Manitoba Financial Services Agency

November 24, 2025

IN THE MATTER OF: A DECISION OF A HEARING PANEL OF THE CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

AND

IN THE MATTER OF: AN AMENDED APPEAL APPLICATION FILED BY ANDREW KAZINA

DECISION OF A HEARING PANEL OF THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	L. A. Vincent
Member:	D. Metcalfe

Appearances:

For CIRO:	A. Melamud
For A. Kazina	Self-represented

A. Overview

1. On May 11, 2023, by Order No. 7601, the Canadian Investment Regulatory Organization (CIRO) was recognized as a self-regulatory organization under the provisions of Section 31.1. of *The Securities Act* C.C.S.M. c.S50 (the "Act") to operate as a successor to the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), following the legal amalgamation of IIROC and the MFDA.

2. CIRO is subject to the provisions of Order No. 7601 (the "Order") and to ongoing oversight by the Manitoba Securities Commission (the "MSC" or the "Commission"). CIRO is responsible for many matters including establishing and maintaining rules to ensure compliance with all applicable legislation, the protection of the investing public, and administering robust compliance and enforcement processes including handling disciplinary matters, conducting disciplinary hearings and imposing sanctions.

3. On February 21, 2025, Andrew Kazina ("Kazina" or the "Appellant") filed an Amended Notice of Appeal (the "Amended Appeal") with the Commission. Kazina is appealing a) the Decision and Reasons (Misconduct) dated November 15, 2023 and b) the Reasons for Decision (Penalty) dated January 15, 2024, of a CIRO disciplinary hearing panel (the "CIRO Panel").

4. This matter comes to this hearing panel (the "Panel") of the Commission pursuant to the provisions of Section 31 of the Act. The relevant provisions include:

> **Review of self-regulatory organization's decision**
> **31.5.1(1)** Any person or company affected by a decision of a self-regulatory organization may, within 30 days after the decision is made, apply to the commission for a review of the decision. On receiving the application, the commission has discretion whether to review the decision.
>
> **Application of Part IV**
> **31.5.1(2)** If the commission decides to review the decision, Part IV (Appeals) of this Act applies, with necessary modifications, to the review as if the decision were a decision of the Director.

The relevant provision in Part IV reads:

Power on review

29(2) Upon a hearing and review, the commission may by order confirm, quash, or vary, the direction, decision, order or ruling under review, or make such other direction, decision, order or ruling as the commission deems proper.

B. Background

5. Kazina was a consultant engaged in the sale of mutual funds in Manitoba with Investors Group Financial Services Inc. (the "Member") from approximately January 1992 to October 2017. Kazina was briefly designated as a branch manager of the Member for a period of time prior to 2010.

6. From February 8, 2002 to October 5, 2017, (the "Material Time") Kazina was registered as an Approved Person of a member firm of the MFDA. In order to engage in the sale of mutual funds in Canada, an individual was legally required to be associated with a member firm registered with the MFDA and was required to be registered as an Approved Person with the MFDA.

7. In May 2018 staff of the MFDA commenced an investigation into Kazina's conduct, following a report the Member filed with it. The filing of the report followed a complaint the Member received from an individual on behalf of her parents, JG and MG, who were clients of the Member.

8. On June 4, 2020, the MFDA issued a Notice of Hearing which contained the following allegations:

    a. **Allegation #1**. Between February 8, 2002 and October 5, 2017, the Respondent engaged in outside business activities that were not disclosed to and approved by the Member by operating businesses that provided tax and financial planning services to individuals, and marketing, franchising and other consulting services to businesses, contrary to the policies and procedures of the Member and MFDA Rules 1.2.1(d) [now 1.3], 2.1.1, 2.5.1, 2.10 and 11.2.

b. **Allegation #2**. Between January 2012 and October 5, 2017, the Respondent recommended and accepted approximately $257,500 for investments in a business that he operated from at least eight clients and at least two non-clients, thereby engaging in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.1.1, 2.1.1, 2.5.1, 2.10 and 1.1.2.

c. **Allegation #3.** Between January 2012 and October 5, 2017, the Respondent solicited approximately $232,000 from at least eight clients that he used to finance and operate his business and commingled the money with his personal savings in bank accounts that he held in his own name or jointly with his wife, thereby engaging in personal financial dealings with clients that gave rise to a conflict of interest that he failed to disclose to the Member or address by the exercise of responsible business judgement influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4, and 2.1.1.

d. **Allegation #4**. Between no later than 2006 and October 5, 2017, the respondent provided false or misleading information to the Member in responses to questions on annual compliance questionnaires from the Member, contrary to MFDA Rule 2.1.1.

9. The CIRO Panel heard the matter on November 14 through 19 and November 21, 2022. In the course of the hearing the CIRO Panel heard from eighteen (18) witnesses, three (3) of whom were called by counsel for CIRO Staff ("Staff Counsel") and fifteen (15) of whom were called by Kazina. The witnesses called by Staff Counsel included Catherine Kelly ("Kelly"), a compliance manager with the Member, and Patricia West ("West" or the "CIRO Investigator") who was a senior investigator with the MFDA.

10. After hearing from the witnesses, and accepting into evidence affidavits and other documentary evidence, the CIRO Panel received written submissions and heard oral argument from both parties. A full day was set for the parties to provide their oral submissions on the merits hearing to the CIRO Panel.

11. The CIRO Panel issued its Decision and Reasons (Misconduct) (the "Merits Decision") on November 15, 2023. The reasons were detailed, and included extensive reviews of all of the witnesses' testimony and the documentary evidence. The CIRO Panel found that Staff Counsel had proven all of the allegations.

12. On December 22, 2023, Kazina filed an appeal with the Commission from the findings in the Merits Decision.

13. The hearing panel of the Commission assigned to the matter dismissed the request to have an appeal heard from the Merits Decision. On June 9, 2024 it issued a decision that directed the parties to return to the CIRO Panel and to complete all of the disciplinary processes under the CIRO Rules.

14. The CIRO Panel then received written submissions[1] and heard oral argument from the parties on the issue of the appropriate sanctions.

15. The CIRO Panel issued its Decision on Penalties (the "Penalty Decision") on January 15, 2025. The following sanctions were ordered:

    a. A permanent prohibition from conducting securities related business while in the employ of, or associated with, any Dealer Member that is registered as a Mutual Fund Dealer, pursuant to section 24.1.1(e) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1.(e)).;

    b. A total fine of $313,500.00 which includes:
        i. A fine in the amount of $213,000.00 which represents disgorgement of the amount Kazina received in connection with accepting monies for investment into his outside business interests; and
        ii. An additional fine in the amount of $100,000.00.

    and

    c. Costs in the amount of $30,000.00.

1 The CIRO Panel received written submissions from Staff Counsel dated February 20, 2024, March 20, 2024, May 10, 2024 and received written submissions from Kazina dated March 10, 2024 and June 17, 2024.

16. The determination of the CIRO Panel in the Merits Decision and the Penalty Decision was finalized by CIRO in an order issued on November 13, 2024.

17. On February 21, 2025 Kazina filed the Amended Appeal with the MSC, in which he appealed from the findings in both the Merits Decision and the Penalty Decision. In the Amended Appeal document, Kazina requested that he be permitted to adduce fresh evidence at the appeal hearing, including hearing from a number of witnesses. The Panel determined that it would first decide the issue of whether it was appropriate to allow for fresh evidence after receipt of written arguments from the parties.

18. The Panel was provided with the transcripts from the CIRO Panel hearing on the merits, as well as the transcripts of the oral arguments made by the parties to the CIRO Panel on both the merits hearing and the penalty hearing.

19. Following receipt of written arguments, the Panel issued a written decision on June 9, 2025 which dismissed Kazina's request to adduce fresh evidence at the hearing of the Amended Appeal.

20. The Panel received written submissions from the parties on August 28, 2025 and heard oral arguments, in person, on September 4, 2025. This is our decision on the Amended Appeal.

