommended and implemented in the accounts of the 10 clients described above.

¶ 26 When recommending the Leveraged Investment Strategy, the Respondent told the clients that:

a) the strategy was low risk or "risk-free";

b) he would limit the risk to some limited pre-determined amount; or

c) the distributions from the mutual fund investment would cover the loan payments while providing additional income.

¶ 27 The Respondent also showed some of the clients charts illustrating positive outcomes that the Respondent purportedly achieved using the same strategy.

¶ 28 The Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the following to some or all of the clients:

a) the nature of the distributions that the ROC Funds paid to investors, specifically that a substantial portion of the distributions paid could consist of a return of capital;

b) that the ROC Funds were subject to deferred sales charges ("**DSC**"), such that the clients could face penalties if they needed to redeem the mutual funds prior to the expiration of the 7-year DSC schedule;

c) the risk that if the ROC Funds declined in value, the sale of the ROC Funds could be insufficient to pay back the entirety of their investment loans or cover investment losses;

d) the risk that the ROC Funds might reduce, suspend or cancel altogether the distributions paid to investors due to declining market conditions, poor investment performance or other factors, such that the clients would be forced to incur out-of-pocket expenses to make the payments on their investment loans; and

e) the risk that if the investments performed poorly, the clients would still be responsible for repaying the investment loans, potentially putting any assets that they owned in jeopardy.

¶ 29 To the extent the Respondent disclosed to the clients that the value of the investments and/or distributions could decline, he assured them that they would have surplus distributions to cover any short fall with respect to the loan payments and that he would manage the investments to address any deficiencies such that the clients would not face any financial difficulties.

Clients Suffer Losses as a Result of Implementing the Leveraged Investment Strategy

¶ 30 Initially, when the 10 clients implemented the Leveraged Investment Strategy, the clients received sufficient distributions from the ROC Funds to make the investment loan payments and retain a surplus. At the Respondent's recommendation, 6 of the 10 clients, RS, KM, NK, SDD, PR, and NJ, opened non-leveraged accounts, in which they implemented pre-authorized contributions to purchase mutual funds using the surplus.

¶ 31 Beginning mid-2016, the value of the ROC Funds recommended by the Respondent declined in value to the point that all 10 clients were required to invest in different ROC Funds that provided a smaller distribution. As a result of the reduction in the distribution, each of the clients experienced a shortfall with respect to the required loan payments, which the clients paid by: (a) using surplus amounts saved from the ROC Fund distributions; (b) redeeming the investments made in the non-leveraged accounts described in the preceding paragraph; and (c) using other sources of income savings, or taking on additional debt from another source.

¶ 32 Between 2018 and 2020, after determining that they could no longer afford the loan payments, 8 of the 10 clients redeemed their mutual funds (both ROC Funds and amounts retained in the non-leveraged accounts described at paragraph ¶ 30)[5] and directed the proceeds to pay down the balance of their loans. In all cases the proceeds were insufficient to repay the loans, resulting in each of the clients having to pay the remaining balance out of pocket or face legal action from the lending institution.

¶ 33 As at October 26, 2020, the remaining 2 clients, clients MSK and FT, continued to hold their leverage loans and the underlying investments, with the value of the underlying investments being less than the balance outstanding on the loans.

Client IR

¶ 34 From September 24, 2009 to July 23, 2012, AA was registered as a dealing representative with Sterling Mutuals.

¶ 35 Client IR became a client of Sterling Mutuals in 2010. Prior to becoming a client of Sterling Mutuals, client IR had purchased mutual funds by borrowing $200,000 to invest (i.e., a leveraged investment) via two investment loans, which client IR had implemented in his accounts with a former dealing representative at the previous Member. Client IR transferred these mutual funds to Sterling Mutuals in kind in 2010.

¶ 36 From January 13, 2010 to February 7, 2012, the account opening documents and trade forms executed by client IR provided that AA, who was an Approved Person at Sterling Mutuals, was the Approved Person responsible for servicing client IR's accounts. However, client IR only ever dealt with and received investment advice and signed account forms provided by the Respondent. During this period (2010 to 2012), the Respondent was registered as an Approved Person with Sterling Mutuals.

