



# ANNUAL ENFORCEMENT REPORT 2021

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# Message from the President and CEO



*“MFDA’s focus has been to protect Canadian investors and promote investor confidence by delivering responsible and effective regulation and by strengthening collaboration, knowledge and expertise within the MFDA membership.”*

I am pleased to present the 2021 Annual Enforcement report which highlights key enforcement activity over the course of 2021.

This has been an important and exciting year for the MFDA as we prepare for the transition to the new, single enhanced self-regulatory organization (New SRO) as first described in the Canadian Securities Administrators’ (CSA) Position Paper 25-404 – *New Self-Regulatory Organization Framework*. With the establishment of the New SRO on the horizon I think that it is timely to look back at the accomplishments and meaningful changes that the MFDA enforcement department has brought to the Canadian securities regulatory landscape since it commenced its first enforcement proceeding over 17 years ago.

From the very beginning, the MFDA’s focus has been to protect Canadian investors and promote investor confidence by delivering responsible and effective regulation and by strengthening collaboration, knowledge and expertise within the MFDA membership. These goals have been achieved by MFDA enforcement through both the deterrent effect of its regulatory prosecutions and by working collaboratively with Members to educate and raise the standard of regulatory compliance within the industry. The application of this two-pillar approach is distinctive for an enforcement department, which typically focus on regulatory prosecutions only, and it is this approach which has been a critical component of the success of MFDA enforcement in protecting Canadian investors and promoting investor confidence.

Another key accomplishment has been MFDA enforcement’s long-standing focus on dealer complaint handling obligations. MFDA enforcement assess complaint handling in all relevant cases, and when necessary, work collaboratively with Members who must meet their regulatory obligations to deal with complaints both promptly and fairly. In addition, MFDA enforcement blazed-the-trail in prosecuting several cases where there were serious deficiencies by Members in meeting these standards. These prosecutions highlighted the importance of the MFDA’s complaint handling requirements and raised the standard of regulatory compliance within the industry. This consistent focus on complaint handling by MFDA enforcement has steadily led to greatly improved outcomes for investors.

Another important area of achievement that I would like to note is the MFDA’s work with respect to Members’ supervisory responsibilities. The MFDA’s work in this area enhanced investor protection by holding Members to a high standard with respect to their supervisory obligations, which ultimately led to a highly regulatory compliant membership whose robust supervisory activities now help detect and prevent breaches of regulatory requirements.

In addition to these accomplishments, MFDA enforcement was at the forefront of the protection of seniors and other vulnerable investors, with the protection of this important demographic having been a priority for MFDA enforcement from its very inception. MFDA enforcement has policies and procedures for the prioritization of cases involving seniors and vulnerable investors and was responsible for organizing three Seniors’ Summits held in 2013, 2015 and 2019 which were educational events for Members and investors on the protection of senior investors.

What I have highlighted above only begins to scratch the surface of the important contributions that the MFDA enforcement department has made to investor protection in Canada over the last 17 years. None of this could have been accomplished without the hard work, unwavering commitment and dedication of MFDA enforcement staff and management who I would like to acknowledge. I would also like to whole-heartedly thank all MFDA staff for going “above-and-beyond” during the last two difficult years of the pandemic – your unwavering dedication to investor protection during what was a very difficult time for everyone is simply amazing. Going forward, I have no doubt that your good work will continue and that the investor-protection focused foundation laid by staff of the MFDA will be further built upon at the New SRO, and will continue to benefit Canadian investors.

**Mark T. Gordon, LL.B.**  
President and CEO

A handwritten signature in blue ink, appearing to read 'Mark T. Gordon'.

# About Us

## Mutual Fund Dealers Association of Canada

The Mutual Fund Dealers Association of Canada (“MFDA”) is the national self-regulatory organization (“SRO”) for the distribution side of the Canadian mutual fund industry. The MFDA is structured as a not-for-profit corporation and its Members are mutual fund dealers that are licensed with provincial securities commissions.

The MFDA is formally recognized as a SRO by the provincial or territorial securities regulatory authorities in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, Yukon Territory, Northwest Territories, and Nunavut. The MFDA has also entered into a Co-operative Agreement with the Autorité des marchés financiers and actively participates in the regulation of mutual fund dealers in Quebec.

As a SRO, the MFDA is responsible for regulating the operations, standards of practice and business conduct of its Members and their representatives with a view to enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry. As of December 31, 2021, the MFDA has 88 Members. These Members represent approximately \$867 billion of assets under administration. MFDA Members are registered in every province and territory of Canada and service approximately 9 million households.