C. The Merits Hearing

21. Kazina was retained by the Member as a Consultant. At the time of his initial on-boarding with the Member, he entered into a Sales Representative's Agreement dated October 16, 1991 (the "1991 Agreement") in which he agreed to adhere to the policies and procedures of the Member, as amended from time to time. The 1991 Agreement included the following provisions:

> 2. SALES REPRESENTATIVE'S STATUS
>
> The Sales Representative shall carry out the responsibilities set out herein without interference from Investors, except that Investors may from time to time prescribe rules and regulations respecting the conduct of the Sales Representative's business, which are necessary to protect the interests of Investors or its clients or to comply with any law, ordinance or regulation, or with any resolution of the Investment Funds Institute of Canada which has been adopted by Investors, governing or relating to

the conduct of Investors' business. With the exception of these rules and regulations, the Sales Representative is free to exercise his or her own judgement as to the conduct of his or her business, including the persons the Sales Representative will solicit and the time and place of solicitation.

3. SALES REPRESENTATIVE'S RESPONSIBILITIES

The Sales Representative agrees to carry out the following responsibilities in connection with the canvassing for applications for products issued or distributed by Investors;

(i) Licensing- **to comply with all laws, ordinances, and regulations relating to the performance of his or her duties under this Agreement and to comply with all policy statements issued by the Securities Commission of the jurisdiction granting his or her license and issued by other regulatory authorities governing the conduct of his or her business.** In particular, the Sales Representative agrees not to interview prospective clients nor to canvass for applications until he or she has securities all licenses required by law and has filed application for surety bond coverage on a form supplied by Investors;[emphasis added]

…

18. FORMER AGREEMENTS

Effective as of the date of signing hereof, this Agreement shall be in lieu of and supersede any former Sales Representative Agreement between the parties.

22. Kazina later signed a Consultant's Agreement with the Member on August 12, 2002 (the "2002 Agreement"). The relevant provisions of the 2002 Agreement included:

1. **CONSULTANT'S APPOINTMENT AND STATUS**

IGFS hereby engages the Consultant as its agent to arrange for the distribution of the financial products and services offered or sponsored by IGFS and/or its affiliated corporations, from time to time, and to collect and pay over to IGFS all payments received by the Consultant in connection with such activity. For greater certainty, the Consultant and IGFS agree that the Consultant is not an employee of IGFS and the relationship is one of principal and agent. Subject to the protection of IGFS' goodwill and regulatory responsibilities, the Consultant is free to exercise his/her own judgement as to the conduct of his/her business and is free to carry out his/her responsibilities at such times, at such places and in such manner as he/she sees fit…

The Consultant agrees that he/she will not distribute any products or services not offered or sponsored by IGFS and/or its affiliated corporations. The Consultant further acknowledges and agrees that all

clients have a contractual relationship with IGFS and that he/she owes a fiduciary duty to IGFS and he/she will not do anything to diminish IGFS' relationship with its clients.

2. CONSULTANT'S RESPONSIBILITIES

The Consultant agrees to carry out certain responsibilities in connection with arranging for the distribution of financial products and services offered or sponsored by IGFS and/or its affiliated corporations, including but not limited to

(i) Rules, Regulations and Laws – to comply with all rules, regulations and policies that IGFS may prescribe from time to time regarding the conduct of the Consultant when he/she is carrying on business as an agent of IGFS which are necessary to protect the interests of IGFS or its clients, or to comply with any applicable law, rule, policy, ordinance or regulations and any amendments thereto, issued by any applicable regulatory authority, including, without limitation, the Mutual Fund Dealers Association of Canada, and any other self-regulatory authority and any securities commission or any successor thereto:

…

12. **MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

This Agreement incorporates all of the obligations required by Rule 1.15(a) to (i) of the Mutual Fund Dealers Association of Canada or any other similar Rule that is imposed on its members from time to time.

…

14. **FORMER AGREEMENTS**

Effective as of the date of signing hereof, this Agreement shall be in lieu of and supersede any former Consultant's Agreement or Sales Representative Agreement.

23. Kazina also signed a Schedule G - Agreement of Approved Person (the "Agreement of Approved Person"") dated May 15, 2001. The Agreement of Approved Person was a form that the MFDA required all Approved Persons to sign. The Agreement of Approved Person required Kazina to notify the Member, in writing, of any change in information relating to him as an Approved Person as prescribed by any applicable law or any by-law, rule or policy of the MFDA: and be bound by, observe, and comply with the MFDA Rules as they were from time to time amended or supplemented. The Agreement of Approved Person also required that Kazina be conversant with, and remain fully informed of, the MFDA Rules as they were amended or supplemented from time to time.

24. The MFDA has rules and regulations that all Approved Persons are required to adhere to. Some of the rules relevant to this matter include:

> **1.2 INDIVIDUAL QUALIFICATIONS**
>
> **1.2.1 Salespersons**
>
> ...
>
> (c) **Dual Occupations.** An Approved Person may have, and continue in, another gainful occupation, provided that:
>
> **...**
>
> (iii) *Member approval*. The Member for which the Approved Person carried on business either as an employee or agent is aware and approves of the Approved Person engaging in such other gainful occupation.
>
> ...
>
> (vi) *Disclosure*. Clear disclosure is provided to clients that any activities related to such other gainful occupation are not business of the Member and are not the responsibility of the Member.

MFDA Rule 2.1.1 reads:

> **2.1.1 Standard of Conduct.**
>
> Each Member and each Approved Person of a Member shall:
>
> (a) deal fairly, honestly and in good faith with its clients;
>
> (b) observe high standards of ethics and conduct in the transaction of business;
>
> (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
>
> (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

25. Approved Persons were also required, in the MFDA Rules, to adhere to all requirements of their member firm Rule 1.1.2 reads:

> **1.1.2 Compliance by Approved Persons**
>
> Each Approved Person who conducts or participates in any securities related business in respect of a Member in accordance with Rule 1.1.1.(c)(i) or (ii) shall comply with the By laws and Rules as they relate to the Member or such Approved Person.

26. The MFDA also has rules and regulations that required member firms to supervise their Approved Persons. Member firms were required to be the first line of supervision in ensuring

that Approved Persons were adhering to the rules and regulations of the MFDA. MFDA Rules 2.5.1, and 2.10 read:

> **2.5 MINIMUM STANDARDS OF SUPERVISION**
>
> **2.5.1 Member Responsibilities**
>
> 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 and with applicable securities legislation.
>
> **2.10 POLICIES AND PROCEDURES MANUAL**
>
> Every Member shall establish and maintain written policies and procedures (that have been approved by senior management of the Member) for dealing with clients and ensuring compliance with the Rules, By-laws and Policies of the Corporation and applicable securities legislation.

27. From 1997 to 2005, the Member set out requirements for its Approved Persons in a document titled "Business Standards Manual". From July 2005 and following, that document was called the "Compliance Manual". In each version of the documents, the issue of Approved Persons being involved in Outside Business Activities ("OBA") was addressed.

28. In 1997 the provision included:

> 8. A Representative's outside business activities must be disclosed to the Regional Manager and the securities commission. Your mutual funds license stipulates that you will work full time with Investor's Group. If this is not the case, the Securities Commission may revoke your license or place restrictions on it.

29. In the version dated 2000, the relevant provision read:

> 7. A Consultant's outside business interests must be disclosed to the Regional Director and the Securities Commission. Your mutual funds registration stipulates that you will work full-time with Investors Group. If this is not the case, the Securities Commission may revoke your license or place restrictions on it.

And with respect to tax preparation:

> It is against corporate policy for you to prepare tax returns for clients. ***Leave tax preparation to the professionals.*** This policy is necessary to limit your personal liability, corporate liability and ensure that you have the time necessary to fully serve clients.

30. With respect to OBAs the Compliance Manual was updated on May 28, 2010. The relevant provisions read as follows:

> "3.6 Outside business activity

Updated May 28, 2010

As an Investors Group Consultant, it is expected that your time and energy will be devoted to the on going servicing of clients and building your business. As a professional, you have responsibilities to maintain high standards of conduct as well as protect the confidentiality of client information and a void potential conflicts of interest. It is therefore strongly recommended that Consultants focus their commitment to their primary career as an Investors Group Consultant versus seeking other employment activities.