¶ 37 At the time client IR became a client of Sterling Mutuals, the KYC information recorded for client IR overstated his investment knowledge (as sophisticated), risk tolerance (as high), annual income, and net worth in a manner that made it appear that borrowing to invest was suitable for client IR.

¶ 38 Beginning May 17, 2012, the Respondent became the Approved Person responsible for servicing client IR's accounts at the Member. After becoming the responsible Approved Person, the Respondent did not use due diligence to learn client IR's KYC information. In April and July 2014 and November 2015, the Respondent had client IR sign KYC update forms that inaccurately recorded KYC information in a manner similar to that described in the preceding paragraph.

¶ 39 In or around June 2014, the Respondent recommended that client IR redeem all of his existing leveraged

[5] As described below at paragraph ¶ 65, in some instances, clients redeemed their non-leveraged investments to fund their investment in the Respondent's trading business.

investments and invest the proceeds in a ROC Fund. Client IR followed the Respondent's recommendation.

¶ 40 Similar to the conduct that the Respondent engaged in with the 10 clients described above, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain to client IR the risks, benefits, material assumptions, costs, and features of ROC Funds.

¶ 41 In November 2015, the Respondent had client IR open a non-leveraged account with Sterling Mutuals, in which the Respondent had client IR set up a pre-authorized contribution using the surplus earned from his leveraged investment.

¶ 42 In October 2016, due to a decline in the value of the ROC Fund that he held, client IR was required to switch to a different ROC Fund with a lower distribution. Consequently, client IR was required to begin paying his investment loans out of pocket by relying on other sources of income and savings and by redeeming the other mutual fund investments that he held in his non-leveraged account.

¶ 43 In August 2018, client IR redeemed his leveraged accounts and non-leveraged account in their entirety and directed the proceeds towards the balance of the investment loans. As the proceeds were insufficient to pay off the loan in full, client IR has been unable to repay the loan and consequently, the lending institution has commenced a civil proceeding against client IR.

Conducting Securities Related Business at Another Member

¶ 44 From July 24, 2014 to January 16, 2019, AA, described above at paragraph ¶ 34, was registered as a dealing representative with Shah Financial Planning Inc. ("Shah Financial"), a Member of the MFDA.

¶ 45 From April 17, 2013 to July 31, 2015, BB was registered as a dealing representative with Shah Financial.

¶ 46 Between August 2014 and August 2018, AA and BB opened leveraged and non-leveraged accounts and submitted transactions for processing for clients KH, AK, RS, and KM (described above at paragraph ¶ 10) and individual SD (the spouse of client SDD described above at paragraph ¶ 10) at Shah Financial (collectively, the "Shah Clients").[6] However, the Shah Clients only received investment advice from and signed account documents provided by the Respondent. These Shah Clients either met AA or BB briefly or not at all.

¶ 47 All of the Shah Clients implemented the Leveraged Investment Strategy in their accounts at Shah Financial, as follows:

Shah Client	Loan Amount	Date of Loan Application
KM	$150,000	August 7, 2014
SD	$200,000	May 28, 2015
KH	$200,000	June 15, 2015
AK	$200,000	June 22, 2015
RS	$200,000	June 8, 2015

¶ 48 The KYC information for the Shah Clients, recorded in connection with the Leveraged Investment Strategy, was inaccurate as it overstated the Shah Clients' investment knowledge (as moderate), risk tolerance (as medium to high), annual income, and net worth in a manner that made it appear the Leveraged Investment Strategy was suitable.

¶ 49 False supporting documents were submitted to Shah Financial in connection with the investment loans obtained by all 5 Shah Clients, which increased the likelihood that the lending institutions would approve the Shah Clients' investment loans or that Shah Financial would approve the implementation of the Leveraged Investment Strategy in the Shah Clients' accounts.

¶ 50 Shah Financial's policies and procedures identified a TDSR above 35%, and a LNWR above 30% as "red flags", indicating that borrowing to invest may be unsuitable. While the annual income and net worth recorded for the Shah Clients made it appear that they had sufficient resources to engage in leveraged investing, the

[6] Clients KH, AK, RS, and KM also held accounts at Sterling Mutuals serviced by the Respondent, which are discussed above.

