

Re Jenkins

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Dean Martin Jenkins

2020 IIROC 44

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: December 8, 2020 in Toronto, Ontario by videoconference

Decision: December 8, 2020

Reasons for Decision: December 18, 2020

Hearing Panel:

Emily Cole, Chair, Peter Gribbin and Guenther Kleberg

Appearance:

Kathryn Andrews, Senior Enforcement Counsel

Mitchell Fournie, for Dean Martin Jenkins

Dean Martin Jenkins (present)

DECISION ON LIABILITY AND ADJOURNMENT OF SANCTIONS HEARING

INTRODUCTION

¶ 1 This was a hearing to consider whether the admissions made by the Respondent and the facts agreed to in a November 30, 2020 Agreed Statement of Fact between Staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, Dean Martin Jenkins was sufficient evidence to find liability against him. The Respondent requested that if this Panel found him liable, we adjourn the Sanctions Hearing pending the release of the Mutual Fund Dealers Association (MFDA)'s sanctions decision in a related proceeding.

BACKGROUND

¶ 2 IIROC commenced a proceeding against the Respondent by Notice of Hearing dated February 28, 2020. The Statement of Allegations alleged that the Respondent contravened Dealer Member Rules 18.14 and 29.1.

¶ 3 IIROC Staff and the Respondent reached an Agreed Statement of Facts on November 30, 2020 attached to this decision as Schedule A. On December 1, 2020, the parties filed the Agreed Statement of Facts and asked that the Merits Hearing be converted into a Liability Hearing.

¶ 4 The MFDA commenced a disciplinary proceeding against the Respondent by Notice of Hearing dated January 15, 2020 attached to this decision as Schedule B. The MFDA Statement of Allegations alleged the Respondent engaged in conduct contrary to the MFDA By-laws, Rules and/or Policies. Most of the alleged misconduct was similar to the misconduct alleged in this case.

¶ 5 On November 2, 2020, MFDA Staff and the Respondent reached an Agreed Statement of Facts in which the Respondent admitted to facts constituting contraventions of MFDA By-laws, Rules or Policies. The MFDA Agreed Statement of Facts is attached to this decision as Schedule C.

¶ 6 On November 3, 2020, the MFDA held a Sanctions Hearing. Following submissions from the parties concerning sanctions, the MFDA Hearing Panel reserved its judgement and advised that it will issue a written decision and provide its reasons in due course. The MFDA Press Release advising that the MFDA Hearing Panel reserved its judgment on sanctions is attached to this decision as Schedule D.

ANALYSIS

FIRST ISSUE: WHETHER THE FACTS AGREED TO IN THE STATEMENT OF FACTS ESTABLISH THE ALLEGED CONTRAVENTIONS

¶ 7 The Respondent admits to the following contravention:

Between November 2013 and February 12, 2016, the Respondent facilitated off-book investments for various clients without the knowledge or approval of his Dealer Member and received remuneration for the investments, contrary to Dealer Member Rules 18.14 and 29.1.

¶ 8 The Outside Business Activity Rule 18.14 provides:

(1) A Registered Representative or Investment Representative may have, and continue in, any business activity outside of the Dealer Member, including another gainful occupation if:

(a) The securities commission in the jurisdiction in which the Registered Representative or Investment Representative acts or proposes to act as a Registered Representative or Investment Representative, or the securities legislation or policies administered by such securities commission, does not prohibit him or her from devoting less than his or her full time to the securities business of the Dealer Member employing him or her;

(b) The Dealer Member establishes and maintains procedures acceptable to the Corporation to ensure continuous service to clients and to address potential conflicts of interest;

(c) The Registered Representative or Investment Representative informs the Dealer Member of the outside business activity and obtains the Dealer Member's approval to engage in such outside business activity prior to engaging in such outside business activity;

(d) The Dealer Member notifies the Corporation of the outside business activity within the time period and manner required by the applicable National Instrument or Regulation; and

(e) The outside business activity is not:

(i) One which would bring the securities industry into disrepute; or

(ii) With another dealer that is a member of a recognized self regulatory organization unless:

(1) Such dealer is a related company of the Dealer Member employing the Registered Representative or Investment Representative and the Dealer Member and related company provide cross-guarantees pursuant to Rule 6.6, and

(2) Such outside business activity is not contrary to the provisions of the applicable securities legislation or any policy made pursuant thereto.

¶ 9 The Business Conduct Rule 29.1 was in effect at the time of the contravention and provided:

Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member

- (i) shall observe high standards of ethics and conduct in the transaction of their business,
- (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and
- (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board. For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

¶ 10 The overview of the Statement of Facts states:

Overview

The Respondent was a Registered Representative at Edward Jones Inc. in the St. Catharines, Ontario area between 2013 and February 12, 2016 (**the Relevant Period**).

During the Relevant Period, the Respondent facilitated the off-book purchase of syndicated mortgage investments for numerous clients, without telling his employer of his involvement with these products or his clients' investments. The Respondent received compensation of \$55,450 as a result of his clients' off-book purchases during the Relevant Period.

The Respondent has not been registered with IIROC since leaving Edward Jones. The Respondent has advised that he has no intention of ever becoming re-registered in the industry.

The Respondent has no prior disciplinary history with IIROC.

¶ 11 We find that the admissions made by the Respondent and the facts agreed to in the November 30, 2020 Agreed Statement of Facts establish the contravention.

SECOND ISSUE: WHETHER THE SANCTIONS HEARING SHOULD BE ADJOURNED PENDING THE MFDA SANCTIONS DECISION

¶ 12 We decided to exercise our discretion under subparagraph 8422(5) of the Rules of Procedure to adjourn the Sanctions Hearing until after the MFDA sanctions decision is released for the following reasons:

¶ 13 The Respondent has a right of procedural fairness which includes the right to be heard. In *Re Darrigo*, an IIROC hearing panel acknowledged the right of procedural fairness in the context of a request for an adjournment.

The Panel acknowledges that the law on procedural fairness requires that a person must know the case being made against him and be given an opportunity to answer it before the decision maker. The details of what this right entails are well established in law and need not be repeated in these reasons....

Re Darrigo 2014 IIROC 48 at para 9

¶ 14 In *Re Darrigo*, the Hearing Panel went on to state that the individual's right of procedural fairness is flexible and must be balanced against IIROC's purpose and the need for efficient decision making:

...It is also clear law that the scope and extent of the right to procedural fairness is flexible depending on the circumstances of the particular case and that rights of the individual must be balanced against the effective and expeditious performance of public duties. For example, in "Hearings Before Administrative Tribunals", Macauley & Sprague, Third Edition, paragraph 12.2 (c), the authors state "... the essence of administrative law is the balancing of the rights to be accorded individuals in the protection of their rights with the need of society for efficiency in administrative decision-making..." and " An agency exists to accomplish some statutory purpose....One cannot determine the fairness of a situation without taking into account that which the agency is supposed to accomplish and the practical constraints facing it in its task."