In the event you wish to seek another business/employment activity, you must obtain prior approval from your Regional Director and Vice-President, Financial Services responsible for that region. From a regulatory and compliance perspective, outside business activities are potential risk areas for a number of reasons. The Regional Director will consider the following, among other factors, when granting approval:

- Potential conflict of interest (real or perceived) - a conflict exists when there is potential for a Consultant to place their own personal interest ahead of the client's interest
- Client confusion – clients could potentially misunderstand who the Consultant represents in their outside business. Therefore, there is potential for liability to Investors Group for activit ies of the outside business
- Time commitment and potential for client servicing impact
- Consistency with standards of conduct expected of a Consultant

In the event that approval is granted, you will be expected to meet certain requirements including disclosure to the securities commission, through NRD (within 2 business days of commencing the activity/occupation to your Region Coordinator, who will facilitate the updated of your NRD record. In addition, any changes (e.g. number of hours, position, cessation of the outside business activity, etc.) mu7st be reported to your Region Coordinator within 2 business days. In certain cases (e.g. tax preparation services), a disclosure letter acknowledging that Investors Group is not involved in the operation or supervision of the Consultant's outside business activity and is not responsible for any losses or errors that may result, will be required.

If it is determined that a disclosure letter is appropriate, Consultants are notified and are provided with an approved disclosure template which must be used in all cases. Consultants are to use these letters when a client of Investors Group is also involved with the Consultant in the outside activity. It is not necessary that the Consultant provide the letter to clients who are not involved with the activity.

Consultants are to provide their Regional Director with a copy of each disclosure letter which is sent to clients and retain a copy in the Consultant's client file. The Regional Director copy of the disclosure letter is to be maintained."

31. Kelly was called to give evidence at the Merits Hearing by Staff Counsel. Kelly was a senior manager in the Member's Compliance Investigation Unit and had been for more than 20 years. She testified that from, and subsequent to, November 2011, in order for Approved Persons of the Member to be permitted to engage in OBAs, the following was the required process;

a. The Approved Person was to complete an "outside disclosure form for OBA";

b. The OBA then had to be approved by the Regional Director;
c. If the Regional Director approved, it then had to be approved by either the Area Vice-President or the Senior Vice-President;
d. If approved at that level, it then had to be submitted to the Members' registration team with the compliance area for review and appraisal;
e. Once approved by the registration team, it was submitted to the securities commission via the National Registration Database for approval.

32. Kelly testified that only after the above approvals were all obtained was the Approved Person advised that the OBA was accepted, subject to any conditions deemed necessary by the approving parties.

33. Kelly testified that an OBA would not be approved if there were concerns about conflicts of interest. She testified that conflicts of interest could include such matters as an Approved Person borrowing from or lending monies to a client, being a power of attorney for a client, investing with clients, or being an executor or trustee for the estate of a client.

34. Kelly further testified that if there could be any confusion as to who the client was dealing with; the Member or the Approved Person, then consent would not be granted.

35. With respect to Conflicts of Interest, the Business Standards Manual included the following provisions in 1997:

> 4. Avoid any perception of a conflict of interest.
>
> You must **act in the best interests of the client at all times**. Never allow your personal interests to conflict – or even appear to conflict – with the best interests of the client. (Please refer to the section on Investors Group's conflict of interest policy.) All recommendations must be objective and designed to suit the needs of the particular client. If you are recommending the services of other professionals such as a lawyer, their ability to provide proper service to the client should be the major consideration.
>
> CONFLICT OF INTEREST
>
> As a professional, there is a need for real and perceived integrity in all dealings with clients. The best interests of the client must always be the first consideration. A number of situations may arise, resulting in a potential conflict of interest for a Representative. **You must avoid allowing your relationship with a client to produce an actual or perceived conflict between your personal interests and those of the client.**

The following are examples of situations that could give rise to a conflict of interest and are to be avoided:

...

Outside Activities With Clients.

You should avoid business relationships with clients other than those involving the products and services offered by Investors Group, for example, buying or selling property or other items from or to a client.
These actions can affect your dealings with the client causing a potential conflict of interest.

36. In 2000 the Compliance Manual stated:

4. Avoid any perception of a conflict of interest.

You must **act in the best interests of the client at all times**. Never allow your personal interests to conflict – or even appear to conflict – with the best interests of the client. (Please refer to the section on Investors Group's conflict of interest policy.) All recommendations must be objective and designed to suit the needs of the particular client. If you are recommending the services of other professionals such as a lawyer, their ability to provide proper service to the client should be the major consideration.

...

CONFLICT OF INTEREST

As a professional, there is a need for real and perceived integrity in all dealings with clients. The best interests of the client must always be the first consideration. A number of situations may arise, resulting in a potential conflict of interest for a Consultant. *You must avoid allowing your relationship with a client to produce an actual or perceived conflict between your personal interests and those of the client.*

The following are examples of situations that could give rise to a conflict of interest and are to be avoided:

...

Outside Activities With Clients

You should avoid business relationships with clients other than those involving the products and services offered by Investors Group, for example, buying or selling property or other items from or to a client. These actions can affect your dealings with the client causing a potential conflict of interest.

37. The 2011 Compliance Manual defined a conflict of interest as follows:

Any relationship that is, real or perceived to be, not in the best interest of the client or organization. A conflict of interest could prejudice a Consultant's ability to perform his or her duties and responsibilities, objectively and in good faith.

38. In February 2011, the Compliance Manual was updated to further discuss the issue of conflicts of interest and how to avoid them. It included the following:

Investing with clients

Investors Group Consultants are not permitted to become involved with clients in investment arrangements where the Consultant and the client invest together, except for members of your immediate family. Examples of inappropriate investment arrangements would be joint accounts with clients, investment clubs or investments involving client funds that are to be directly or indirectly managed by the Consultant. This prohibition also includes accounts held at other dealers.

39. MFDA Rules prohibited an Approved Person from engaging in any securities related business outside of his or her Member Firm. The MFDA Rules required that all securities related business, including all compensation related thereto, had to be conducted through the Member Firm.

40. Kazina had a company called Kazina Financial Services (”KFS”). He later conducted various financial and tax services under entities called Eagle Franchising and Business Consulting (“Eagle Franchising”) and Bullseye Business Consulting (“Bullseye”). These companies were operated by Kazina, and provided tax services, franchise consulting services, business consulting and various other services. Collectively these business activities are referred to as Kazina’s Outside Business Activities (“OBA”).

41. During the interview of Kazina by the CIRO Investigator on November 22, 2019 (the November 2019 Interview”);

a. Kazina provided the following information on his OBAs:
    1. KFS existed in 1973 and was an unregistered sole proprietorship that offered accounting and tax services;
    2. KFS may at one point have been called Kazina Accounting Services;
    3. KFS did not have its own bank account;
    4. KFS was the name that he used on tax returns to report the commissions he earned from the Member but said that the commissions were paid to him personally not to KFS;
    5. KFS’s expenses included things such as advertising and normal business or operating expenses;
    6. KFS provided “fee for service” accounting and tax services to individuals;
    7. he started a business called Eagle Franchising around 2004;

8. KFS was providing tax services to people and companies on a fee for service basis; and when Eagle Franchising came about he switched to doing the taxes under Eagle Franchising;
9. Eagle Franchising provided franchising support to companies that wanted to expand their operations using a franchising model and also engaged in tax preparation and miscellaneous business consulting;
10. Eagle Franchising was registered in 2014 at the Manitoba Corporations Branch as a partnership between Kazina and his cousin and subsequently became registered as a sole proprietorship to Kazina in 2017;
11. although Eagle Franchising was registered as a sole proprietorship Kazina had sold interests in the business, including to clients JG and MG, and others; and
12. Eagle Franchising also had an affiliated business Kazina called Bullseye that offered marketing assistance to business owners who wished to sell their business.

b. Kazina said that he had never disclosed the accounting businesses to the Member in a "formal way" and had never completed any forms pertaining to his OBAs;
c. Kazina said that he did not disclose his OBAs to the Member when he joined the MFDA;
d. Kazina said that he had never disclosed to the Member that he had taken monies from the "Co-Owners" (as that term is later defined) for investment in his OBAs;
e. with respect to his understanding of the Member's policies regarding personal financial dealings with clients Kazina said he thought it was not a problem as long as the "client understood the relationship"; and
f. When asked what his understanding of the Member's policies with respect to conflicts of interests were, Kazina said that he did not know that he had really thought about it and when asked, he could not give an example of what he might think would be a reportable conflict of interest.