## Enforcement Department

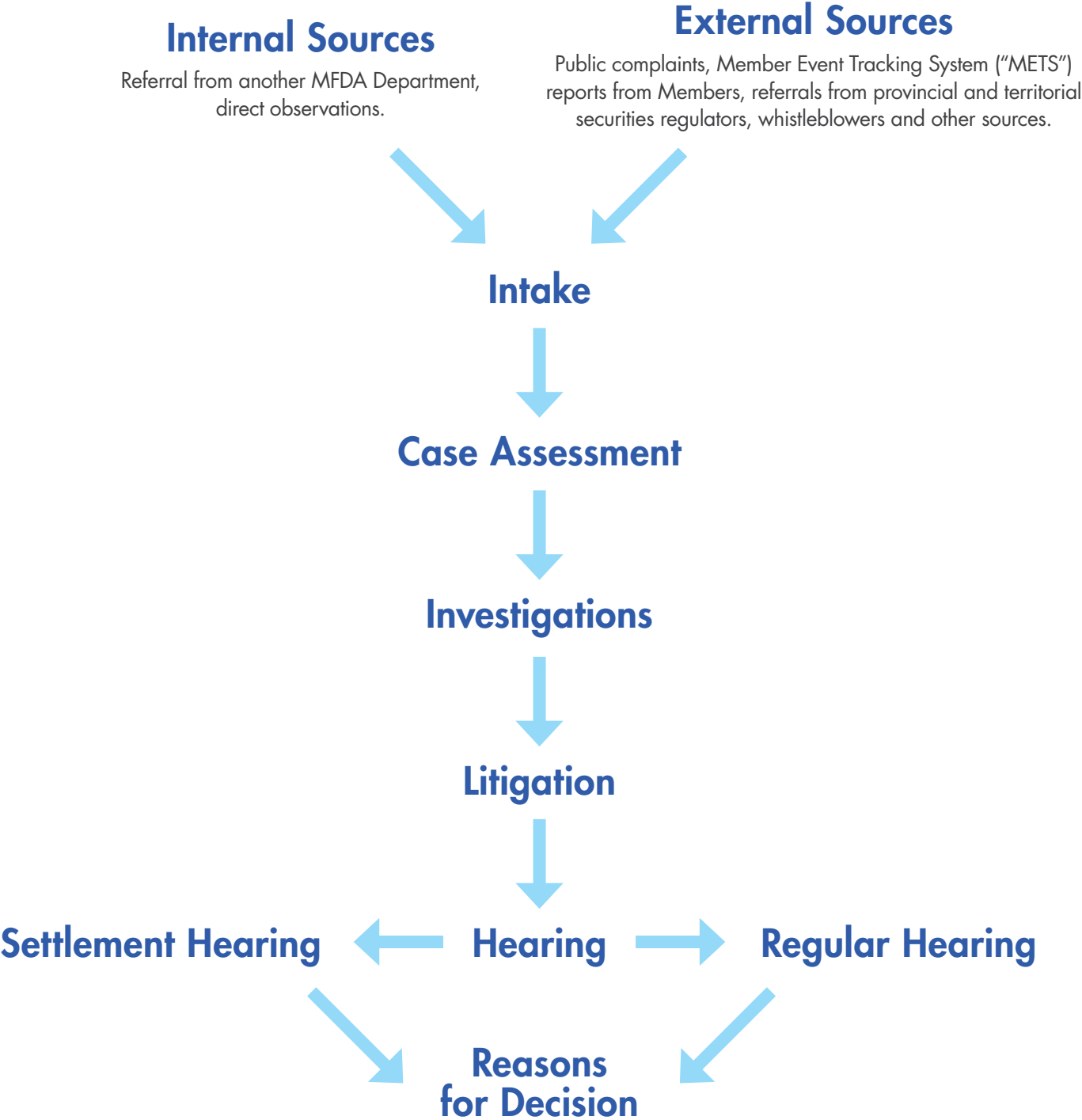
The Enforcement Department investigates situations where MFDA Members and their Approved Persons may have breached MFDA requirements. The Enforcement Department operates on several general principles:

- › The Enforcement Department considers general and specific deterrence in its decision making.
- › Members and Approved Persons are provided opportunity for input before a decision is made on disciplinary action, except in urgent cases involving potential public harm.
- › Member supervision of Approved Persons is reviewed in all cases.
- › The fairness and promptness of a Member’s complaint handling is reviewed in all cases involving an investor complaint.
- › Cases are reviewed proactively, with a view to identifying possible associated misconduct and assessing root causes.
- › The Enforcement Department works on a cooperative basis with:
  - › Other regulatory agencies and law enforcement organizations.
  - › MFDA Compliance and Policy Departments and refers cases and issues to these departments where appropriate.

The Enforcement Department has four main functions: Intake, Case Assessment, Investigations and Litigation.

Case screening occurs throughout the enforcement process and cases may be closed at any stage of the enforcement process. Screening factors include the seriousness of the alleged misconduct, whether the alleged misconduct resulted in significant losses or harm to investors, and whether the victim is part of a vulnerable or priority group. The screening factors include many of the same considerations in the MFDA’s Sanction Guidelines.

# Enforcement Process



**Note:** Provincial securities legislation allow Respondents and in many cases MFDA Staff to appeal a decision of an MFDA Hearing Panel to the applicable securities regulator.

# Statistics

**TABLE 1: Overview of Enforcement Department Activity (2019-2021)**

The table below summarizes overall activity for the Enforcement Department.

	2019	2020	2021
Cases Opened	453	461	414
Cases Closed	503	457	461
Warning Letters	92	60	81
Cautionary Letters	113	112	78
Proceedings Commenced	78	79	91

Warning letters are issued in circumstances where the violation is one that the MFDA could have escalated to a formal disciplinary hearing, but has chosen not to due to screening factors. Cautionary letters are issued when the violation is minor or less serious in nature and one that the MFDA would not generally escalate to a formal disciplinary hearing. While Cautionary Letters are disciplinary in nature, they are often issued for educational purposes.

**TABLE 2: Cases Opened at Case Assessment by Source (2019-2021)**

Source	Number of Cases		
	2019	2020	2021
METS	272	269	286
Public	137	143	100
CSA and Other Regulators	5	26	11
Financial Industry Participant	4	4	5
MFDA Compliance	18	10	4
Whistleblower	9	6	4
Other	N/A	1	3
Media	3	N/A	1
Member	3	2	N/A
Referral from Membership Services	2	N/A	N/A
<b>Total</b>	<b>453</b>	<b>461</b>	<b>414</b>

**TABLE 3: Primary Allegations Made in Cases Opened at Case Assessment (2019-2021)**

The table below lists the primary allegation made in cases opened at the Case Assessment stage.

Nature of Primary Allegation	Number of Cases		
	2019	2020	2021
Business Standards	38	87	80
Suitability – Investments	38	61	55
Unauthorized/Discretionary Trading	26	50	35
Transfer of Accounts	17	21	35
Pre-Signed Forms	94	22	32
Personal Financial Dealings	19	18	24
Active Signature Falsification	18	17	23
Policy & Procedures	17	19	17
Complaint Procedure	22	21	12
Outside Activity	11	13	12
Reporting Violations	4	6	10
Confidentiality/Privacy	10	8	8
Falsification/Misrepresentation	12	6	7
Forgery/Fraud/Theft/Misappropriation/ Misapplication	13	10	6
Supervision	13	7	6
Commissions and Fees	29	16	5
Conflict of Interest	15	11	5
Acting Outside Registration Status	3	6	4
KYC Documentation Deficiency	12	6	3
Suitability – Leveraging	11	9	2
Know Your Product	4	5	1
Stealth Advising	2	5	1
Other	25	37	31
<b>Total</b>	<b>453</b>	<b>461</b>	<b>414</b>

#### TABLE 4: Enforcement Proceedings (2019-2021)

The table below shows the total number of formal enforcement proceedings commenced in the last three years. It also shows for each year how many of those proceedings were commenced utilizing the Bulk Track Process that provides for a more efficient process in cases where a violation of MFDA requirements is not disputed by the Respondent. The decrease in hearings in 2019 is due primarily to a decrease in signature cases.