Re Darrigo, *ibid*

¶ 15 IIROC's primary purpose is to protect investors. In this case, there is no ongoing investor harm, and we are assured there is no risk of future investor harm. The Respondent is no longer registered with IIROC. He has no intention of ever becoming re-registered in any capacity in the securities industry. The MFDA Agreed Statement of Fact states that the Respondent is no longer registered with the MFDA.

¶ 16 In a Sanctions Hearing, the right to procedural fairness includes a right to lead relevant evidence and to make submissions. The MFDA proceeding arises from similar misconduct. Therefore, the MFDA sanctions decision may be relevant to our determination of the appropriate sanctions to be imposed upon the Respondent in this proceeding.

¶ 17 IIROC Sanction Guidelines state that sanctions should prevent and discourage future misconduct by the Respondent (specific deterrence) and to deter others from engaging in similar misconduct (general deterrence).

¶ 18 Sanctions must be proportionate to the misconduct. Sanctions must also be tailored to act as a specific deterrent to the Respondent.

IIROC Sanction Guidelines, February 2, 2015

¶ 19 The effectiveness of general deterrence relies on proportionate and consistent sanctions so that the industry knows what is expected of it:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus, the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment

Re Mills, [2001] I.D.A.C.D. No. 7 at p. 3

¶ 20 We find that the Respondent's right to procedural fairness far outweighs any potential prejudice to the public interest in the efficient and timely conduct of proceedings.

¶ 21 Enforcement Staff consents to the adjournment.

CONCLUSION

¶ 22 We find the Respondent liable for the contravention as admitted in the Agreed Statement of Facts.

¶ 23 The Sanctions Hearing in this matter is adjourned and shall be returned to this Panel promptly after the MFDA sanctions decision is released.

Dated at Toronto, Ontario this 18 day of December, 2020.

Emily Cole

Peter Gribbin

Guenther Kleberg

Schedule A

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. The Enforcement Department of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (the “Investigation”) into the conduct of the Respondent Dean Martin Jenkins (“the Respondent”).
2. The Investigation discloses matters for which the Respondent may be disciplined by an IIROC hearing panel (the “Hearing Panel”).
3. IIROC Staff (“Staff”) and the Respondent agree and admit to the facts outlined below.

II. CONTRAVENTION

4. The Respondent admits to the following contravention:

Between November 2013 and February 12, 2016, the Respondent facilitated off-book investments for various clients without the knowledge or approval of his Dealer Member and received remuneration for the investments, contrary to Dealer Member Rules 18.14 and 29.1.

III. STATEMENT OF FACTS

Overview

5. The Respondent was a Registered Representative at Edward Jones Inc. (“Edward Jones”) in the St. Catharines, Ontario area between 2013 and February 12, 2016 (the “Relevant Period”).
6. During the Relevant Period, the Respondent facilitated the off-book purchase of syndicated mortgage investments for numerous clients, without telling his employer of his involvement with these products or his clients’ investments. The Respondent received compensation of \$55,450 as a result of his clients’ off-book purchases during the Relevant Period.
7. The Respondent has not been registered with IIROC since leaving Edward Jones. The Respondent has advised that he has no intention of ever becoming re-registered in the industry.
8. The Respondent has no prior disciplinary history with IIROC.

The Tier 1 Participants

9. Tier 1 Transaction Advisory Services Inc. (“Tier 1 TAS”) was a management firm specializing in financing

real estate related projects and the creation and design of mortgage products.

10. First Commonwealth Mortgage Corporation (“First Commonwealth”), a mortgage brokerage, was licensed by the Financial Services Commission of Ontario (“FSCO”, now known as “FSRA”) and was a distributor of Tier 1 TAS products.
11. Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) was licensed by FSCO and was a distributor of Tier 1 TAS products. The above three companies are collectively referred to below as “Tier 1”.
12. Olympia Trust Company (“Olympia Trust”) was the custodian of client funds used in investments in various real estate development projects connected with Tier 1.
13. JC was an acquaintance of the Respondent and was involved with marketing, and promoting Tier 1 investments. JC was not registered with IIROC or the Mutual Fund Dealers Association of Canada. JC was not licensed by FSCO during the Relevant Period.
14. The client investments were made in various Tier 1 syndicated mortgage projects, such as Whitby Boathaus, Memory Care Investments Ltd (“Memory Care”) (which were nursing homes in Burlington, Oakville or Kitchener) and Textbook Campus Suites Inc. (“Textbook”) (which were university/college student housing in London or Ottawa).

The Respondent’s Activity

15. From late 2013 until early February 2016, the Respondent facilitated clients’ investments in various Tier 1 real estate development projects, without disclosing his activities to his Dealer Member.
16. Some clients sold investments in their Edward Jones accounts in order to transfer funds to Olympia Trust with the Respondent’s assistance. Olympia Trust then provided the funds to Tier 1, who then dealt with the various building companies.
17. Some clients’ funds went from their bank accounts or other sources to Olympia Trust, with the Respondent’s assistance (rather than directly from their Edward Jones accounts).
18. Clients received or were offered on-line access to an Olympia Trust account where they could access details about their investment. Other clients received Olympia Trust statements by mail, which set out any quarterly interest payments made to them, as well as monthly and yearly fees paid by the clients to Olympia Trust.
19. The Respondent states that he would advise clients that he would receive compensation for his involvement with the Tier 1 investments, however, not all clients could recall being advised of this, or if they were, the specific amount or percentage.
20. During the Relevant Period, the Respondent facilitated off-book purchases for clients of at least \$980,000 in Tier 1 investments. Chart 20(a) below is a summary of the funds transferred from clients’ Edward Jones accounts to Olympia Trust. Chart 20(b) is a summary of the funds provided by the clients to Olympia Trust with the Respondent’s assistance:

Chart 20(a) Funds from Edward Jones Accounts

Date	Client	Amount Transferred to Olympia Trust
February 19, 2014	Ms RPe	54,780
May 14, 2014	RS	26,276

Date	Client	Amount Transferred to Olympia Trust
May 16, 2014	CS	26,364
September 30, 2014	VF	50,320
October 24, 2014	MR	15,000
February 23, 2015	Ms RPe	12,545
March 18, 2015	EK	32,836
July 31, 2015	RS	29,343
September 15, 2015	MR	11,200
November 24, 2015	AK	18,118
February 5, 2016	LB	34,655
February 8, 2016	RP	150,027
February 8, 2016	CP	50,150
		Total: \$511,614

Chart 20(b) Funds provided by the Clients

Date	Client	Amount Invested
November 2013	Mr RPe	25,500
November 2013	Mr RPe	38,200
February 2014	Mr RPe	315,000
July 2014	GJ	40,300
October 2015	GH	50,000
		Total: \$469,000