42. As part of its oversight and supervisory responsibilities under the MFDA Rules, the Member required its Approved Persons to complete and file annual attestation documents (the "Annual Attestations").

43. Kazina filed Annual Attestations with the Member each year from 2006 to 2017, both years inclusive. He did not disclose any of his OBAs to the Member in any of the Annual Attestations. The following table, which was included by the CIRO Panel in the Merits Decision, sets out the relevant excerpts from Kazina's Annual Attestations;

Year	Submit Date	Consultant #	Consultant Name	Question #	Question	Response 1
2017	2017-Mar-13	3690	Andrew Kazina	2c	Have you disclosed and reported all Outside Activities, including volunteer positions, to Compliance for filing on the National Registration Database (NRD)? If you don't engage in any outside activity, select Not Applicable; If no, please describe the outside activity. (Note that previously undisclosed activities should be brought to the attention of Compliance immediately).	N/A
2016	2016-Mar-02	3690	Andrew Kazina	2c	Have you disclosed and reported all Outside Business Activities, including volunteer positions, to Compliance for filing on the National Registration Database (NRD)?	N/A
2015	2015-Mar-18	3690	Andrew Kazina	2c	Have you disclosed and reported all Outside Business Activities, including volunteer positions, to Compliance for filing on the National Registration Database (NRD)? If no outside business activity, select Not Applicable;	N/A
2014	2014-May-30	3690	Andrew Kazina	2b	If I have any outside business activity, I have disclosed and reported it to Compliance for filing on the National Registration Database (NRD). If no outside business activity, select Not Applicable;	N/A
2014	2014-May-30	3690	Andrew Kazina	2c	Other than corporately approved websites, including approved social media websites, I have not established a website, web-blog, or similar forum for the purpose of promoting my business or marketing mutual funds, other securities, insurance, banking, mortgages, other products and services, fee for planning or financial planning;	True
2013		3690	Andrew Kazina	2b	If I have any outside business activity, I have disclosed and reported it to Compliance for filing on the National Registration Database (NRD). If no outside business activity, select Not Applicable;	N/A
2012		3690	Andrew Kazina	2b	If I have any outside business activity, I have disclosed the outside business activity, and it has been approved by my Regional Director and Area Vice-President. In addition, it has been reported to Compliance for filing on the National Registration Database (NRD); If false, please describe the outside business	N/A

Year	Submit Date	Consultant #	Consultant Name	Question #	Question	Response 1
					activity. (Note that previously undisclosed activities should be brought to the attention of your Regional Director and Area Vice-President immediately).	
2011		3690	Andrew Kazina	2b	If I have any outside business activity, I have disclosed the outside business activity, and it has been approved by my Regional Director and Area Vice-President. In addition, it has been reported to Compliance for filing on the National Registration Database (NRD).; If false, please describe the outside business activity. (Note that previously undisclosed activities should be brought to the attention of your Regional Director and Area Vice-President immediately).	True
2010		3690	Andrew Kazina	2c	Other than corporately approved websites, I have not established a website, web-blog, or similar forum for the purpose of promoting my business or marketing mutual funds, other securities, insurance, banking, mortgages, other products and services, fee for planning or financial planning:	True
2009		3690	Andrew Kazina	2b	I have not carried on any outside business activity or dual occupation. If I do have any outside business activity or dual occupation, I have disclosed the outside business activity or dual occupation, and it has been approved by my Regional Director and Area Vice-President. In addition, it has been reported to Compliance for filing on the National Registration Database (NRD):	True
2008		3690	Andrew Kazina	2b	I have not carried on any outside business activity or dual occupation:	True
2007		3690	Andrew Kazina	2b	I have not carried on any outside business activity or dual occupation:	True
2006		3690	Andrew Kazina	2b	I have not carried on any outside business activity or dual occupation without the written approval of my Regional Director and the IGFS Compliance Department, and in accordance with our Corporate policies and procedures	True

44. Kelly testified that the Member had no record of any OBAs being disclosed to it by Kazina at any time throughout the Material Time.

45. From 2006 to 2017 Kazina also completed semi-annual "Consultant Acknowledgement Forms" for disclosure on the National Registration Database (the "NRD") in which he indicated that there was no change to his current employment and that he was not engaged in an OBA or any dual occupation that was not previously disclosed.

46. The MFDA has rules pertaining to the relationships between registrants and customers, including what is and is not permitted with regard to engaging in securities related business. MFDA Rule 1.1.1 reads:

> **RULE NO. 1 – BUSINESS STRUCTURES AND QUALIFICATIONS**
>
> **BUSINESS STRUCTURES**
>
> **Members**
>
> No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:
>
> (a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:
>
> (i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
>
> (ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the Bank Act (Canada), the regulations thereunder and applicable securities legislation.

47. The MFDA By-law No. 1, section 1, defines securities related business as follows:

> "**securities related business**" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation;

48. The following monies were paid by clients and non-clients (collectively the "Co-Owners"), on the dates set out below, to Kazina, for interests in his OBAs. The monies were deposited by Kazina into his personal bank account:

Clients	Date of Payment to the Respondent	Investment Amount
JG and MG	March 21, 2012	$10,000
	August 24, 2016	$5,000
CP and DP (only DP was a client)	July 15, 2012	$10,000
	March 22, 2013	$9,000
SK	August 9, 2012	$5,000
	September 6, 2012	$5,000
DK	March 6, 2013	$10,000
	December 9, 2013	$16,000
	December 11, 2013	$15,000
	February 24, 2014	$91,000
GT	June 1, 2013	$5,000
RW & JW	June 27, 2013	$5,500
GC	April 12, 2013	$5,000
	April 27, 2015	$20,000
	May 15, 2015	$19,000
GA	May 3, 2016	$2,000
TOTAL		**$232,500**

Non-Client Investor	Date of Payment to the Respondent	Investment Amount
HW	May 29, 2012	$10,000
# Manitoba Inc.	September 19, 2012	$15,000
TOTAL		**$25,000**

49. Many of the Co-Owners signed agreements for investments in Kazina's OBAs at the time they provided the monies to Kazina (the "OBA Agreements"). Kazina prepared the OBA Agreements. The OBA Agreements stated that the monies were for an equity interest in Kazina's OBAs, and that the investors would be paid, on an annual basis, a percentage of the gross revenue or a percentage of the pre-tax income of KFS and/or Eagle Franchising.

50. The CIRO Investigator testified that proof of the payment of the monies to Kazina, the deposit of the monies into Kazina's bank account, and the use of the monies by Kazina came from bank records, including cheques and bank statements, e-mail records, the OBA Agreements and letters from Kazina to the Co-Owners with information on the OBAs.

51. After receiving a complaint from a family member of JG and MG, the Member paid JG and MG the sum of $15,000.00 which they accepted as settlement of the matter as against the Member.

Findings of the CIRO Panel

52. The CIRO Panel provided detailed reasons, including an overview of the testimony of each witness called, the documentary evidence and the relevant MFDA rules and regulations.

53. Kazina was self-represented at the merits and penalty hearings before the CIRO Panel. As we set out in our decision dated June 9, 2025 on the issue of fresh evidence, the CIRO Panel made extensive efforts to explain to him the relevant hearing procedures and rules, laws of evidence and in our view provided him with the assistance to be accorded to an unrepresented litigant under the provisions of the 2006 Canadian Judicial Council's "*State of Principles on Self-represented Litigants and Accused Persons*".

54. We will now review the findings of the CIRO Panel in the Merits Decision by allegation.

Allegation #1. Between February 8, 2002 and October 5, 2017, the Respondent engaged in outside business activities that were not disclosed to and approved by the Member by operating businesses that provided tax and financial planning services to individuals, and marketing, franchising and other consulting services to businesses,

contrary to the policies and procedures of the Member and MFDA Rules 1.21(d)[2] [now 1.3.2], 2.1.1, 2.5.1, 2.10 and 11.2.