Year	Proceedings Commenced	Bulk Track Cases
2021	91	42
2020	79	37
2019	78	36

#### Member Cases

Year	Proceedings Commenced
2021	4
2020	4
2019	2



## TABLE 5: Proceedings Commenced (2021) – All Allegations

The MFDA commenced 91 proceedings in 2021 by Notice of Hearing or Notice of Settlement Hearing. Many of the proceedings involved more than one alleged violation of MFDA Rules, By-laws or Policies.

Nature of Allegation	Number of Allegations Against Approved Persons	Number of Allegations Against Members
Pre-Signed Forms	40	-
Policy & Procedures	39	-
Falsification/Misrepresentation	17	-
Personal Financial Dealings	15	-
Business Standards	15	1
Active Signature Falsification	15	-
Conflict of Interest	12	2
Outside Activity	11	-
Unauthorized/Discretionary Trading	10	-
Forgery/Fraud/Theft/Misappropriation	9	-
Failure to Cooperate	7	-
Stealth Advising	4	-
KYC Documentation Deficiency	4	-
Suitability – Investments	3	-
Supervision	3	3
Acting Outside Registration Status	3	-
Referral Arrangements	3	-
Suitability – Leveraging	3	-
Conduct Unbecoming	2	-
Reporting Violations	2	-
Books/Records/Client Reporting	2	-
Securities Regulator’s Order	1	1
Commissions and Fees	1	-
Financial Requirements	-	1
Provincial Securities Legislation	-	2
<b>Sub-total</b>	<b>221</b>	<b>10</b>
<b>Total</b>	<b>231</b>	

## TABLE 6: Proceedings Concluded (2019-2021) – Type of Penalty

In 2021, the Enforcement Department concluded 95 hearings. In those 95 hearings, MFDA Hearing Panels imposed fines of \$4,326,670 of which \$1,945,800 (45%) has been collected. This is an increase on the collection rates from 2019 (19%) and 2020 (29%).<sup>1</sup>

Since the commencement of MFDA disciplinary activity in 2004, MFDA Hearing Panels have imposed total fines of \$104,833,117 of which \$17,087,231 (16%) has been collected.

The MFDA has fine collection powers in all the provinces in which the MFDA is recognized. MFDA Staff makes all reasonable efforts to collect any outstanding fines from former Respondents in provinces where the MFDA is recognized. However, successful collection of outstanding fines using these powers depends on several factors including but not limited to the availability of assets to collect against and the Respondent's status with respect to any bankruptcy or similar proceedings.

Type of Penalty	2019	2020	2021
Permanent Prohibition	22	16	19
Suspension	56	24	35
Educational Course Requirement	7	3	4
<b>Total Fines</b>	<b>\$9,298,603</b>	<b>\$3,350,602</b>	<b>\$4,326,670</b>
<b>Total Costs</b>	<b>\$558,425</b>	<b>\$369,501</b>	<b>\$433,163</b>

## TABLE 7: Hearings Concluded (2019-2021) – Type of Hearing

Type of Hearing	2019	2020	2021
Contested/Uncontested Hearing	22	21	22
Settlement Hearing	98	56	73
<b>Total Number of Hearings</b>	<b>120</b>	<b>77</b>	<b>95</b>

<sup>1</sup> Both of these collection rates have been updated to reflect subsequent collection efforts to-date.

# New Developments



## COVID-19 Update

Enforcement continued to perform its core functions despite working in the challenging environment that COVID-19 has created. Case Assessment continued to accept, review and respond to complaints and inquiries from the public. Investigations and Litigation remained fully operational and conducted interviews and hearings remotely. Since an observed increase in complaints in February/March of 2020, complaint volumes have returned to typical pre-COVID 19 levels. Members have also continued to meet their enforcement related obligations.

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## Amendment to MFDA Rule 2.1.4

On June 30, 2021, enhanced conflict of interest requirements under the Client Focus Reform (“CFR”) amendments came into force. As a result, MFDA Rule 2.1.4, which addresses conflicts of interest was amended and received all required approval for CFR-related changes. These amendments are now in effect. The revised Rule 2.1.4 requires that Members and Approved Persons identify, disclose, and address existing material conflicts of interest, as well as material conflicts of interest that are reasonably foreseeable. Where such a conflict is found to exist, the conflict must either be addressed in the best interests of the client, or be avoided altogether.

In light of the specific guidance set out under Companion Policy 31-103 CP, the MFDA has withdrawn MSN-0054 which provided general guidance in the area of conflicts of interest.

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## Virtual Hearings and Interviews

As COVID-19 pandemic public health concerns and restrictions continued, the Enforcement Department continued to conduct most investigative interviews and hearings remotely using virtual technologies and other means to facilitate the participation of relevant parties in the MFDA’s Enforcement processes. Virtual technologies have facilitated effective interaction between Enforcement Staff and interview subjects and their counsel during investigations and participation of all parties to hearing processes including witnesses. Almost all of the MFDA hearings conducted in 2021 were successfully completed using video conference software.

Enforcement staff continue to regard remote hearings and interview processes as efficient and cost effective. All participants are able to engage in the process from work or home locations without the need to travel to an in-person interview or hearing location. Given the benefits and success of carrying out these enforcement functions remotely, it is likely that the Enforcement Department will continue to use these processes, in appropriate cases, even after COVID-19 pandemic restrictions are discontinued.



## Trusted Contact Person

On July 15, 2021, the Canadian Securities Administrators published amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* designed to enhance the protection of older and vulnerable clients. The amendments provide registrants with tools to proactively address issues of financial exploitation and diminished mental capacity. On December 31, 2021, MFDA conforming rules consistent with the CSA's amendments came into effect. The new rules require MFDA Members and Approved Persons to take reasonable steps to obtain from their clients the name and contact information of a trusted contact person. The new rules also create a regulatory framework for registrants who place a temporary hold on transactions, withdrawals, or transfers in circumstances where the registrant has a reasonable belief that there is financial exploitation of a vulnerable client, or where there are concerns about a client's mental capacity to make decisions involving financial matters.

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## SRO Reform

On August 3, 2021, the Canadian Securities Administrators (CSA) announced its decision to create a new, single self-regulatory organization (New SRO) that will consolidate the functions of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA). The New SRO will provide enhanced regulation of the investment industry.