Shah Clients' actual annual incomes and net worth resulted in TDSRs and LNWRs as follows:

Client	Loan	TDSR	LNWR
KM	$150,000	97.38%	77.13%
SD	$200,000	54.25%	200.00%
KH	$200,000	107.96%	73.13%
AK	$200,000	215.91%	68.73%
RS	$200,000	52.63%	65.79%

¶ 51 Similar to the circumstances described above with respect to the 10 clients, many, if not all, of the Shah Clients relied entirely upon the distributions generated by the ROC Funds to pay the costs of servicing their investment loans; did not have the means to service their investment loans from their own income and assets; had insufficient investment knowledge to appreciate the risks of the Leveraged Investment Strategy; and had a low risk tolerance, such that the Leveraged Investment Strategy exceeded the level of risk the clients were willing to assume.

¶ 52 In addition, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risk, benefits, material assumptions, costs, and features of the Leveraged Investments to the Shah Clients.

¶ 53 Between July 2015 and October 2016, Shah Clients KM, SD, KH, AK, and RS signed additional account opening documents in connection with non-leveraged accounts and KYC update forms, which also inaccurately recorded (and overstated) the clients' investment knowledge, risk tolerance, annual income, and net worth.

¶ 54 Between July and September 2015, Shah Clients SD, KH, AK and RS opened non-leveraged accounts at Shah Financial, in which they implemented pre-authorized contributions to purchase mutual funds using the surplus earned from the leveraged investments purchased in their accounts at Shah Financial.

¶ 55 As described above at paragraphs ¶ 31 to ¶ 32 with respect to the 10 clients, beginning mid-2016, the distributions from the ROC Fund investments received by the Shah Clients became insufficient to pay the required loan payments, and between 2018 and 2020, the Shah Clients had to redeem investments to pay down the balance of their loans,[7] which, in all cases was insufficient to pay the loans down in full. Consequently, each of the Shah Clients had to pay the remaining balance owing on their investment loans out of pocket or face legal action from the lending institution.

¶ 56 Collectively, all of the clients at Sterling Mutuals and Shah Financial described above experienced losses of approximately $449,596. These investment losses have caused significant financial hardship for the clients.

¶ 57 The Respondent earned at least $71,000 in commissions form his recommendations to clients to engage in the Leveraged Investment Strategy at Sterling Mutuals.

Allegation #1 – Inaccurately Recorded or Misrepresented KYC Information

¶ 58 By engaging in the conduct described above at paragraphs ¶ 12 to ¶ 16 and ¶ 38 to ¶ 40, the Respondent failed to exercise due diligence to learn or accurately recorded or intentionally misrepresented the KYC information with respect to at least 11 clients, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #2 – Submission of False Client Documents to Support Leverage Loans

¶ 59 By engaging in the conduct described above at paragraphs ¶ 17 to ¶ 18, the Respondent submitted supporting documents to the Member in connection with loan applications of at least 4 clients, which the Respondent knew or ought to have known contained false, incorrect, or misleading information, contrary to MFDA Rule 2.1.1.

Allegation #3 – Failed to Use Due Diligence to Ensure Suitability of Recommendations

¶ 60 By engaging in the conduct described above at paragraphs ¶ 19 to ¶ 24, the Respondent recommended

[7] As described below at paragraph ¶ 65, in some instances, clients redeemed their non-leveraged investments to fund their investment in the Respondent's trading business.

and implemented a leveraged investment strategy for the accounts of at least 10 clients, without ensuring that the leveraged investment strategy and the ROC Funds were suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #4 – Misrepresented or Failed to Adequately Explain the Features and Risks of Recommendations

¶ 61 By engaging in the conduct described above at paragraphs ¶ 25 to ¶ 29 and ¶ 39 to ¶ 40, the Respondent misrepresented or failed to adequately explain risks, benefits, material assumptions, costs, and features of the leveraged investment strategy and the ROC Funds that he recommended and/or implemented for the accounts of at least 11 clients, contrary to the Member's policies and procedures and MFDA Rules 2.2.1 and 2.1.1.