55. The CIRO Panel reviewed the relevant MFDA Rules, which, they noted, require member firms to establish policies and procedures to ensure the operations of their business is in compliance with the by-laws, Rules and Policies of the MFDA and all applicable securities legislation. The CIRO Panel held;

> "¶380...
> Approved Persons have a corresponding obligation to comply with those policies and procedures pursuant to MFDA Rule 1.1.2. As stated by the Hearing Panel in *Frano (Re):*
>
> > The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of the clients and the public is undermined."

56. The CIRO Panel also considered the importance prior disciplinary panels have paid to the need for CIRO member firms to be aware of the OBAs of their consultants/advisors who are registered as Approved Persons so that they can properly supervise such activities. The CIRO Panel found that member firms need to have sufficient information to supervise their Approved Persons, as the failure to do so negatively impacts on the member firm's front line responsibilities to supervise and protect the interests of the investing public.

57. The CIRO Panel reviewed the documentation that the Member had in place throughout the Material Time to assist with the supervision of its Approved Persons, including the Business Standards Manual, the Compliance Manual, the Annual Attestations, and other compliance-related information it circulated. It also reviewed the Consultant Acknowledgment Forms that were required to be filed on the NRD.

58. The CIRO Panel reviewed the arguments raised by Kazina including:
    a. That he had disclosed to Michael Buhr (Buhr), during an initial conversation when they were discussing Kazina joining the Member as a consultant, that he had an accounting practice he wanted to continue.

2 As noted in the Merits Decision, effective December 3. 2010, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c) and effective March 17, 2016, former MFDA Rule 1.2.(c) was amended and renumbered as MFDA Rule 1.3.

b. That as Buhr knew about Kazina's accounting practice, he should have made note of same in Kazina's employee files;

c. That the Member did not properly supervise him and did not bring the OBA disclosure requirements to his attention;

d. That the Annual Attestation documents were not clear and that because he believed his accounting practice had been "grandfathered" by his first conversation with Buhr he did not need to disclose his OBAs on the Annual Attestation documents;

e. That other consultants at the Member firm had access to tax preparation software; and

f. That because he was 'self-employed' when he was carrying on his OBAs the MFDA Rules should not apply to those OBAs.

59. The CIRO Panel determined, from a review of the evidence and an analysis of the relevant rules and caselaw, that:

a. Kazina operated KFS and Eagle Franchising while he was registered with the Member as an Approved Person and both these entities were OBAs;

b. Through his OBAs, Kazina conducted tax, accounting, franchise, marketing and business services;

c. While Kazina may have discussed his accounting business with Buhr, he never disclosed Eagle Franchising (which carried on different business operations) to anyone at the Member. The CIRO Panel held that

> "...we find there is no evidence that the Respondent ever disclosed Eagle Franchising to the Member. We also find that the activity carried out by Eagle Franchising which included providing marketing and franchising consulting services, was a completely separate activity from the outside business activity which the Respondent disclosed to Mr. Buhr when he was hired in 1991." (Merits Decision para ¶*360)*

d. KFS and Eagle Franchising were OBAs conducted by Kazina which were not businesses of the Member; (Merits Decision para ¶357)

e. By failing to properly disclose his OBAs to the Member, Kazina prevented the Member from its regulatory obligations to supervise him and protect clients; and

f. The argument that he was self-employed had no relevance to, and did not impact on, Kazina's obligation to disclose his OBAs to the Member firm.

60. The CIRO Panel considered Kazina's argument that he did not believe he had any obligation to disclose either the existence of Eagle Franchising or the activities he carried out in connection with it. The CIRO Panel held that members of regulated professions have an obligation to keep themselves informed, on an ongoing basis, of their duties and responsibilities. In this respect the CIRO Panel noted the position of the Alberta Securities Commission in *Botha (Re)* referring to the decision in *Re Pariak-Lukic (2014 IIROC 1 at para 89);*

> "...as a registrant,(the respondent] had an obligation to know and understand the policies and procedures of [her employer] and the obligations and duties imposed on registered representatives by the by-laws and rules of applicable regulatory organizations. Her ignorance or misunderstanding of the rules in this matter was no excuse." (Merits Decision ¶375)

Allegation #2. Between January 2012 and October 5, 2017, the Respondent recommended and accepted approximately $257,500 for investments in a business that he operated from at least eight clients and at least two non-clients, thereby engaging in securities related business that was not carried on for the account of the Member or processed through the facilities of the Member, contrary to the policies and procedures of the Member and MFDA Rules 1.1.1, 2.1.1, 2.5.1, 2.10 and 1.1.2.

61. The Panel noted the relevant provisions of the MFDA rules, which incorporate by reference provisions of the Act. These include the following:

MFDA Rule 1.1.1 reads:

Members
No Member or Approved Person (as defined in By-law 1.1) in respect of a Member shall, directly or indirectly, engage in any securities related business (as defined in By-law 1.1) except in accordance with the following:

(a) all such securities related business is carried on for the account of the Member, through the facilities of the Member (except as expressly provided in the Rules) and in accordance with the By-laws and Rules, other than:

(i) such business as relates solely to trading in deposit instruments conducted by any Approved Person not on account of the Member; and
(ii) such business conducted by an Approved Person as an employee of a bank and in accordance with the Bank Act (Canada) and the regulations thereunder and applicable securities legislation.

"securities related business" is defined in MFDA By-law No. 1, s. 1 as follows:

"**securities related business**" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation;(emphasis added)

The definition of "trade" under the Act provides:

"trade" includes

(a) any sale or disposition of or other dealing in or any solicitation in respect of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, or any attempt to do one of the foregoing;

A "security" is defined in section 1(1) of the Act:

"security" includes:

...

(m) any investment contract including an investment contract as defined in Part XVI;

62. The CIRO Panel reviewed the evidence, including the CIRO Investigator's testimony, the bank statements, the cancelled cheques, the OBA Agreements and Kazina's own statements at the November 2019 Interview, determining that, between January 2012 and October 5, 2017, Kazina recommended and accepted approximately $257,500.00 for investment in his OBAs from eight (8) clients and two (2) non-clients.

63. Kazina had acknowledged in the November 2019 interview that he had taken the monies from the Co-Owners for investment in his OBAs, and that he had deposited these monies into his personal bank account.

64. Kazina had further acknowledged in the November 2019 Interview that the persons he sold equity interests to had all entered into agreements similar to the OBA Agreement signed by JG and MG.

65. Staff Counsel argued that by taking the investment monies and signing agreements Kazina was engaging in the trade of securities of businesses outside his Member firm.

66. Kazina argued that what he had been involved in was not the sale of a security within the meaning of the Act. He said that the Co-Owners were not sold investment contracts because,

a. His OBAs were sole proprietorships with no shares, units or securities;
b. The monies he got from the Co-Owners were a partial sale of interests in his OBAs;
c. There was no specified rate of return on any of the OBA Agreements;
d. The MSC did not require information on the sale of an individual's sole proprietorship businesses; and
e. the Co-Owners were allowed to provide business leads and feed-back to him.

67. In its analysis, the CIRO Panel noted that in order to prove Allegation #2, Staff Counsel had to establish that Kazina's activities constituted "securities related business" and needed to show that a) the Respondent was trading or advising; and b) the transaction activity entered into by the individuals who provided money to the Respondent was in respect of a "security" within the meaning of the Act. (Merits Decision para ¶429)

68. The CIRO Panel looked to the Howey test requirements set out in *Pacific Coast Coin Exchange* v *Ontario Securities Commission* [1978] 2 SCR 112, 1977 CanLII 37 (SCC) and found that the requirements of the Howey test had been met in this matter and that the OBA Agreements under which the Co-Owners paid monies to Kazina for a share in his OBAs were investment contracts.

69. The CIRO Panel held that the MFDA Rules are designed to ensure that an Approved Person cannot advise or trade in securities unless those securities are offered "on the books" of its CIRO member firm.

70. As the CIRO Panel noted;

> ¶424 Requiring that securities related business be directed through the Member ensures that clients are protected by the oversight, due diligence and risk appraisals undertaken by Members."