The MFDA Enforcement Department is working collaboratively with the IIROC Enforcement Department and others in support of the New SRO. As stated in the CSA, IIROC and MFDA update on implementation of New SRO issued April 5, 2022, work on the New SRO is progressing well and timing is on track for a completion date of December 31, 2022. The work of the New SRO will be informed by the principle that like activities will be regulated in a like manner. The intention is to create consistent rules that present a risk-and-principles based approach to rules, compliance and enforcement.

# Key Enforcement Activity



## Referrals to Law Enforcement

Section 23.3 of MFDA By-Law No. 1 permits the MFDA to provide assistance to law enforcement, including providing information to law enforcement in the MFDA's possession. The Enforcement Department continues to ensure that cases involving criminal misconduct, such as theft and fraud, are referred to law enforcement. This is done through direct referrals to law enforcement and through coordination with provincial securities regulators. The MFDA also encourages Members and complainants to directly contact law enforcement to report criminal activity.

When the MFDA becomes aware that a law enforcement agency is investigating the conduct of an Approved Person or a Member, the Enforcement Department will contact that law enforcement agency and offer assistance. The Enforcement Department also participates in ongoing information sharing and educational initiatives with a variety of law enforcement agencies. Since January 1, 2013, the MFDA has worked with law enforcement on 50 matters involving theft or fraud by either referring the matter to their attention or by providing assistance with an ongoing investigation.

In cases where a referral is made to law enforcement, the Enforcement Department will continue to investigate and, where appropriate, take disciplinary action against the subject(s).



## Fine Collection

The MFDA has fine collection powers in all provinces that the MFDA is recognized in including, Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan. As a result of the MFDA collection powers, the MFDA is able to use civil enforcement remedies for the collection of unpaid fines and costs. The MFDA takes proactive steps to collect outstanding fines including retaining outside counsel to pursue collection of unpaid fines and costs orders where appropriate. As a result of the MFDA's efforts in this area, the MFDA collected a total of \$1,945,800 in fines in 2021, resulting in a collection rate of 45%. This is an increase on the collection rates from 2019 (19%) and 2020 (29%) respectively.





## Sales Practices

The Enforcement Department continues to investigate sales incentives practices at Members that may impact the sale of products to clients, that could potentially give rise to conflicts of interest, and that may not comply with the requirements set out in National Instrument 81-105 – Mutual Fund Sales Practices (“NI 81-105”) and to address such situations by way of disciplinary action in appropriate cases.

Some of these programs were identified through the Targeted Review of Member Compensation and Incentive Programs project conducted in collaboration with various provincial securities regulators and the Investment Industry Regulatory Organization of Canada (see Bulletin #0705-C). In 2021, the MFDA conducted proceedings against two Members for failing to establish and maintain adequate systems of controls and supervision to ensure compliance with securities legislation relating to internal dealer sales incentives practices. In one of those two cases, MFDA Enforcement Staff coordinated the disciplinary action that was taken with the British Columbia Securities Commission and settlement agreements between the Respondent and each regulator were announced on the same day.

The MFDA also conducted disciplinary proceedings against Approved Persons who engaged in unethical sales practices. In one case, an Approved Person admitted that he had opened and processed trades in fictitious mutual fund client accounts which made him eligible to receive promotional monies that were ordinarily payable to new banking clients. In another case, an Approved Person admitted that he had recommended a trade in a mutual fund that unnecessarily subjected a client to a deferred sales charge schedule and generated commissions to himself, thereby giving rise to a conflict of interest.



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## Conflicts of Interest Involving Seniors and Vulnerable Clients

Enforcement Staff has observed a number of cases that raise significant conflict of interest concerns impacting seniors and vulnerable clients. Staff has observed cases where Approved Persons are named as beneficiaries and/or executors in wills prepared by their clients. In many cases, Members identify these issues only after the client has passed away and the Approved Person is attempting to redeem funds from the client’s estate accounts.

Staff has also observed cases where Approved Persons have been named as power of attorney over their client’s financial affairs and have acted in a manner that causes financial harm to the client.

Staff will continue to prioritize these types of cases going forward and expect that Members will continue to be vigilant in their supervision.

# Enforcement Priorities



## Supervision

In each enforcement case, the MFDA conducts a review of the adequacy of the Member's supervision, both prior to and after the Member being alerted to potential misconduct. The first level of review focuses on the adequacy of the Member's routine supervision of its daily business activities prior to any indication of potential misconduct. Where a Member has been alerted to potential misconduct, the MFDA also reviews the completeness and reasonableness of the Member's supervisory investigation into the potential misconduct. By doing so, the MFDA ensures compliance with MFDA Rule 2.5.1 which states that each Member is responsible for establishing, implementing and maintaining policies and procedures to ensure the handling of its business is in accordance with the By-Laws, Rules and Policies of the MFDA, as well as with applicable securities legislation.

Where the MFDA identifies material deficiencies in a Member's supervision, the MFDA may bring proceedings against that Member. In 2021, the MFDA completed several cases involving Member supervision. Please refer to the section Case Highlights, Member Cases on page 8 for a summary of Member cases completed by the MFDA in 2021.



## Complaint Handling

The MFDA continues to focus on the handling of client complaints by Members in order to foster continued investor confidence in the mutual fund industry. The MFDA reviews and assesses Member complaint handling against the principles set out in MFDA Policy No. 3 in every enforcement case that involves a client complaint. MFDA Rule 2.11 requires that Member firms implement policies and procedures for handling client complaints that address the complaint handling requirements set out in MFDA Policy No. 3, including responding to client complaints in a fair and prompt manner. Fair and prompt complaint handling demonstrates to clients that complaints are taken seriously and that Members are responsive to their clients.

Where the MFDA believes that a Member may have failed to respond to a client complaint in a fair and prompt manner, Enforcement Department Staff often engage in dialogue with Member Compliance Staff regarding the issues, and the Member's approach to assessing them. In this way, the MFDA seeks to educate Members about fair complaint handling principles, and in doing so, to facilitate consistency in approach to the handling of client complaints by all MFDA Members. The MFDA also reviews complaint reporting data from all MFDA members to identify trends and areas of potential risk.

To date, the MFDA has completed seven cases against Members that included deficiencies in Member complaint handling. The Enforcement Department will continue to review and assess Member complaint handling in all cases against the principles set out in MFDA Policy 3 and MFDA Rule 2.11.