Allegation #5 – Conducting Securities Related Business Through Another Member

¶ 62 Based on the conduct described above at paragraphs ¶ 44 to ¶ 47, while registered as a dealing representative of a Member, the Respondent engaged in securities related business on behalf of another Member that the Respondent was not registered with, contrary to MFDA Rules 1.1.1 and 2.1.1.

Allegation #6 – Misappropriated Client Monies

¶ 63 Beginning in or about the latter part of 2016, the Respondent recommended to clients KM, NK, SDD, IR, AK, KH, RS, and Shah Client SD (collectively, the "Trading Business Clients"), that they invest in what he described to them as a "trading business" that he was developing.

¶ 64 At around this time, as described above at paragraphs ¶ 31, ¶ 42, and ¶ 55, the Trading Business Clients began to experience a short fall with respect to the distributions that they were receiving and were required to cover a portion of their loan payments from the sale of other investments or out of pocket. The Respondent recommended that the Trading Business Clients invest in the Respondent's "trading business" as a means to generate a return to pay their investment loans.

¶ 65 Some or all of the Trading Business Clients redeemed their mutual funds held in non-leveraged accounts at Sterling Mutuals or at Shah Financial to fund their investment in the Respondent's "trading business." To invest in the "trading business," the Trading Business Clients, at the Respondent's direction, provided monies as follows:

a) on or about September 23, 2016, Trading Business Client RS transferred $48,500 to the Respondent;

b) on or about October 21, 2016, Trading Business Clients KM and NK provided a $40,000 bank draft to a third party, CC (who the Respondent described as his business partner), and on or about May 15, 2017, the clients provided a $15,500 cheque to the Respondent;

c) on or about May 11, 2017, Trading Business Clients SD and SDD transferred $31,000USD to AA, who the Respondent described as his partner in the "trading business";

d) on or about July 23, 2017, Trading Business Clients AK and KH transferred $45,000USD to the Respondent; and

e) on or about August 22, 2018, Trading Business Client IR transferred $24,426 to the Respondent.

¶ 66 In total, the Respondent received CDN$88,426 and US$45,000 from the Trading Business Clients, which he used to pay personal expenses. The Respondent directed that CDN$40,000 and US$31,000 be paid to CC and AA, respectively. None of the monies were used in connection with any "trading business."

¶ 67 None of the Trading Business Clients received any return on the monies they provided to the Respondent or to the third parties at the Respondent's direction, as described above.

¶ 68 The Respondent has not repaid or accounted for the monies described above.

¶ 69 By virtue of the foregoing, the Respondent misappropriated or failed to account for at least CDN$128,426 and US$76,000 from at least 7 clients and 1 individual, contrary to MFDA Rule 2.1.1.

Allegation #7 – Securities Related Business Outside the Member

¶ 70 In connection with the "trading business," the Respondent told client SDD and Shah Client SD (who were

spouses) to open a trading account with a Futures Commission Merchant in the U.S. Based on the Respondent's direction, on or about September 23, 2016, SDD and SD opened such an account and deposited US$9,990.

¶ 71 From September 23, 2016 to March 25, 2019, the Respondent conducted or provided instructions in connection with currency trading in the account set up by SD and SDD. Over this period, the clients deposited a total of US$15,990 and withdrew a total of approximately US$14,068.

¶ 72 None of the currency trading conducted by the Respondent or for which he gave instructions was carried on for the account of Sterling Mutuals or through its facilities.

¶ 73 By recommending and conducting or providing instructions for currency trading in the account of SDD and SD, the Respondent engaged in securities related business outside the Member, contrary to the Member's Policies and Procedures, MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2, and the terms of the Respondent's registration as a dealing representative.

Allegation #8 – Personal Financial Dealings with a Client

¶ 74 As described above at paragraphs ¶ 31 and ¶ 54, beginning in or about October 2016, client SDD and Shah Client SD (spouses) began to experience a shortfall between the leveraged investment distributions and the loan payments. By the middle of 2018, SDD and SD had exhausted all surplus distributions saved from the leveraged investments and all proceeds from the redemption of the investments held in their non-leveraged accounts.