71. The CIRO Panel found that whether the Co-Owners were clients or non-clients did not impact on whether Kazina had breached the MFDA Rules prohibiting him from advising or trading in securities related business outside of the Member. The Rules provide for a blanket prohibition

on all securities related business unless it is conducted through the facilities of an Approved Persons's member firm.

72. In finding that Allegation #2 had been proven the CIRO Panel found that the evidence had established that Kazina's selling interests in his OBAS, and the monies invested in the OBAs, were not conducted through the Member's facilities and did not involve products that the Member carried. (Merits Decision, ¶450 to ¶452)

Allegation #3 Between January 2012 and October 5, 2017, the Respondent solicited approximately $232,000 from at least eight clients that he used to finance and operate his business and commingled the money with his personal saving in bank accounts that he held in his own name or jointly with his wife, thereby engaging in personal financial dealing with clients that gave rise to a conflict of interest that he failed to disclose to the Member or address by the exercise of responsible business judgement influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

73. The CIRO Panel reviewed the relevant provisions of the MFDA Rules, and in particular Rule 2.1.4 which reads:

> **2.1.4 Conflicts of Interest**
>
> (a) Each Member and Approved Person shall be aware of the possibility of conflicts of interest arising between the interests of the Member or Approved Person and the interests of the client. Where an Approved Person becomes aware of any conflict or potential conflict of interest, the Approved Person shall immediately disclose such conflict or potential conflict of interest to the Member.
>
> (b) In the event that such a conflict or potential conflict of interest arises, the Member and the Approved Person shall ensure that it is addressed by the exercise of responsible business judgment influenced only by the best interests of the client and in compliance with Rules 2.1.4(c) and (d).
>
> (c) Any conflict or potential conflict of interest that arises as referred to in Rule 2.1.4(a) shall be immediately disclosed in writing to the client by the Member, or by the Approved Person as the Member directs, prior to the Member or Approved Person proceeding with the proposed transaction giving rise to the conflict or potential conflict of interest.
>
> (d) Each Member shall develop and maintain written policies and procedures to ensure compliance with Rules 2.1.4(a), (b) and (c).

74. The CIRO Panel also reviewed MFDA Staff Counsel notice MSN-0047 titled "Personal Financial Dealings with Clients" ("MSN-0047"). The relevant provision of this notice include:

> Responsible business judgment requires the use of reasonable care and diligence as necessary in the circumstances to address the conflict or potential conflict in the best interests of the client. The appropriate course of action will depend on the nature of the conflict of interest and the clients' circumstances. In situations involving a potentially significant conflict of interest, the exercise of responsible business judgment may require a prohibition on the type of transaction giving rise to the conflict.
> MSN-0047, p. 1

75. The CIRO Panel noted that MSN-0047 provided that certain types of private investment schemes may be prohibited not only due to the significant conflict but also because they violate MFDA Rule 1.1.1.

> **Private Investment Schemes with clients**
>
> ...
>
> arrangements where client funds are put into investments that are to be directly or indirectly managed by the Approved Person"
>
> ...
>
> MSN-0047, p. 2

76. Staff Counsel submitted that in taking monies from clients of the Member and commingling those monies in his personal bank account, Kazina engaged in acts of personal financial dealings with clients which gave rise to a conflict of interest that he failed to address in accordance with the requirements of the MFDA's Rules relating to conflicts of interest.

77. Staff Counsel submitted that this was a prohibited conflict of interest for which the exercise of reasonable judgement was a blanket prohibition, as set out in MSN-0047.

78. Kazina's position was that this allegation involved only six (6) clients and four (4) non-clients. He pointed out that with regard to two of the couples, identified as JW and RW, and CP and DP, only one person in each of the couples was a client of the Member.

79. Kazina also submitted that there was no evidence that any of the Co-Owners felt that there had been a conflict of interest and only one couple had filed a complaint.

80. The CIRO Panel determined that investment monies were taken by Kazina from eight (8) clients of the Member and two (2) non-clients of the Member.

81. With respect to RW and JW, the CIRO Panel found that although Kazina had argued that his agreement was only with JW, it was RW who wrote the cheque for $5,500.00 dated June 27,

2013 and made payable to Kazina. The CIRO Panel found that Kazina deposited that cheque into his personal bank account and found that RW was a client of the Member.

82. With respect to DP and CP, the CIRO Panel found that although the cheque for $10,000.00 dated July 15, 2012 and made payable to Kazina was signed by DP, it was drawn on a joint account owned by DP and CP. The CIRO Panel found that DP was providing the funds and was a client of the Member.

83. The CIRO Panel found that disciplinary hearing panels of the MFDA have consistently held that MFDA member firms and Approved Persons have a significant responsibility to ensure that their dealings with clients do not breach the conflict of interest rules. In the Merits Decision, the CIRO Panel referenced the findings of prior CIRO disciplinary panels which had held:

> ¶493 The phrase "responsible business judgment", which is contained in the Rule, is not defined by the Rules. However, a reasonable interpretation would suggest that it requires the exercise of care and diligence in the circumstances to address the conflict or potential conflict of interest always subject to being in the best interest of the client.
>
> . . . In cases involving a significant and actual conflict of interest, the exercise of responsible business judgment may require a blanket prohibition on, or refusal to proceed with, the type of transaction giving rise to the conflict.
>
> Tonnies (Re) MFDA File No. 200503, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated June 27, 2005, at pp. 13-14
>
> and,
>
> ¶496 Where an Approved Person borrows money from a client, or arranges investments by clients in companies in which the Approved Person has a personal interest, such conduct immediately raises a significant actual conflict of interest, a conflict that in most if not all cases will be impossible to resolve in favour of the client. It is patently obvious that facilitating investments by a client in your company, or borrowing money from a client is not the exercise of responsible business judgment in the best interests of the client.
>
> Nunweiler (Re), MFDA File No. 201030, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated May 28, 2012 at para. 17

84. Kazina argued that none of his dealings with his OBAs, including the monies the Co-Owners had provided to him, should be subject to the MFDA Rules since they were subject to his separate verbal agreement with the Member to conduct his OBAs as he saw fit.

85. The CIRO Panel dismissed this argument, finding that Kazina had never disclosed any of his OBAs activities in Eagle Franchising to the Member. It found that Kazina was bound to adhere to the Member's rules and the MFDA's rules and regulations on matters concerning conflicts of interest.

86. The CIRO Panel determined that the solicitation of client money by Kazina for an interest in his OBAs were monies he had acknowledged receiving and depositing into his personal bank account, in the November 2019 Interview and that this constituted a *"...prohibited conflict of interest for which the exercise of reasonable judgement required a blanket prohibition."* (Merits Decision para.¶495)

Allegation #4
Between no later than 2006 and October 5, 2017, the Respondent provided false or misleading information to the Member in responses to questions on annual compliance questionnaires from the Member, contrary to MFDA Rule 2.1.1.

87. Staff Counsel submitted to the CIRO Panel that the evidence showed that from 2006 to 2017, Kazina had made false and misleading statements to the Member on each of his Annual Attestations relating to his OBAs.

88. Kazina argued to the CIRO Panel that he did not disclose his OBAs on the Annual Attestations because:

a. he had disclosed his OBAs in the first conversation he had with Buhr, and that this information should be on his personnel files;
b. he believed his OBAs were "grandfathered" and therefore did not concern the Member any further;
c. none of his supervisors brought this matter specifically to his attention;
d. the financial dealings he had with the clients in the sale of interests in his OBAs involved what he referred to as the sale of his "personal assets"; and
e. he was a "self-employed business person" and therefore did not need to disclose anything about his OBAs to the Member.

89. The CIRO Panel noted that Kazina did not testify and led no evidence to explain his responses on the Annual Attestations.

90. The CIRO Panel determined that Kazina's business operations in KFS had changed significantly from 1991 when he initially spoke to Buhr, through to his retirement in 2017, holding that;

> "*...by 2004 when Eagle Franchising began, the activities the Respondent conducted relating to offering franchising services and business consulting, together with the personal financial dealings he engaged in with clients, were different business activities than the accounting and tax preparation business that he conducted when he was hired by the Member in 1991.*" (Merits Decision para ¶512)

91. The CIRO Panel found the questions on the Annual Attestations to be clear and unambiguous and that as Kazina had worked in the industry for a significant period of time, including as a branch manager in a compliance oversight role for four (4) years, he should have understood the questions.