## Seniors and Vulnerable Persons

The protection of seniors and vulnerable persons continues to be an area of focus for the MFDA. The MFDA continues to encounter the following situations involving seniors and vulnerable persons: receiving unsuitable investment advice from Approved Persons, loaning money to Approved Persons (often where the money was never repaid), and providing Executor Powers to Approved Persons.

The MFDA places a priority on cases involving seniors and vulnerable persons. In 2021, 28% of commenced proceedings involved seniors or vulnerable persons (other than signature falsification cases that do not involve a client complaint or harm to a client).

In 2021, the MFDA undertook and continued to perform a number of activities to improve the protection of seniors and vulnerable persons. These activities include the maintenance of the Seniors' Section of the MFDA website, and the publication of an educational paper in April 2021 entitled "Vulnerability and Financial Advice: A Broader Look at the Factors That May Increase the Risk of Client Vulnerability" to promote further awareness and discussion of client vulnerability.

In addition, the MFDA implemented amendments to MFDA Rules to enhance the protection of older and vulnerable clients by providing registrants with tools to address issues of financial exploitation and diminished mental capacity. In December 2021, amendments to MFDA Rules came into effect requiring Members and Approved persons to request that clients name a trusted contact person, establishing a regulatory framework for a temporary hold to be placed on transactions where there are reasonable concerns regarding financial exploitation of a client.

The MFDA also announced a two-year commitment to provide financial support to the Investor Protection Clinic at Osgoode Hall Law School, which offers pro bono legal advice to people who believe their investments were mishandled and who cannot afford a lawyer.

The MFDA is actively engaged with the Canadian Securities Administrators in developing a flexible and responsive regulatory approach to address issues of financial exploitation and diminished mental capacity among seniors and vulnerable clients.





# Case Highlights – Member

## Credential Asset Management Inc.

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### Reasons for Decision: March 9, 2022

In a Settlement Agreement, Credential Asset Management Inc. (“Credential”) admitted that it failed to establish and maintain adequate policies and procedures, controls, and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices. As a result, certain sales incentives offered by Credential contravened requirements in NI 81-105 that prohibits incentives that could improperly influence an Approved Person’s decision to recommend one mutual fund product over another. This settlement was part of joint regulatory action taken by the MFDA and the British Columbia Securities Commission (the “BCSC”) which released a settlement agreement with Credential addressing the same conduct on the same day.

In November 2011, Credential began offering a customized suite of related party and third party mutual funds to clients of Credential’s financial institution (“FI”) partners that was branded as the OnCourse Program and was similar to proprietary mutual fund lines offered by its competitors. Credential and certain FI partners received higher trailing commissions on sales of OnCourse Funds compared to similar products sold outside the program. Some Approved Persons of Credential and its FI Partners were eligible to receive sales incentives for selling mutual funds through the program that were not offered in respect of sales outside the program, including performance bonuses and increased sales commissions.

Separately, between 2016 and 2017, one of Credential’s FI partners implemented a sales incentive program that offered Approved Persons bonus compensation and credit for selling mutual funds that met criteria to be characterized as socially responsible investing (“SRI”) mutual funds that was not offered to Approved Persons of other mutual funds.

Subsequent to the events described above, Credential:

- › amended its policies and procedures to address sales incentives and comply with NI 81-105;
- › directed its FI partners to discontinue the bonuses and other sales incentives offered to Approved Persons for sales of OnCourse and SRI mutual funds; and
- › established a special committee to address conflicts of interest related to compensation.

**The Hearing Panel accepted the Settlement Agreement and imposed a fine of \$280,000 and costs of \$20,000. In a separate settlement agreement with the BCSC, Credential agreed to pay a \$300,000 fine to the BCSC for, among other things, contravening the requirements of NI 81-105.**

## Quadrus Investment Services Ltd.

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### Reasons for Decision: January 20, 2021

In a Settlement Agreement, Quadrus Investment Services Ltd. (“Quadrus”) admitted that it failed to establish and maintain adequate policies and procedures, controls, and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices. As a result, some sales incentives offered by Quadrus contravened requirements in NI 81-105 that prohibit incentives that could improperly influence an Approved Person’s decision to recommend one mutual fund product over another.

Quadrus distributed certain proprietary mutual funds as well as third party mutual funds. Certain classes of Approved Persons could only sell proprietary mutual funds (Category 1 advisors), while others could sell both proprietary and third party mutual funds (Category 2 advisors).

Between 2002 and December 31, 2016, Category 2 advisors participated in three programs which offered incentives (some monetary and some non-monetary) that may have encouraged Approved Persons to recommend proprietary mutual funds over third party mutual funds.

Quadrus also failed to adequately supervise its compliance with an exemption that permitted Category 1 advisors to service client accounts holding third-party mutual funds on an “accommodation” basis. Category 1 advisors were only permitted to service accounts holding third party mutual fund holdings provided that neither Quadrus nor its advisors received any compensation from the sale of third party mutual fund products to clients by those Category 1 advisors. Between 2009 and 2018, contrary to the conditions of the exemption, Quadrus received \$219,000 in DSC and front-end load commissions, and clients incurred \$43,000 sales charges from the purchase of third party mutual funds offered by Category 1 advisors.

Quadrus subsequently implemented remediation plans to reimburse fees charged on the sale of third party mutual funds by Category 1 advisors, and amended or discontinued the incentive programs offered to Category 2 advisors that might contravene NI 81-105.

**The Hearing Panel accepted the Settlement Agreement and imposed a fine of \$600,000 and costs of \$25,000.**

## Progressive Financial Strategy Capital Group Corp.

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### Reasons for Decision: Not Yet Issued

In a Settlement Agreement, Progressive Financial Strategy Capital Group Corp. (“Progressive”) admitted that it failed to maintain minimum capital of \$50,000 and minimum risk adjusted capital of zero as required by MFDA Rules. In particular, between January 2018 and September 2019, Progressive made 6 cash transfers to its parent company or paid the parent company’s credit card debt, which caused Progressive’s capital to go below \$50,000 and which caused its RAC to fall to a level below zero.

On three occasions the Respondent replenished its bank account with transfers from the President’s personal bank account to Progressive’s bank account. Contrary to MFDA requirements, Progressive failed to immediately notify the MFDA when its RAC fell below zero.

Since September 2019, Progressive has maintained its minimum capital above \$50,000 and its RAC at a level above zero and has produced bank statements to the MFDA with its monthly financial reports to confirm its compliance with the Rules.