¶ 75 At this time, the Respondent offered to help SDD and SD pay their investment loan payments by making monthly transfers of $600 to a joint account held by SDD and SD. From August 2, 2018 to December 5, 2018, the Respondent made such monthly transfers (with one transfer being $699), totaling approximately $3,699.

¶ 76 The Respondent did not disclose to the Member that he was providing monies to client SDD towards the payment of her investment loan payments.

¶ 77 By virtue of the foregoing, the Respondent engaged in personal financial dealings with a client which gave rise to a conflict or potential conflict of interest, that the Respondent did not disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

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
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Alan Melamud
Email: amelamud@mfda.ca

a **Reply** shall be filed by:

a) providing four 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 one 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.

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: Muhamad Asghar Sadiq

ORDER

(ARISING FROM THE PENALTY HEARING ON NOVEMBER 22, 2022)

WHEREAS on September 14, 2021, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 (the "Notice of Hearing") in respect of a disciplinary proceeding commenced against Muhamad Asghar Sadiq (the "Respondent") which shall take place before a hearing panel of the Central Regional Council (the "Hearing Panel");

AND WHEREAS in accordance with s. 19.13 of MFDA By-Law No. 1, the first appearance in this hearing was held by teleconference before a public representative of the Central Regional Council of the MFDA (the "Chair of the Hearing Panel") on November 22, 2021;

AND WHEREAS the Hearing on the Merits in this matter was held on August 16, 2022 and November 2, 2022 was held before the Hearing Panel;

AND WHEREAS the Respondent did not file a Reply in this proceeding, did not attend the Hearing, was not represented by counsel at the Hearing, and did not otherwise participate in the Hearing;

AND WHEREAS the Hearing Panel considered the evidence filed by and the submissions of Staff;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

a) between March 2011 and October 2016, failed to use due diligence to learn and accurately record or intentionally misrepresented the essential facts relative to at least 11 clients, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2;

b) between August 2014 and June 2015, submitted supporting documents to the Member in connection with loan applications of at least 4 clients, which he knew or ought to have known contained false, incorrect, or misleading information, contrary to MFDA Rule 2.1.1;

c) between March 2011 and July 2015, failed to ensure that the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 10 clients were suitable for the clients, in keeping with the clients' risk tolerances, investment knowledge, and ability to withstand the potential costs and investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1;

d) between March 2011 and July 2015, misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, costs, and features of the leveraged investment strategy and the underlying investments that he recommended and implemented in the accounts of at least 11 clients, thereby failing to ensure that the leverage investment strategy and underlying investments were suitable for the clients, contrary to MFDA Rules 2.2.1 and 2.1.1;

e) between August 2014 and August 2018, while registered as a dealing representative of a Member, engaged in securities related business on behalf of another Member that he was not registered with, contrary to MFDA Rules 1.1.1 and 2.1.1;

f) between October 2016 and August 2018, misappropriated or failed to account for monies received from 7 clients and 1 individual, contrary to MFDA Rule 2.1.1; and

g) between August 2, 2018 and December 5, 2018, engaged in personal financial dealings with a client by providing the client with monies to pay her investment loan payments, which gave rise to a conflict or potential conflict of interest that he did not disclose to the Member or otherwise address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to the Member's policies and procedures and MFDA Rules 2.1.4, 2.1.1, 2.5.1, and 1.1.2.

IT IS HEREBY ORDERED THAT:

¶ 1 The Respondent has been appropriately served with the Notice of Hearing in accordance with Rules 4.2(1)(b), (d) and 4.8(1) of the MFDA Rules of Procedure.

¶ 2 The Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of the MFDA By-law No. 1.

¶ 3 The Respondent shall pay a fine in the amount of $750,000 on the date of this Order, pursuant to s. 24.1.1(b) of MFDA By-law No.1.

¶ 4 The Respondent shall pay costs in the amount of $49,662.50 on the date of this Order, pursuant to s. 24.2 of MFDA By-law No.1.

¶ 5 If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 2nd day of November, 2022.

"John Lorn McDougall"
John Lorn McDougall, K.C.
Chair

"Brigitte J. Geisler"
Brigitte J. Geisler
Industry Representative

"Timothy J. Pryor"
Timothy J. Pryor
Industry Representative