92. The CIRO Panel held that in signing the Annual Attestations Kazina was providing false and/or misleading answers in contravention of Rule 2.1.1 and that Allegation #4 had been proven.

D. The Penalty Hearing

93. As noted above, the CIRO Panel heard oral arguments from the parties on the matter of sanctions and penalty on March 20 and November 13, 2024. Staff Counsel provided four written submissions dated February 20, March 20, May 20 and October 22, 2024. Kazina provided two written submissions dated March 10 and October 8, 2024. Kazina also filed a sworn affidavit with attached exhibits dated June 17, 2024.

94. The CIRO Panel issued its Penalty Decision on January 15, 2025.

95. The authority for issuing the penalties and sanctions is set out in MFDA By-Law section 241.1 (now Mutual Fund Dealer Rule 7.4.1.1).

96. The CIRO Panel noted that the primary goal of securities regulation is protection of the investing public and fostering public confidence in the securities marketplace. The MFDA has set out the principles and factors that disciplinary hearing panels should consider before issuing sanctions. The CIRO Panel thoroughly reviewed the CIRO Sanction Principles in its Penalty Decision, including;

¶ 22 In particular, when determining the appropriate sanction a Hearing Panel should consider:

a) the protection of the investing public;

b) the integrity of the securities market;

c) specific and general deterrence;

d) the protection of the MFDA's [now CIRO's] membership; and

e) the protection of the integrity of the MFDA's [now CIRO's] enforcement process.

¶ 23 Additional factors for a Hearing Panel to consider are:

a) the seriousness of the allegations provided against the Respondent;

b) the Respondent's past conduct, including prior sanctions;

c) the Respondent's experience and level of activity in the capital markets;

d) whether the Respondent recognizes the seriousness of the improper activity;

e) the harm suffered by investors as a result of the Respondent's activities;

f) the benefits received by the Respondent as a result of the improper activity;

g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;

j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) previous decisions made in similar circumstances.

97. The CIRO Panel noted that sanctions and penalties assessed must be both reasonable and proportionate to the evidence adduced.

98. The CIRO Panel determined that each of the four Allegations proven in the Merits Hearing constituted serious violations of conduct. It found that:

a. By failing to disclose his OBAs to the Member for a period in excess of ten (10) years, the Member was unable to properly supervise Kazina.

b. By trading in securities that were not offered by the Member and by taking monies from the investing public that he commingled in his personal bank account and used for personal purposes, Kazina seriously undermined the regulatory regime, exposing clients to harm and bringing the mutual fund industry into disrepute.

c. By taking monies from the Co-Owners, Kazina had personal financial dealings with the clients of the Member that constituted an obvious conflict of interest that was prohibited under the MFDA Rules.

d. Kazina's material misstatements to the Member were a direct violation of the MFDA Rules.

99. In the Penalty Decision, the CIRO Panel noted that:

a. Kazina's failure, throughout the Merits hearing and the Penalty hearing, to accept that he had done anything wrong was concerning. He continued to argue at the penalty hearing that he had done nothing wrong, and blamed others for his misconduct. The CIRO Panel found this to be a *"…disturbing failure to understand the obligations imposed on him by both the MFDA and the Member*." (Penalty Decision ¶34).

b. It could not find that Kazina's lack of any prior disciplinary findings was mitigating in this situation, given that it was his own misconduct, over a ten year period, that had prevented the MFDA and the Member from detecting his misconduct.

c. Kazina's time in the industry, "...combined with the fact that for a portion of the material time, he was a District Director who was responsible to act as a Branch Manager and therefore was expected to know the MFDA's Rules and the Member's Policies and Procedures so that he could fulfill his supervisory rule and compliance responsibilities..." was an aggravating factor in these circumstances and that he ought to have known that his conduct contravened the MFDA Rules. (Penalty Decision, ¶35)

d. The risk to investors and the capital markets from Kazina's conduct was significant and he could not be permitted to continue to be registered with CIRO as an Approved Person. He breached the trust of the investing public by taking monies from the Co-Owners, co-mingling that money in his personal bank account, and spending it for his own purposes. Kazina's actions did damage to the integrity of the capital markets.

100. The CIRO Panel analyzed the purpose of deterrence in determining sanctions, noting that the intention is to include both specific deterrence, to ensure that the wrongdoer does not repeat the misconduct, and also general deterrence to other participants in the capital markets.

101. The CIRO Panel held:

> ¶ 63 In light of the Respondent's refusal to recognize the nature and seriousness of his misconduct, we find that the only way to satisfy the primary goal of securities regulation on which the integrity of the capital markets depends, namely, protection of the investing public, is to impose a sanction which includes a permanent prohibition on his authority to conduct securities related business while in the employ of or associated with any dealer member of the Corporation that is registered as a mutual fund dealer.

102. The CIRO Panel addressed the issue of a disgorgement order, finding that:

> ¶ 86 When considering whether a disgorgement order is appropriate, a Panel should consider the following non-exhaustive list of factors:
>
> a) Whether an amount was obtained by a Respondent as a result of the non-compliance with the regulator's rules and/or the Member's policies and procedures;
>
> b) The seriousness of the misconduct and whether that misconduct caused serious harm whether directly to original investors or otherwise;
>
> c) Whether the amount obtained as a result of the non-compliance is reasonably ascertainable; and
>
> d) Whether those who suffered losses are likely to be able to obtain recovery; and
>
> e) The deterrent effect of a disgorgement order on the Respondent and on other market participants.
>
> *Pro-Financial Asset Management Inc. (Re)*, 2018 LNONOSC 192 at para. 56

103. The CIRO Panel reviewed Kazina's arguments for why a disgorgement order should be not be issued in this matter. Kazina argued that not all of the Co-Owners were clients of the Member, that the Member had reduced payments to him following the disclosure of the MFDA hearing matter, that he had not made profits, and that none of the Co-Owners had complained (except JG and MG). He also argued that there was no "privity of contract" between the MFDA / CIRO with respect to the OBA Agreements he entered into with the Co-Owners. Kazina also made arguments based on criminal law principles and the common law of negligence. The CIRO Panel reviewed each of these arguments and found them to be without merit, or to be irrelevant to the issue(s) before it.

104. In applying the principles of disgorgement to this case the CIRO Panel noted that Staff Counsel had been required to prove, on a balance of probabilities, that monies had been improperly taken by Kazina. The burden of proof then shifted to Kazina to disprove the reasonableness of the amount.

105. After assessing the evidence the CIRO Panel determined that the amount requested by Staff Counsel (which had accounted for the $15,000.00 paid to JG and MG by the Member) should be further reduced by $29,000.00 given payments that the CIRO Panel found Kazina had paid to SK and CP.

106. In making the disgorgement order for $213,500.00, the CIRO Panel noted that this was the amount by which Kazina had benefited from his misconduct. They considered whether the wording of the provisions in the MFDA Rules restricts a disgorgement order to only the "profits" and concluded, based on the wording of the MFDA Rules and the decisions of other MFDA disciplinary hearing panels, that a disgorgement order should not be restricted to an amount that is calculated after deducting expenses or losses. They held:

"¶80...

What is relevant is the amount a respondent has obtained through their misconduct, not what they retained or spent inappropriately."

107. The CIRO Panel further held that:

¶109...
"...disgorgement in the securities regulatory context is governed by the principles we have set out above, including, as we emphasized, that a fine that disgorges the amounts wrongfully obtained by the Respondent is appropriate to ensure specific and general deterrence and confirm the public's confidence in the industry."

108. The CIRO Panel found that it was appropriate, in all of the circumstances, for a fine in addition to the disgorgement order, be assessed to cover the need for deterrence. The CIRO Panel assessed an amount in line with other cases where serious violative conduct had been found and it referenced those cases.

109. Kazina argued an inability to pay. He provided incomplete documentation which he had attached to an affidavit filed June 2024. The CIRO Panel considered his arguments for reduced financial circumstances but found that they were the direct result of Kazina's own misconduct and that this did not outweigh the factors requiring the imposition of a fine.