Details of Certain Clients' Investments

GJ

21. GJ is a tradesman and became the Respondent's client in 2013.
22. In 2014, the Respondent told GJ about Tier 1 investments. GJ told the Respondent that his pension funds would be available for investment shortly. The Respondent advised GJ to invest these funds in Whitby Boathaus (Scollard Development Corporation), a Tier 1 project. The Respondent told GJ that:
 - Tier 1 was a mortgage investment that paid 8% interest for three years;
 - a lot of people were purchasing this type of investment, and the mortgage closing date was approaching; and
 - an account would be opened up for GJ at Olympia Trust.
23. GJ states that the Respondent did not mention any of the risks associated with Whitby Boathaus. He

discussed other Tier 1 projects that he said had been successful. The Respondent brought him the Whitby Boathaus paperwork for signature at his house. GJ had not heard of JC prior to investing in Whitby Boathaus. In July 2014, GJ invested his pension funds of \$40,300 in Whitby Boathaus following the Respondent's advice.

24. GJ was not aware who made the arrangements with Olympia Trust. According to the Respondent, JC arranged for the transfer of funds from GJ to Olympia Trust. GJ received the Olympia Trust Account Opening Documents and Investor Closing Book in the mail from Olympia Trust. JC as well as RSi (a Tier 1 principal) were both listed on GJ's Olympia Trust account statement dated January 1, 2014 to January 15, 2015 as having authorization to obtain information about GJ's account at Olympia Trust.
25. In 2014 GJ was 58 years old. He had very limited investment knowledge. The Respondent failed to adequately review or discuss the suitability of investing GJ's entire pension in the Tier 1 investment. Given GJ's personal circumstances, the Tier 1 investment recommended by the Respondent was not suitable for him.
26. GJ paid fees to Olympia Trust regarding his investment and also received interest payments from his investment in Whitby Boathaus.
27. While GJ paid fees and received interest payments regarding his Tier 1 investment, the amount, if any, that GJ received for the return of his principal investment is unknown.

Ms. RPe and Mr. RPe

28. Ms. RPe and Mr. RPe are a married couple and had been the Respondent's clients for some time. In late 2013, the Respondent contacted Mr. RPe to suggest an investment in the mortgage business. Mr. RPe agreed to discuss it and the Respondent and JC attended at the Pes' house on more than one occasion to discuss Tier 1 investments. The Pes had never heard of JC until he came to the Pes' house with the Respondent to discuss Tier 1 investments.
29. The first property discussed was a Tier 1 investment known as Vaughan Crossing. The Respondent told them that the mortgage closing date was approaching. Both the Respondent and JC provided Mr. RPe with Tier 1 project information.
30. Based on the Respondent's suggestion, in November 2013, Mr. RPe invested approximately \$63,000 in two investments in the Tier 1 project known as Vaughan Crossing. The Respondent suggested the amounts, which came from Mr. RPe's TFSA and a spousal RRSP. These funds were provided by Mr. RPe to Olympia Trust with the Respondent's assistance. The Investor Closing Book indicated that the interest rate was 8% and would be 12% for the final year.
31. In February 2014, Mr. RPe invested \$315,000 in a Tier 1 project known as Memory Care Kitchener, based on the Respondent's advice. These funds came from Mr. RPe's LIRA and were provided to Olympia Trust with the Respondent's assistance. The paperwork for this investment was provided to Mr. RPe by the Respondent.
32. In February 2014, Ms. RPe invested in Memory Care Kitchener, in the amount of approximately \$54,000 based on the Respondent's advice. These funds were transferred from her Edward Jones account to Olympia Trust.
33. Mr. RPe met directly with JC on occasion, and maintained contact with him throughout the duration of the investment.
34. Ms. RPe had limited investment knowledge. In 2014 she was 57 years old and her spouse had recently

ceased to be employed. The Respondent failed to adequately discuss the risks or suitability of the Tier 1 investment with her. The transfer of approximately \$54,000 from Ms. RPe's Edward Jones account in February 2014 represented 95% of her portfolio at the time.

35. The Pes paid fees and received interest payments on their Tier 1 investments from November 2013 to 2016.

36. The principal amount, if any, paid out to the Pes regarding their Tier 1 investments is unknown.

The Ks

37. GK and EK are husband and wife and had been clients of the Respondent for some time. They operate a farm and EK is a lab technician.

38. The Respondent introduced the Ks to JC with respect to life insurance policies. JC first mentioned the name Tier 1 to GK. The Respondent and JC met with the Ks at their house to discuss insurance and Tier 1 investments on more than one occasion. JC brought some Tier 1 documentation to the Ks house.

39. The Respondent told GK that Tier 1 was an alternative product, a great investment and would have interest of 8%, with a 4% bonus at the end. The Respondent told the Ks that they should invest in Tier 1. The Ks stated that both the Respondent and JC told the Ks that the investment was almost as guaranteed as a GIC. The Respondent suggested that the Ks use a portion of EK's RRSP and move it into a Tier 1 investment.

40. In March 2015, EK purchased a Tier 1 investment in the amount of approximately \$32,000. The Respondent did not explain the risks or downside of selling securities in EK's Edward Jones account in order to purchase the Tier 1 investment. Funds were transferred from EK's Edward Jones account to Olympia Trust.

41. Although the Respondent suggested investing further funds into a Tier 1 project, the Ks declined.

42. The principal amount, if any, paid out to EK regarding her Tier 1 investment is unknown.

GH

43. GH was a tradesman and became a client of the Respondent in August 2014. GH had not previously invested in syndicated mortgages. The Respondent told him about various Tier 1 projects and encouraged him to invest. GH states that the Respondent told him that he himself had invested or was going to invest.

44. The Respondent provided GH with marketing information regarding Tier 1 projects called Memory Care Burlington and Memory Care Kitchener. The Respondent also told GH that this would be a good way to diversify his investments and that the investment was closing shortly. He also told GH that there would be interest payments of 8% with an additional bonus of 4% at the end.

45. GH did not meet JC until after he had decided to invest in the Tier 1 projects. JC was present with the Respondent at two meetings with GH, including when the paperwork was signed by GH. Later on, when GH started to have questions about his investment, most of his contact was with JC.

46. In October 2015, based on the Respondent's advice, GH invested \$18,800 in Memory Care Burlington and \$31,200 in Memory Care Kitchener, for a total investment of \$50,000. These funds were from his savings and were provided to the Respondent in a certified cheque payable to what GH thought was a Tier 1 entity.

47. GH paid fees and received interest payments on his investment. The amount, if any, which GH received as a return on his principal investment is unknown.