**The Hearing Panel accepted the Settlement Agreement and imposed a fine of \$10,000, costs of \$5,000 and a 1 year requirement that Progressive produce bank statements with its monthly financial reports to the MFDA.**

# Case Highlights – Approved Person

## Omar Enrique Rojas Diaz (also known as Omar Rojas)

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### Reasons for Decision: January 29, 2021

### Hearing and Review Decision: October 5, 2021

In an Agreed Statement of Facts, Diaz admitted that he misappropriated approximately \$39,270 from a client. Diaz, who was also an employee of a bank affiliated with the Member encouraged the client to open a line of credit, and then, without the knowledge or authorization of the client, he proceeded to withdraw and misappropriate monies from the client's line of credit. In order to avoid detection, he secretly made minimum payments on the line of credit until his conduct was discovered. The client was subsequently compensated by the bank for the monies misappropriated by Diaz. Diaz was terminated by the bank and entered into a consumer proposal with his creditors. He claimed that due to his financial circumstances, he could not afford to pay a financial penalty as a consequence of his misconduct.

The MFDA Hearing Panel imposed a permanent prohibition and costs of \$2,500, finding that Diaz was impecunious and that an additional financial penalty would constitute an unreasonable punishment in the circumstances.

MFDA Staff applied to the Ontario Securities Commission (the "OSC") for a hearing and review. The OSC varied the penalty by imposing a fine that disgorged the financial benefit that Diaz obtained by engaging in his misconduct and an additional amount to promote general deterrence. In doing so, the OSC found that disgorgement was necessary even with the Respondent's inability to pay, given the seriousness of the misconduct in this case.

**The Commission Panel imposed a fine of \$52,270 in addition to the penalties imposed by the MFDA Hearing Panel.**

## Tyler Weldon Davidson

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### Reasons for Decision: August 24, 2021

In a Settlement Agreement, Davidson admitted that he recommended that a client make a \$403,800 purchase of a mutual fund that unnecessarily subjected the client to a 7 year deferred sales charge ("DSC") schedule and generated a commission to himself. The client was eligible to purchase no-load mutual funds with lower management fees. As a result of the purchase of the DSC mutual fund, Davidson received commissions of approximately \$15,346 that he would not have received if the client had purchased no-load funds. Four days after processing the DSC mutual fund purchase, the Respondent facilitated switches out of the DSC fund and into the no-load mutual funds that he had previously recommended to the client. Following the switches, the money invested remained subject to the 7 year DSC schedule.

Between October 2014 and October 2018, the client redeemed some of the mutual funds from her account and incurred DSC fees of approximately \$17,200. The Member reimbursed the client for the DSC fees and interest charges that she incurred as a result of the DSC schedule that was applicable to her mutual fund holdings.

**The Hearing Panel accepted the Settlement Agreement and imposed a one month prohibition, a fine of \$22,500, and costs of \$5,000.**

## Brian Walter Wilkinson

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**Reasons for Decision (Misconduct): January 29, 2021**  
**Reasons for Decision (Penalty): June 28, 2021**

Upon the conclusion of a contested hearing, Wilkinson was found to have breached his suitability obligations by failing to disclose the material risk of overconcentration in precious metal bullion funds to two clients. Notwithstanding Wilkinson's beliefs in the viability of bullion funds, he had an obligation to disclose the material risks of overconcentration in these funds, which he did not do. Wilkinson also sent written communications to clients which contained misleading or incomplete information, made unwarranted or

exaggerated claims or conclusions about the safety and future performances of precious metal sector mutual funds or failed to identify material assumptions made in arriving at the conclusions. Wilkinson was also found to have placed advertisements on the internet without obtaining the prior approval of his Member as required by MFDA rules and the Member's policies and procedures.

**The Hearing Panel took into account the fact that the Respondent had not been registered for 3 years prior to the hearing and imposed a three month prohibition, a fine of \$25,000, and costs of \$15,000.**

## Matthew Elliot De Haan

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**Reasons for Decision: September 27, 2021**

In an Agreed Statement of Facts, De Haan admitted that he engaged in securities related business outside of the Member by soliciting seven individuals, including one client, to invest in an investment to finance an American windfarm that was not approved for sale by his Member. Promotional materials distributed by De Haan forecasted a 7468% return on a USD \$500,000 investment in the windfarm. Notably, this was found to be a regulatory contravention even though none of the investors who were solicited by De Haan

actually purchased the investments. De Haan also acknowledged that he engaged in an unapproved outside activity by acting on behalf of a third party company without the approval of his Member. In addition, De Haan admitted that during the course of the Member's investigation into his conduct, he provided a false or misleading statement to the Member when he falsely denied that any of the investors solicited to invest in the windfarm were clients of the Member.

**The Hearing Panel imposed a five year prohibition and a fine of \$15,000.**

## Alim Kassam

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### Reasons for Decision: January 18, 2022

This case is related to the proceeding against Matthew Elliot De Haan. Kassam was De Haan's branch manager and was responsible for supervising De Haan during the material time period.

In a Settlement Agreement, Kassam admitted that he failed to adequately query or report to the Member information that he received that an Approved Person who he was responsible for supervising [De Haan] had solicited an individual to purchase an investment outside the Member. When an Approved Person from another dealer informed Kassam that he had been solicited to invest in an American windfarm investment, Kassam failed to follow up on the information in a timely way

to, among other things, ascertain the identity of the Approved Person who had made the solicitation. When he subsequently did learn that it was De Haan, Kassam did not report the information to the Member's head office because De Haan had tendered his resignation. As a branch manager, Kassam had a duty to report this information to the Member in spite of De Haan's intention to resign. Kassam admitted to failing to fulfill his supervisory obligations as a branch manager and his reporting obligations under MFDA Policy No. 6.

**The Hearing Panel accepted the Settlement Agreement and imposed a fine of \$5,000, costs of \$5,000, a 6 month prohibition from serving as a branch manager or in any supervisory capacity, and the requirement to successfully complete an acceptable supervision course.**

## Mark Allen Smith

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### Reasons for Decision: September 24, 2021

In an Agreed Statement of Facts, Smith admitted that he accepted and acted upon a power of attorney ("POA") for his mother who was a client without notifying the Member and failed to transfer the accounts to another Approved Person in accordance with the Member's requirements. Smith also admitted that he engaged in personal financial dealings when he exercised his authority under the POA to borrow or otherwise obtain monies from the client's accounts, provided false or misleading responses to the Member on annual compliance questionnaires, and failed to notify the Member within two business days that he had made an arrangement with his creditors.