The Ss

48. RS and CS, a married couple, had been clients of the Respondent for some time. In May 2014, CS transferred some \$26,000 to an Olympia Trust account from her Edward Jones account, to purchase a Tier 1 investment known as Memory Care, based on the Respondent's advice. CS paid fees of \$1,522 and received interest payments of \$4,325 regarding this investment. No interest was paid after July 2016 although fees continued to be deducted until February 2018. Olympia Trust statements indicate a payout of \$4,479 in January 2018 regarding CS's investment. CS sustained a loss regarding her Tier 1 investment.
49. Based on the Respondent's advice and by way of a May 2014 transfer from his Edward Jones account, RS invested some \$26,000 in September 2014 to purchase a Tier 1 project known as Scollard Development. He also transferred some \$29,000 in July 2015 to purchase a Tier 1 project known as Textbook. RS paid total fees of \$1,976 and received quarterly interest payments totaling \$6,134. No interest was paid after September 2016 although some fees continued to be withdrawn until April 2018. Olympia Trust statements indicate a payout of \$10,248 in January 2018 regarding the Scollard Development project and \$3,928 in March 2018 regarding the Textbook project. RS sustained a loss regarding his Tier 1 investments.

Other Clients

50. In addition to the eight clients listed above, the Respondent facilitated the purchase of Tier 1 investments with other clients during the Relevant Period, which clients are listed in the chart at paragraph 20(a) above. The Respondent advised that at times JC was present during these discussions and provided Tier 1 project documentation to clients. While the Respondent did not know the exact dates these investments were made or the specific amounts, amounts transferred by six of these other clients (VF, MR, AK, LB, RP and CP) out of their Edward Jones accounts between September 2014 and February 8, 2016 in order to invest in Tier 1 projects, totaled some \$328,000. The Respondent did not disclose his involvement with these investments to his Member firm.

Compensation

51. The Respondent told Staff that he received compensation from JC regarding Tier 1 investments during the Relevant Period, ranging from 1% to 3% of the investment. The Respondent advises that he received \$55,450 in net compensation relating to Tier 1 investments during the Relevant Period.

Outside Business Activity

52. Edward Jones' Policies and Procedures Manual (the "Manual") provides that no associate may participate in an outside business activity unless written approval has been granted. Outside business activity is defined in the Manual as engaging in any business activity for another entity, accepting compensation from any other entity etc.
53. In 2014 and 2015, the Respondent did not indicate any outside business activity on annual firm audit questionnaires.
54. The Respondent did not obtain written approval from his Dealer Member nor did he inform Edward Jones of his actions regarding Tier 1 and his clients' purchase of these investments.

FSCO Orders

55. In October 2016, after issuing a Notice of Proposal, FSCO issued an interim order suspending the licenses of Tier 1 Mortgage and First Commonwealth, for a number of contraventions, including failing to disclose risks and conflict of interest.
56. FSCO’s interim order stated, amongst other things, that:
- Examinations of the First Commonwealth and Tier 1 Mortgage and other enquiries by FSCO staff revealed a number of serious contraventions of the [*Mortgage Brokerages, Lenders and Administrators*] Act. The contraventions are widespread and reveal systemic disregard for the basic consumer protection measures set out in the Act. The most serious contraventions relate to the failure to provide written disclosure of material risks, disclosure of conflicts of interest, the failure to ensure that syndicated mortgage investments (“SMIs”) (a mortgage for which there is more than one lender or investor) were suitable for the investor to whom they were presented and the provision of false and misleading information as to the characterization of appraisals as reflecting the “as is” value of the relevant properties when such appraisals were actually premised on the successful completion of the proposed development.
- These contraventions exacerbate the risk inherent to the type of SMIs sold by the brokerages in this case. Such SMIs function as a form of mezzanine-like financing provided by individual, consumer lenders, which allows the developer to finance early development costs. Where the value of the property is misrepresented to investors whose security will be subordinated to senior ranking construction loans and where investors are provided with incomplete disclosure, the risks to investors are significant.
57. The Respondent was not an officer or director of Tier 1 Mortgage, First Commonwealth, Tier 1 TAS or Olympia Trust.
58. In January 2018, the mortgage brokerage licenses of Tier 1 Mortgage and First Commonwealth were revoked by FSCO.

DATED at St. Catharines, Ontario this “30” day of November, 2020.

“Dean Martin Jenkins”

Respondent Dean Martin Jenkins

“Kathryn Andrews”

Kathryn Andrews

Senior Enforcement Counsel

on behalf of Staff of the Investment Industry
Regulatory Organization of Canada



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: Dean Martin Jenkins

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 (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) in the hearing room at the MFDA offices, 121 King Street West, Suite 1000, Toronto, Ontario on March 31, 2020 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 Dean Martin Jenkins (“Respondent”).

DATED this 15th day of January, 2020.

“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@mfd.ca

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

Allegation #1: In 2016, the Respondent recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and five other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, or 2.5.1.

Allegation #2: In 2016, the Respondent engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and five other investors that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c))¹, 2.1.1, 1.1.2, or 2.5.1.

Allegation #3: In 2016, the Respondent made referrals in respect of the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and five other investors outside the Member, thereby participating in a referral arrangement that was not approved by the Member and to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 1.1.2, or 2.5.1.

Allegation #4: The Respondent misled the Member and MFDA Staff during the course of an investigation into his conduct when he:

- a) on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages; and
- b) on January 11, 2018, in response to a request for information from MFDA Staff, provided another misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages;

thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

¹ Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

Allegation #5: Between February 2016 and February 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

PARTICULARS

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

Registration History

1. From 2009 to February 12, 2016, the Respondent was registered in Ontario with a Dealer Member of the Investment Industry Regulatory Organization of Canada.
2. From February 22, 2016 to March 31, 2018, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.
3. The Respondent is not currently registered in the securities industry in any capacity.
4. At all material times, the Respondent conducted business in the St. Catharines, Ontario area.

Bulletin #0583-P

5. On November 12, 2013, the MFDA issued Bulletin #0583-P Transactions by Approved Persons in Syndicated Mortgage Securities. The Bulletin provided guidance with respect to syndicated mortgages. The Bulletin specifically advised that all syndicated mortgages sold or referred by Approved Persons must be facilitated through the accounts and facilities of the Member in accordance with the requirement of Rule 1.1.1 and are subject to all applicable MFDA Rules.