In particular, Smith was appointed as POA over his 88 year old mother's accounts at the Member as his mother was suffering from health problems and her husband had recently passed away. By virtue of his mother's age and circumstances, she was a vulnerable client. Subsequently, Smith borrowed \$149,358 by exercising his authority as POA to withdraw monies from her lines of credit and personal bank accounts.

Of the amount borrowed, \$21,224 came from the proceeds of mutual fund redemptions. Smith used these monies to support his gambling activities, pay personal expenses, or otherwise fund his lifestyle. The client also accrued \$27,000 in interest on her lines of credit as a result of Smith's withdrawals. Smith reimbursed \$54,358 of the \$149,358 withdrawn from the client. In responses submitted to the Member in annual compliance questionnaires, Smith falsely denied that he held a POA in favour of a client and that he had borrowed money from a client, thereby undermining the Member's ability to supervise his conduct.

Smith also failed to disclose a consumer proposal to the Member, and only did so after an investigation was opened with respect to his POA over the client's accounts.

**The Hearing Panel imposed a permanent prohibition, a fine of \$140,000 (to be reduced by amounts repaid to the client up to \$122,000 if received prior to December 31, 2022), and costs of \$5,000.**

# Hearings – Concluded by Type of Primary Allegation

## Acting Outside Registration Status

Jenkins, Dean  
Spithoff, Collin

## Active Signature Falsification

Armstrong, Ronald  
Arruda, Lucia  
Boutilier, Chad  
Dickout, Jason  
Fahad, Muhammad  
Gilmour, Orrin  
Makonin, Cindy  
Martineau, Jason  
Miller, Jessica  
Satchithanatham, Sageev  
Stewart, Benjamin  
Targerson, Derek

## Confidentiality/ Privacy

Mitha, Zeleen  
Wang, Yukun

## Conflict of Interest

Davidson, Tyler

## Failure to Cooperate

Chow, King Kwong  
Dudding, Guy  
Harmer, Marja  
Henricks, Jewel  
Loyola, Ilden  
Tuitakalai, Douglas

## Financial Requirements

Progressive Financial Strategy  
Capital Group Corp.

## Forgery/Fraud/Theft/ Misappropriation/ Misapplication

Diaz, Omar  
Goodison (Johal), Natasha  
Ramgolam, Ramnarine  
Richard, David Len Carleton  
Shen, Libin  
Ton-That, Viet

## KYC Documentation Deficiency

Sunkara, Kosal Vibhav

## Outside Activity

de Haan, Matthew  
Tan, Lucillia

## Personal Financial Dealings

Chapman, Derek  
Davidson, Sean  
Krahl, Kimberley  
Luong Dao, My Phuong  
Rahman, Md Ashanur  
Raza, Mir Amer  
Smith, Mark  
Yalkezian, Joe

## Pre-Signed Forms

Bennett, James  
Campbell, Jason  
Chiu, Peter  
Church, Bryan  
Clark, Kenneth  
Dziadecki, Leszek  
Farrell, Michael  
Hare, Jason  
Harry, Helen  
Harvey, William  
Hillsdon, John Paul  
Kennedy, Marilyn  
Kliever, Teagan  
Knyf, Diane  
Koo, Albert  
Kotze, Adrian

Lebel, Nancy  
Ledingham, Robert  
Lynch, Patrick Daniel  
MacDermaid, Edward  
MacDonald, Brian  
Mcmillan, David  
Moreno, Julio  
Myers, Gregory  
Myers, Nancy  
Nguyen, Khoa  
Perron, Gilles  
Ramjohn, Zanecia  
Ravn, Bertha  
Rolland, Charles  
Romaniuk, Edward  
Sherman, Scott  
Sopel, Steven  
Treble, William  
Tse, Ada  
Vyas, Bhavin  
Weiler, Roland Martin  
Wilson, James  
Wong, Magdalene  
Wong, Sylvia

## Provincial Securities Legislation

Gowan, Paul  
Nichols, Scott Charles  
O'Brien, Joshua

## Suitability - Investments

Kostamo, Tuomo  
Sjostrom, Vanessa  
Thompson, Deryl  
Wilkinson, Brian

## Supervision

Arnold, Pauline  
Kassam, Alim

## Unauthorized/ Discretionary Trading

Attis, Joel  
Charlton, Wayne  
Monteiro, Laura

# Glossary

## Active Signature Falsification

Refers to instances in which an Approved Person or other individual signs the client's signature or initials on a document in an effort to make it appear the client actually signed the document.

## Approved Person

Refers to an individual who is a partner, director, officer, compliance officer, branch manager, or alternate branch manager, employee or agent of a Member who (i) is registered or permitted, where required by applicable securities legislation, by the securities commission having jurisdiction, or (ii) submits to the jurisdiction of the MFDA.

## Business Standards

Refers to a breach of the high business standards required by MFDA Rule 2.1.1(b).

## Canadian Securities Administrators

Refers to the umbrella organization of provincial and territorial securities regulators in Canada.

## Commissions and Fees

Refers to allegations involving practices such as disclosure of commission structure and cost, and other issues such as where an Approved Person recommends a trade or multiple trades in a client's account for the purpose of generating sales commissions or otherwise creating a benefit for the Approved Person where there is little or no rationale for the trade.

## Complaint Procedures

Refers to allegations involving the requirement that every Member shall establish written policies and procedures for dealing with client complaints that ensure that such complaints are dealt with promptly and fairly.

## Concentration Risk

Refers to the risk posed to a client when a client's accounts are concentrated into a single investment or sector, which can be subject to greater volatility and pose greater risk than accounts that are well diversified.

## Discretionary Trading

Refers to a situation whereby a Member or Approved Person is granted authority by the client to make a trade without obtaining specific instructions from the client prior to the execution of the trade concerning one or more elements of the trade: selection of the security to be purchased or sold, the amount of the security to be purchased or sold, and the timing of the trade. MFDA Members and Approved Persons are not permitted to engage in discretionary trading.

## Falsification

Refers to the false making or alteration of a document by which the rights or obligations of another person are affected but where a person is not deprived of a property or a right.

## Forgery

Refers to the creation of a false document with the intent that it be acted upon as the original or genuine document, and where the victim is deprived of property or rights.

## Fraud

Refers to an act of dishonest deception, misrepresentation, or an intentional distortion of truth in order to induce another to part with something of value or to surrender a legal right.