Tier 1 Syndicated Mortgages

6. Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and First Commonwealth Mortgage Corporation (“First Commonwealth”) were mortgage brokerages licensed by the Financial Services Commission of Ontario (“FSCO”).
7. Tier 1 Transaction Advisory Services Inc. (“Tier 1 Transaction”) was a company that was affiliated with Tier 1 Mortgage and First Commonwealth.
8. Tier 1 Mortgage, First Commonwealth and Tier 1 Transaction were engaged in the distribution of syndicated mortgage investments (the “Tier 1 SMIs”) to investors.
9. In or about 2013, the Respondent met JC, who was involved in the distribution of Tier 1 SMIs.
10. The Respondent subsequently entered into an arrangement (the “Arrangement”) with JC to facilitate the sale of Tier 1 SMIs to investors, in exchange for JC paying the Respondent a fee equal to 2.5% to 3% of the amount that each investor invested.
11. In 2016, during the period that the Respondent was registered with FundEX, the Respondent recommended, sold, facilitated the sale of, or made referrals in respect of the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and five other investors outside the Member, as described in the table below:

Investor	Tier 1 SMI	Amount
Client DD	445 Princess Street	\$28,000
Client DF	445 Princess Street	\$25,500
MR	445 Princess Street Hazelton	\$51,000 \$25,500
PD	445 Princess Street Hazelton	\$65,000 \$105,000
Client AH	445 Princess Street Hazelton	\$75,000 \$40,000
Client JH	445 Princess Street	\$76,000
Client SS	445 Princess Street	\$38,700
Client MP	445 Princess Street	\$25,500
Client TK	445 Princess Street	\$48,750
Client CP	445 Princess Street	\$59,900

Investor	Tier 1 SMI	Amount
Client ### Ontario Inc.	445 Princess Street	\$85,000
	Hazelton	\$40,000
	774 Bronson	\$65,000
KB	445 Princess Street	\$25,500
CH	445 Princess Street	\$30,000
	Hazelton	\$46,000
GVS	Hazelton	\$34,000
Client JF	445 Princess Street	\$65,000
Client SW	445 Princess Street	\$25,000
TOTAL		\$1,079,350

12. Between April 2016 and August 2016, pursuant to the Arrangement, the Respondent received fees from JC totaling approximately \$28,970.17. The fees were paid into the account of the Respondent’s corporation, Kingsman Wealth Management Group Inc. Some or all of the fees were made in relation to the conduct described above in paragraph 11.²

13. The Respondent did not disclose to FundEX that he was recommending, selling, facilitating the sale of, or making referrals in respect of the sale of the Tier 1 SMIs to clients and other investors.

14. None of the Respondent’s activities with respect to the Tier 1 SMIs were approved by FundEX or conducted through its facilities.

15. The Respondent did not personally invest in the Tier 1 SMIs.

16. In October 2016, FSCO issued an interim order suspending the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction. The interim order stated, among other things, that:

Examinations of the First Commonwealth and Tier 1 Mortgage and other enquiries by FSCO staff revealed a number of serious contraventions of the *[Mortgage Brokerages, Lenders and Administrators]* Act. The contraventions are widespread and reveal systemic disregard for the basic consumer protection measures set out in the Act. The most serious contraventions relate to the failure to provide written disclosure of material risks, disclosure of conflicts of interest, the failure to ensure that syndicated mortgage investments (“SMIs”) (a mortgage for which there is more than one lender or investor) were suitable for the investor to whom they were

² Some of the fees may have been for conduct that occurred before the Respondent became an Approved Person registered with FundEX.

presented and the provision of false and misleading information as to the characterization of appraisals as reflecting the “as is” value of the relevant properties when such appraisals were actually premised on the successful completion of the proposed development.

These contraventions exacerbate the risk inherent to the type of SMIs sold by the brokerages in this case. Such SMIs function as a form of mezzanine-like financing provided by individual, consumer lenders, which allows the developer to finance early development costs. Where the value of the property is misrepresented to investors whose security will be subordinated to senior ranking construction loans and where investors are provided with incomplete disclosure, the risks to investors are significant.

17. In October 2016, the Ontario Superior Court of Justice (Commercial List) appointed a trustee (the “Trustee”) to protect the interests of investors in the Tier 1 SMIs.

18. In January 2018, FSCO revoked the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction.

19. According to communications from the Trustee, the recovery to investors in the 445 Princess Street Tier 1 SMI is nil.

Allegation #1 – Securities Related Business Outside the Member

20. At all material times, FundEX’s policies and procedures required that its Approved Persons only offer products that FundEX had approved for sale, and that all products be sold through FundEX.

21. In addition, FundEX’s policies and procedures stated the following: “FundEX does not authorize the sale of or referral to [...] Syndicated Mortgage Investments (“SMI”) by its Representatives.”

22. As described above at paragraph 11, the Respondent recommended, sold, or facilitated the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and five other investors outside the Member.

23. In the course of engaging in the conduct described above, the Respondent, in some or all instances:

- a) informed investors of the opportunity to invest in the Tier 1 SMIs;
- b) provided investors with brochures regarding the Tier 1 SMIs;
- c) offered to contact JC on behalf of the investors if they had questions about the Tier 1 SMIs;
- d) obtained investment documents in relation to the Tier 1 SMIs from JC and provided the investment documents to investors for completion and signature; or
- e) on behalf of investors, returned completed investment documents to JC for processing.

24. In addition, as described above at paragraph 12, the Respondent received fees from JC totaling approximately \$28,970.17 in respect of the sale of Tier 1 SMIs.

25. The Respondent did not disclose to FundEX that he was recommending, selling, or facilitating the sale of Tier 1 SMIs to clients and other investors.

26. FundEX did not approve the Tier 1 SMIs for sale to its clients by its Approved Persons, including the Respondent.

27. None of the purchases of the Tier 1 SMIs by clients were carried on for the account of FundEX or through its facilities.

28. None of the fees that the Respondent received from JC flowed through the books and records of FundEX.

29. By virtue of the foregoing, the Respondent engaged in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 1.1.2, or 2.5.1.

Allegation #2 – Undisclosed and Unapproved Outside Business Activity

30. At all material times, FundEX's policies and procedures prohibited its Approved Persons from engaging in outside business activities that were not disclosed to and approved by FundEX.

31. In the event that the Respondent's activities described above did not constitute securities related business contrary to MFDA Rule 1.1.1, then the Respondent engaged in outside activities

with respect to the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and five other investors outside the Member as described above.

32. At no time did the Respondent disclose his activities relating to the Tier 1 SMIs to FundEX, and FundEX did not approve these activities.

33. By virtue of the foregoing, the Respondent engaged in outside activities relating to the sale of syndicated mortgages that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c)), 2.1.1, 1.1.2, or 2.5.1.

Allegation #3 – Referral Arrangement Outside the Member

34. At all material times, FundEX's policies and procedures required that its Approved Persons only participate in referral arrangements that FundEX had approved, and that all fees or commissions paid or received as a result of approved referral arrangements be recorded on the books and records of FundEX.

35. To the extent that the Respondent made referrals in respect of the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and five other investors as described above in paragraph 11, the Respondent participated in a referral arrangement that FundEX had not approved and was not a party to.