## Handling of Funds

Refers to the failure to properly handle client funds in accordance with MFDA requirements.

## Know-Your-Client ("KYC")

Refers to the requirement that a Member and Approved Person collect information about a client to assist in making suitable investment recommendations.

## Leveraging

Refers to the practice of using borrowed money for the purpose of investing.

## **Member**

Refers to mutual fund dealers that are Members of the MFDA.

## **Misapplication of Funds**

Refers to situations where funds in the rightful possession of an Approved Person or Member are put to an improper purpose for the benefit of a third party.

## **Misappropriation**

Refers to situations where a person has a right to be in possession of property but puts it to his or her own benefit.

## **Misrepresentation**

Refers to a misstatement or omission of a material fact with the intent to deceive.

## **Outside Activities (“OA”)**

Refers to any activity conducted by an Approved Person outside of the Member: (a) for which direct or indirect payment, compensation, consideration or other benefit is received or expected; (b) involving any officer or director position and any other equivalent positions; or (c) involving any position of influence.

## **Personal Financial Dealings (“PFD”)**

Refers to situations in which an Approved Person or Member engages in financial activity with a client. A concern arising from this type of conduct is that conflicts of interest arise in connection with such activity. PFD can include borrowing from clients, lending to clients, and engaging in private investment schemes with clients.

## **Policies and Procedures**

Refers to the requirement on Members to establish and maintain written policies and procedures (that have been approved by senior management) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the MFDA, and applicable securities legislation.

## **Pre-Signed Form**

Refers to forms that have been signed by a client when they were blank or only partially completed.

## **Provincial Securities Legislation**

Refers to the violation of provincial securities legislation and requirements for which there is no comparable MFDA requirement.

## **Referral Arrangements**

Refers to an arrangement whereby a Member is paid, or pays a fee for the referral of a client to, or from, another person. All referrals must go through a Member.

## **Sales Communications**

Refers to the requirement that advertisements and sales communications must be approved by a designated partner, director, officer, compliance officer or branch manager before being issued. The rationale for this is to ensure that no misleading, inaccurate or otherwise prohibited information is provided to a client who may act upon such information in making investment decisions.

## **Self Regulatory Organization (“SRO”)**

A Self-Regulatory Organization (“SRO”) is an entity that is organized for the purpose of regulating the operations and the standards of practice and business conduct of its members and their representatives with a view to promoting the protection of investors and the public interest.

## **Senior**

Refers to investors 60 years of age or over.

## **Signature Falsification**

Refers to the creation, possession, or use of documents which have been pre-signed or on which client signatures have been falsified through other means. Examples include cutting and pasting a previous signature, signing a client’s name to a document, having a client sign multiple forms for use in future trading, and using liquid paper to white out old instructions and write in new ones on a signed client form.

## **Suitability**

Refers to the requirement that recommendations made by an advisor be suitable in relation to a client’s investment objectives, risk tolerance and other personal circumstances.



### **Supervision**

Refers to the MFDA's investigation of whether a supervisory failure may have contributed to situations where an Approved Person engaged in misconduct. Supervisory failures may include inadequacy in the procedures for supervision or in the actual supervision of others.

### **Theft**

Refers to the taking of property, not rightfully in one's possession, for personal use and exploitation.

### **Transfer of Accounts**

Refers to the transfer of an account without proper client consent or a delay in the transfer of the account.

### **Vulnerable Person**

Refers to investors particularly at risk due to circumstances such as language barriers, limited literacy, disability issues, or very limited financial resources.

### **Unauthorized Trading**

Refers to the practice of a Member or Approved Person making trades without the client's knowledge or approval.



# Resources

## Further Information

The MFDA website has additional information including with respect to the following areas:

- › [Opening an Investment Account](#)
- › [Protecting Yourself from Fraud](#)
- › [Guide to the Hearing Process](#)
- › [Sanction Guidelines](#)
- › Enforcement Hearings:
  - [Hearings Schedule](#)
  - [Current Cases](#)
  - [Completed Cases](#)
  - [Cases Under Review/Appeal](#)
- › Hearing Procedures:
  - [Rules of Procedure](#)
  - [Forms](#)
- › Related By-Law Sections (Sections 18-26)
- › [Enforcement Statistics](#) contains additional information on case handling activity
- › [For Seniors](#)
- › [For Investors](#)

## Other Resources

### Ombudsman for Banking Services and Investments

Any action taken by the MFDA will not include an order that investors be compensated for any financial losses they may have suffered. Additionally, the MFDA is unable to assist clients with civil claims. Investors who wish to pursue financial compensation may wish to consult with the Ombudsman for Banking Services and Investments ([www.obsi.ca](http://www.obsi.ca) or 1-888-451-4519) or a lawyer.

### National Registration Search

In Canada, anyone trading securities or in the business of advising clients on such securities, including Approved Persons and Members, must be registered with the provincial or territorial securities regulator, unless an exemption applies. Check the National Registration Search to find out if an individual or firm is registered in your province or territory and what product and services a firm or individual can offer, or contact your provincial securities regulator.


### Disciplined List


The Canadian Securities Administrators maintains a cross-jurisdictional Disciplined List, which can be used to search for any disciplinary action taken against an individual or company by a provincial securities regulator or self-regulatory organization, including the MFDA.


## How to File a Complaint

Information on how to file a complaint about a Member or Approved Person can be found at <http://www.mfda.ca/investors/complaints.html>

## Investors can complain electronically by:

 [complaints@mfda.ca](mailto:complaints@mfda.ca)

 using the complaint form available on the website

 416-361-6332  
(toll-free: 1-888-466-6332)

#### **TORONTO OFFICE**

121 King Street West  
Suite 1000  
Toronto, ON M5H 3T9

☎ (416) 361-6332 or  
1-888-466-6332

✉ [mfda@mfda.ca](mailto:mfda@mfda.ca)

#### **PACIFIC OFFICE**

650 West Georgia Street  
Suite 1220  
Vancouver, BC V6B 4N9

☎ (604) 694-8840

✉ [PacificOffice@mfda.ca](mailto:PacificOffice@mfda.ca)

#### **PRAIRIE OFFICE**

800-6th Avenue S.W.  
Suite 850  
Calgary, AB T2P 3G3

☎ (403) 266-8826

✉ [PrarieOffice@mfda.ca](mailto:PrarieOffice@mfda.ca)



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