36. The Respondent received referral fees from JC in the amount of approximately \$28,970.17 for referring investors to JC to purchase syndicated mortgages, which did not flow through the books and records of FundEX.

37. The Respondent failed to disclose any referral arrangement with JC or in respect of the syndicated mortgages to FundEX, and at no time did FundEX approve of the referral arrangement.

38. By virtue of the foregoing, the Respondent participated in a referral arrangement that was not approved by the Member and to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 1.1.2, or 2.5.1.

Allegation #4 – Misleading the Member and MFDA Staff

39. As described in the table above at paragraph 11, in 2016, client JF invested \$65,000 in a Tier 1 SMI.

40. In or about December 2017, client JF submitted a complaint to FundEX alleging, among other things, that the Respondent had failed to disclose the fees that he received as a result of client JF's investment in the Tier 1 SMI.

41. On December 5, 2017, FundEX provided a copy of client JF's complaint to the Respondent, and requested a written statement from the Respondent concerning the complaint.

42. On or about December 20, 2017, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading in that he falsely indicated that he had not received compensation for the sale or referral of Tier 1 SMIs. In particular, the Respondent stated the following in his written statement: "At no time have I been compensated by Tier One or through a mortgage Broker. I have no referral arrangement with either Tier One or Mortgage Broker."

43. In fact, as described above in paragraph 12, between April 2016 and August 2016, the Respondent received fees from JC totaling approximately \$28,970.17 for the sale of Tier 1 SMIs or referral of investors to JC to invest in the Tier 1 SMIs.

44. On January 3, 2018, FundEX requested an additional written statement from the Respondent concerning his involvement in the sale of syndicated mortgages. FundEX advised the Respondent that his written statement was required by MFDA Staff for the purposes of its investigation. Among other things, FundEX specifically requested that the Respondent provide a response to the following question: "Detail any fees, commissions or any other remuneration you have received in relation to the recommendation/sale/referral of syndicated mortgages and indicate the name of the entity these fees/commissions were paid to."

45. On January 11, 2018, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading in that he falsely indicated that he had not received compensation related to the sale or referral of syndicated mortgages. In particular, the Respondent

stated the following in response to FundEX's question described above in paragraph 44: "There is no commissions and remuneration [sic] for sale/referral of syndicated mortgage from [JC]."

46. By virtue of the foregoing, the Respondent engaged in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #5 – Pre-Signed Account Forms

47. At all material times, FundEX's policies and procedures prohibited its Approved Persons from holding pre-signed account forms.

48. Between February 2016 and February 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients.

49. The pre-signed account forms consisted of Nominee Systematic Instruction Forms, Self-Directed Account Application Forms, New Client Application Forms, Transfer Authorization Forms, Order Entry Forms, a KYC Update Form, an Internal Transfer Form and an Education Savings Plan Application Form.

50. By virtue of the foregoing, the Respondent failed to adhere to the standard of conduct, contrary to MFDA Rule 2.1.1.

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

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

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

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

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- 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 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: Paul Blasiak
Email: pblasiak@mfd.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@mfd.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.

DM 721015

Agreed Statement of Facts

File No. 202006



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: Dean Martin Jenkins

AGREED STATEMENT OF FACTS

I. INTRODUCTION

1. By Notice of Hearing dated January 15, 2020, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Dean Martin Jenkins (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing set out the following allegations:

Allegation #1: In 2016, the Respondent recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, or 2.5.1.

Allegation #2: In 2016, the Respondent engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors

that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c))¹, 2.1.1, 1.1.2, or 2.5.1.

Allegation #3: In 2016, the Respondent made referrals in respect of the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby participating in a referral arrangement that was not approved by the Member and to which the Member was not a party, contrary to the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 1.1.2, or 2.5.1.

Allegation #4: The Respondent misled the Member and MFDA Staff during the course of an investigation into his conduct when he:

- a) on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages; and
- b) on January 11, 2018, in response to a request for information from MFDA Staff, provided another misleading written statement to the Member regarding the compensation he received for the sale or referral of syndicated mortgages;

thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Allegation #5: Between February 2016 and February 2017, the Respondent obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

II. IN PUBLIC/IN CAMERA

3. The Respondent and Staff of the MFDA ("Staff") agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA *Rules of Procedure*.

III. ADMISSIONS AND ISSUES TO BE DETERMINED

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which

¹ Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate penalty to impose on the Respondent.

IV. AGREED FACTS

6. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV and no other facts or documents, subject to paragraph 7 below. In the event the Hearing Panel advises one or both of Staff and the Respondent of any additional facts it considers necessary to determine the issues before it, Staff and the Respondent agree that such additional facts shall be provided to the Hearing Panel only with the consent of both Staff and the Respondent. If the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel.

7. Staff and the Respondent agree that the Respondent may lead evidence at the hearing on the merits that is relevant to the Respondent's remorse, financial circumstances, and any intentions to re-enter the securities industry. This evidence will be tendered solely for the purpose of the Hearing Panel's determination of the appropriate sanction and for no other purpose. Staff may lead any responding evidence at its discretion, and may cross-examine the Respondent and any witnesses tendered by the Respondent.

8. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

Registration History

9. From 2009 to February 12, 2016, the Respondent was registered in Ontario with a Dealer Member of the Investment Industry Regulatory Organization of Canada.

10. From February 22, 2016 to March 31, 2018, the Respondent was registered in Ontario as a dealing representative (formerly known as a mutual fund salesperson) with FundEX Investments Inc. ("FundEX"), a Member of the MFDA.

11. The Respondent is not currently registered in the securities industry in any capacity.
12. At all material times, the Respondent conducted business in the St. Catharines, Ontario area.

Tier 1 Syndicated Mortgages

13. Tier 1 Mortgage Corporation (“Tier 1 Mortgage”) and First Commonwealth Mortgage Corporation (“First Commonwealth”) were mortgage brokerages licensed by the Financial Services Commission of Ontario (“FSCO”) (now known as the Financial Services Regulatory Authority of Ontario).

14. Tier 1 Transaction Advisory Services Inc. (“Tier 1 Transaction”) was a company that was affiliated with Tier 1 Mortgage and First Commonwealth.

15. Tier 1 Mortgage, First Commonwealth and Tier 1 Transaction were engaged in the distribution of syndicated mortgage investments (the “Tier 1 SMIs”) to investors.

16. In or about 2013, the Respondent met JC. JC was involved in the distribution, marketing and promoting of Tier 1 SMIs. JC discussed the Tier 1 SMIs with the Respondent, and he provided brochures and other materials regarding the Tier 1 SMIs to the Respondent.

17. The Respondent subsequently entered into an arrangement (the “Arrangement”) with JC to facilitate the sale of Tier 1 SMIs to investors, in exchange for JC paying the Respondent compensation equal to 2.5% to 3% of the amount that each investor invested.

18. In 2016, during the period that the Respondent was registered with FundEX, the Respondent recommended, sold, or facilitated the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, as described in the table below:

Investor	Tier 1 SMI	Amount
Client DD	445 Princess Street	\$28,000
Client DF	445 Princess Street	\$25,500
MR	445 Princes Street Hazelton	\$51,000 \$25,500
PD	445 Princess Street Hazelton	\$65,000 \$105,000

Investor	Tier 1 SMI	Amount
Client AH	445 Princess Street Hazelton	\$75,000 \$40,000
Client JH	445 Princess Street	\$76,000
Client SS	445 Princess Street	\$38,700
Client MP	445 Princess Street	\$25,500
Client TK	445 Princess Street	\$48,750
Client CP	445 Princess Street	\$59,900
Client ### Ontario Inc.	445 Princess Street Hazelton 774 Bronson	\$85,000 \$40,000 \$65,000
KB	445 Princess Street	\$25,500
CH	445 Princess Street Hazelton	\$30,000 \$46,000
GVS	Hazelton	\$34,000
Client JF	445 Princess Street	\$65,000
Client SW	445 Princess Street	\$25,000
TOTAL		\$1,079,350

19. Between April 2016 and August 2016, pursuant to the Arrangement, the Respondent received compensation from JC totaling approximately \$28,970.17. The compensation was paid into the account of the Respondent's corporation, Kingsman Wealth Management Group Inc.

20. The Respondent did not disclose to FundEX that he was recommending, selling or facilitating the sale of Tier 1 SMIs to clients and other investors.

21. None of the Respondent's activities with respect to the Tier 1 SMIs were approved by FundEX or conducted through its facilities.

22. The Respondent did not personally invest in the Tier 1 SMIs.

23. In October 2016, FSCO issued an interim order suspending the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction. The interim order stated, among other things, that:

Examinations of the First Commonwealth and Tier 1 Mortgage and other enquiries by FSCO staff revealed a number of serious contraventions of the *[Mortgage Brokerages, Lenders and Administrators]* Act. The contraventions are widespread and reveal systemic disregard for the basic consumer protection measures set out in the Act. The most serious contraventions relate to the failure to provide written disclosure of material risks, disclosure of conflicts of interest, the failure to ensure

that syndicated mortgage investments (“SMIs”) (a mortgage for which there is more than one lender or investor) were suitable for the investor to whom they were presented and the provision of false and misleading information as to the characterization of appraisals as reflecting the “as is” value of the relevant properties when such appraisals were actually premised on the successful completion of the proposed development.

These contraventions exacerbate the risk inherent to the type of SMIs sold by the brokerages in this case. Such SMIs function as a form of mezzanine-like financing provided by individual, consumer lenders, which allows the developer to finance early development costs. Where the value of the property is misrepresented to investors whose security will be subordinated to senior ranking construction loans and where investors are provided with incomplete disclosure, the risks to investors are significant.

24. In October 2016, following the interim order issued by FSCO described above, the Ontario Superior Court of Justice (Commercial List) appointed a trustee (the “Trustee”) to protect the interests of investors in the Tier 1 SMIs.

25. In January 2018, FSCO revoked the licenses of Tier 1, First Commonwealth, and the principals of Tier 1, First Commonwealth and Tier 1 Transaction.

26. The Trustee has advised that: the recovery to investors in the 445 Princess Street Tier 1 SMI is nil; the recovery to investors in the Hazelton Tier 1 SMI is 101.1% of their investment; and the recovery to investors in the 774 Bronson Tier 1 SMI is 7.1% of their investment.

27. The investor losses are summarized in the table below:

Tier 1 SMI	Recovery to Investors	Approximate total amount of investment that the Respondent recommended, sold, or facilitated the sale of	Approximate Investor Loss
445 Princess Street	Nil	\$723,850 to 15 investors	\$723,850
Hazelton	101.1% of the investment	\$290,500 to 6 investors	None
774 Bronson	7.1% of the investment	\$65,000 to one investor	\$60,385
TOTAL		\$1,079,350	\$784,235

28. Of the clients listed in the table above at paragraph 18, clients JF and SW, who were investors in the 445 Princess Street Tier 1 SMI, complained to the Member. Clients JF and SW

subsequently accepted payments of compensation from the Member in the amounts of \$50,000 and \$12,769, respectively.

29. The Respondent states that other than recommending, selling or facilitating the sale of Tier 1 SMIs, he was not involved in the day-to-day operations of Tier 1 Mortgage, First Commonwealth or Tier 1 Transaction.

Securities Related Business Outside the Member

30. At all material times, FundEX's policies and procedures required that its Approved Persons only offer products that FundEX had approved for sale, and that all products be sold through FundEX.

31. In addition, FundEX's policies and procedures stated the following: "FundEX does not authorize the sale of or referral to [...] Syndicated Mortgage Investments ("SMI") by its Representatives."

32. As described above at paragraph 18, the Respondent recommended, sold, or facilitated the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member.

33. In the course of engaging in the conduct described above, the Respondent:

- a) informed investors of the opportunity to invest in the Tier 1 SMIs;
- b) provided investors with brochures regarding the Tier 1 SMIs;
- c) offered to contact JC on behalf of the investors if they had questions about the Tier 1 SMIs;
- d) obtained investment documents in relation to the Tier 1 SMIs from JC and provided the investment documents to investors for completion and signature; and
- e) on behalf of investors, returned completed investment documents to JC for processing.

34. In addition, as described above at paragraph 19, the Respondent received compensation from JC totaling approximately \$28,970.17 in respect of the sale of Tier 1 SMIs.

35. The Respondent did not disclose to FundEX that he was recommending, selling, or facilitating the sale of Tier 1 SMIs to clients and other investors.

36. FundEX did not approve the Tier 1 SMIs for sale to its clients by its Approved Persons, including the Respondent.

37. None of the purchases of the Tier 1 SMIs by clients were carried on for the account of FundEX or through its facilities.

38. None of the compensation that the Respondent received from JC flowed through the books and records of FundEX.

39. By virtue of the foregoing, the Respondent engaged in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1.

Undisclosed and Unapproved Outside Business Activity

40. At all material times, FundEX's policies and procedures prohibited its Approved Persons from engaging in outside business activities that were not disclosed to and approved by FundEX.

41. In the event that the Respondent's activities described above did not constitute securities related business contrary to MFDA Rule 1.1.1, then the Respondent engaged in outside activities with respect to the sale of Tier 1 SMIs totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member as described above.

42. At no time did the Respondent disclose his activities relating to the Tier 1 SMIs to FundEX, and FundEX did not approve these activities.

43. By virtue of the foregoing, the Respondent engaged outside activities relating to the sale of syndicated mortgages that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c)), 2.1.1, 1.1.2, and 2.5.1.

Misleading the Member

44. As described in the table above at paragraph 18, in 2016, client JF invested \$65,000 in a Tier 1 SMI.

45. In or about December 2017, client JF submitted a complaint to FundEX alleging, among other things, that the Respondent had failed to disclose the compensation that he received as a result of client JF's investment in the Tier 1 SMI.

46. On December 5, 2017, FundEX provided a copy of client JF's complaint to the Respondent, and requested a written statement from the Respondent concerning the complaint.

47. On or about December 20, 2017, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading because, in response to client JF's allegation described above in paragraph 45, the Respondent failed to inform FundEX of the compensation that he received from JC in relation to the sale of Tier 1 SMIs. In particular, the Respondent stated the following in his written statement: "At no time have I been compensated by Tier One or through a mortgage Broker. I have no referral arrangement with either Tier One or Mortgage Broker."

48. In fact, as described above in paragraph 19, between April 2016 and August 2016, the Respondent received compensation from JC totaling approximately \$28,970.17 in relation to the sale of Tier 1 SMIs.

49. On January 3, 2018, FundEX requested an additional written statement from the Respondent concerning his involvement in the sale of syndicated mortgages. FundEX advised the Respondent that his written statement was required by MFDA Staff for the purposes of its investigation. Among other things, FundEX specifically requested that the Respondent provide a response to the following question: "Detail any fees, commissions or any other remuneration you have received in relation to the recommendation/sale/referral of syndicated mortgages and indicate the name of the entity these fees/commissions were paid to."

50. On January 11, 2018, the Respondent provided a written statement to FundEX. The Respondent's written statement was misleading because he falsely indicated that he had not

received compensation related to the sale of syndicated mortgages. In particular, the Respondent stated the following in response to FundEX's question described above in paragraph 49: "There is no commissions and remuneration [sic] for sale/referral of syndicated mortgage from [JC]."

51. By virtue of the foregoing, the Respondent engaged in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1.

Pre-Signed Account Forms

52. At all material times, FundEX's policies and procedures prohibited its Approved Persons from holding pre-signed account forms.

53. Between February 2016 and February 2017, the Respondent obtained, possessed, and in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients.

54. The pre-signed account forms consisted of Nominee Systematic Instruction Forms, Self-Directed Account Application Forms, New Client Application Forms, Transfer Authorization Forms, Order Entry Forms, a KYC Update Form, an Internal Transfer Form and an Education Savings Plan Application Form.

55. By virtue of the foregoing, the Respondent failed to adhere to the standard of conduct, contrary to MFDA Rule 2.1.1.

Additional Factors

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

57. There is no evidence that the Respondent received any financial benefit from obtaining or using the pre-signed account forms described above beyond any commissions or fees that he would ordinarily be entitled to had the transactions been carried out in the proper manner.

58. With regard to the pre-signed account forms described above, there is no evidence of client complaints, client loss or lack of authorization for the underlying transactions.

Misconduct Admitted

59. By engaging in the conduct described above, the Respondent admits that:

- a) in 2016, he recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member's policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1;
- b) in 2016, he engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors that were not disclosed to and approved by the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c))², 2.1.1, 1.1.2, and 2.5.1;
- c) he misled the Member during the course of an investigation into his conduct when he:
 - i. on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages; and
 - ii. on January 11, 2018, provided another misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages;
thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and
- d) between February 2016 and February 2017, he obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

Execution of Agreed Statement of Facts

60. This Agreed Statement of Facts may be signed in one or more counterparts which together shall constitute a binding agreement.

61. A facsimile copy of any signature shall be effective as an original signature.

² Effective March 17, 2016, former MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3.2.

DATED this 2nd day of November, 2020.

“Dean Martin Jenkins”

Dean Martin Jenkins

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

DM 777367



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

NEWS RELEASE

For immediate release

For further information, please contact:

Marco Wynnycky
Director, Hearings
416-945-5146
mwynnycky@mfda.ca

MFDA Hearing Panel reserves judgment on sanctions in the matter of Dean Jenkins

November 3, 2020 (Toronto, Ontario) – The Mutual Fund Dealers Association of Canada (“MFDA”) commenced a disciplinary proceeding in respect of Dean Martin Jenkins (“Respondent”) by Notice of Hearing dated January 15, 2020.

A disciplinary hearing in this matter was held today by electronic hearing before a three-member Hearing Panel of the MFDA’s Central Regional Council. Prior to the hearing, the parties filed an Agreed Statement of Facts dated November 2, 2020 (“Agreed Statement of Facts”) in which the Respondent admitted to facts constituting contraventions of MFDA By-laws, Rules or Policies, for which the Respondent could be penalized by a Hearing Panel pursuant to section 24.1 of MFDA By-law No. 1. In particular, the Respondent admitted that:

- a) in 2016, he recommended, sold or facilitated the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors outside the Member, thereby engaging in securities related business that was not carried on for the account of the Member and through its facilities, contrary to the Member’s policies and procedures, and MFDA Rules 1.1.1, 2.1.1, 1.1.2, and 2.5.1;
- b) in 2016, he engaged in outside activities relating to the sale of syndicated mortgages totaling approximately \$1,079,350 to 11 clients and 5 other investors that were not disclosed to and approved by the Member, contrary to the Member’s policies and procedures, and MFDA Rules 1.3.2 (formerly Rule 1.2.1(c)), 2.1.1, 1.1.2, and 2.5.1;
- c) he misled the Member during the course of an investigation into his conduct when he:
 - i. on or about December 20, 2017, provided a misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages; and
 - ii. on January 11, 2018, provided another misleading written statement to the Member regarding the compensation he received in relation to the sale of syndicated mortgages;thereby engaging in conduct which is unbecoming and detrimental to the public interest, contrary to MFDA Rule 2.1.1; and

- d) between February 2016 and February 2017, he obtained, possessed and, in some instances, used to process transactions, 70 pre-signed account forms in respect of 45 clients, contrary to MFDA Rule 2.1.1.

Following submissions from the parties concerning sanctions, the Hearing Panel reserved its judgment and advised that it will issue its written decision and provide its reasons in due course.

Copies of the Notice of Hearing and the Agreed Statement of Facts are available on the MFDA website at www.mfda.ca. During the period described in the Agreed Statement of Facts, the Respondent carried on business in the St. Catharines, Ontario area.

The MFDA is the self-regulatory organization for Canadian mutual fund dealers, regulating the operations, standards of practice and business conduct of its Members and their approximately 81,000 Approved Persons with a mandate to protect investors and the public interest. For more information about the MFDA's complaint and enforcement processes, as well as links to 'Check an Advisor' and other Investor Tools, visit the For Investors page on the MFDA website.

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