110. In terms of costs, Staff Counsel had provided a bill of costs that totaled $46,000.00 and requested that the Appellant pay $30,000.00. The CIRO Panel held that this was a reasonable amount, noting that Staff Counsel had not included all of its costs. They noted also that a considerable amount of resources when into dealing with the fifteen (15) witnesses called by Kazina, whose evidence, was, in the words of the CIRO Panel *"...repetitious, and of little relevance or probative value."* (Penalty Decision para ¶149)

E. STANDARD OF REVIEW

111. As provided for in s. 31.5.1(2) and 29(2) of the Act, this Panel may confirm a decision under appeal or make such other decision as it considers proper. In determining how it should exercise its oversight powers of a recognized self-regulatory organization under the Act, the Panel is guided by the direction set out by the Ontario Securities Commission ("OSC") in *Northern Securities Inc., (Re),* 2013 ONSEC 48 (CanLII):

> [38] The Commission's power on review must be exercised in accordance with the two fundamental purposes of the Act: (i) to provide protection to investors from unfair, improper or fraudulent practices, and (ii) to foster fair and efficient capital markets and confidence in capital markets (Section 1.1 of the Act).

112. Staff Counsel submitted that we are required to take a "restrained approach" in this Amended Appeal, unless we find that one of the five factors set out in *Canada Malting Co. (Re),* 1986 Carswell Ont. 151 (CanLII), 9 O.S.C.B. 3565, exist.

113. In *Canada Malting Co. (Re) (*supra*),* the OSC heard an appeal from a decision of the Toronto Stock Exchange (TSE) which had accepted a notice for filing relating to the issuance of shares by Canada Malting Co. to two shareholders: M. Ltd and O. Ltd. Minority shareholders argued that the issuance of the shares secured the control position of M. Ltd and O. Ltd., making a take-over bid or a leveraged buy out unlikely. The minority shareholders also argued that their ownership interest and voting rights had been diluted, contrary to the TSE's rules relating to protecting all shareholders' interests.

114. In its analysis of the scope of review of decisions of the TSE, the OSC noted a line of cases which had developed over time and cited with approval the position set out in *Re Lafferty, Harwood & Partners Ltd. and Board of Governors of TSE* (1973) OSCB 26.

"We do not consider it a proper exercise of our jurisdiciton....to substitute our judgment for that of the Exchange merely because we may disagree with the decision they have come to or because we may have given a different decision."

115. The OSC panel held:

24. In summary, the OSC has indicated five possible grounds on which it might interfere with a decision of the TSE:

(i) the TSE proceeded on some incorrect principles;

(ii) the TSE erred in law;

(iii)the TSE overlooked material evidence;

(iv) new and compelling evidence was presented to the OSC that was not presented to the TSE; and

(v) the TSE's perception of the public interest conflicts with that of the OSC.

116. These five grounds, (the "five factors test") have been accepted and applied by numerous provincial securities commissions on appeals from decisions of first instance by disciplinary panels of self-regulatory organizations and exchanges and clearinghouses. (see *Northern Securities Inc. et al.* 2013 ONSEC 48, *Rojas Kiaz (Re*) 2021 ONSEC 24, *Ali (Re*) 2023 ONCMT 52, *Locke (Re)* 2021 NSSEC 4 (CanLII), *Hemostemix Inc. (Re)* 2017 ABASC 14, *O'Brien (Re)* 2020 ABASC 160, *Eley (Re)* 2021 ONSEC 19 (CanLII) and *Dwyer (Re)* 2023 ABASC 38 (CanLII), 2023 LNABASC 15).

117. We note the reasoning set out in the decision of the Nova Scotia Securities Commission in *Locke (Re*) (supra*)*;

[46] Based on the Securities Commissions decisions, we conclude that the appropriate standard of review of an IIROC decision under subsections 30(5) and (5A) of the Act is reasonableness. The role of the Commission in a hearing and review is not to provide a second opinion of an SRO decision. The Applicant has the heavy burden of showing that its case fits squarely within at least one of the *Canada Malting* grounds before the Commission will intervene. If the Commission determines that there are grounds to intervene, it can consider the matter on a *de novo* basis and determine under subsection 6(3) of the Act.(emphasis added)

118. We also note in *Julien Robert Ricci,* 2015 ONSEC 7 (CanLII), 38 OSCB 2364, the OSC held, in an appeal from a disciplinary hearing panel of IIROC:

[35] The Commission recognizes the specialized expertise of an IIROC hearing panel and accords deference to factual determinations central to the panel's specialized competence (*Re Boulieris* (2004), 2004 ONSEC 1 (CanLII) 27 OSCB 1597, aff'd (2005), 28 OSCB 5174 (Div. Ct.); *Re Northern Securities Inc*. (2014), 2013 ONSEC 48 (CanLII), 37 OSCB 161 at para.61; *Re Questrade Inc.* (2011), 34 OSCB 2595 at paras. 16-17; and *Re Kasman* at para. 43). The Commission accords even greater deference in matters of sanctions, and recognizes that IIROC hearing panels will have greater familiarity with IIROC's regulations and sanction guidelines than the Commission (*Re Benarroch* (2011), 34 OSCB 2041 at paras. 4 and 5). As stated by the Divisional Court in respect of the Commission's own expertise in matters of sanctions:

> [T]he standard of review on the penalties ordered against the appellant must be considered. Here again, the Commission has an expertise in the regulation of the markets and is entitled to deference as to its view of the appropriate penalty. We ought not to disturb the penalty imposed unless there is an error in principle or the punishment clearly does not fit the crime. Decisions as to penalty tend to be fact-intensive mixed questions of fact and law and are rarely determinative of future cases.

(*Costello v. Ontario (Securities Commission),* 2004 CanLII 2651 (ON SCDC), [2004] O.J. No. 2972 (Div. Ct.) at para. 31; see also *Erikson v. Ontario (Securities Commission)*, 2003 CanLii 245 (Div. Ct.) at paras. 55-57)

119. Staff Counsel directed us to the following in *Dwyer (Re*) (supr*a)*, which we find persuasive and applicable;

[73] If one of the "Five Factors" applies, then the standard of review is correctness. If none of the "Five Factors" applies, deference will be given to the SRO decision as long as it was reasonable (*Hemostemix Inc. (Re*), 2017 ABASC 14 at para. 150).

[74] As Staff Counsel pointed out in their written submissions, in *Re O'Brien*, 2020 ABASC 160 (at para. 44), an ASC panel said that in assessing reasonableness, it was guided by certain considerations set out by the relevant case authorities, including the decision of the Supreme Court of Canada (SCC) in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

- whether "there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived", since a decision, taken as a whole, "may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that [we find] compelling" (Law Society of New Brunswick v. Ryan, 2003 SCC 20 at paras. 55-56);

- we [should] consider the evidence that was before the [SRO] Panel, but "refrain from 'reweighing or reassessing the evidence'" (Vavilov at paras. 106,125; Housen [v. Nikolaisen, 2002 SCC 33] at paras. 22-23);

- that "where a factual finding is grounded in an assessment of credibility of a witness", the [SRO] Panel had the "overwhelming advantage" of having seen the witnesses testify (Housen at para. 24);

- that "[r]easonableness is a deferential standard" and "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (Dunsmuir v. New Brunswick, 2008 SCC 9 at para.47); and

- that fact-findings and inferences drawn from facts are "only unreasonable when they are completely unsupported by any evidence on which that particular fact could have been found" (Lum v. Council of the Alberta Dental Assn. and College, Review Panel, 2015 ABQB 12 at para. 120; Housen at 22).

[77] The Act authorizes us to reject an SRO tribunal decision in whole or in part and substitute our own decision, but we will not do so simply because we may have reached a different decision than the SRO if the matter had been before us in the first instance (see, e.g., Re Lamontagne, 2009 ABASC 490 at para. 42; Hemostemix at para. 61; Re Botha, 2021 ABASC 11 at paras. 42-43). As both parties acknowledged in argument, Canadian securities commission panels have expressly recognized the specialized expertise of SRO hearing panels and deferred not only to their credibility findings, but also to the factual determinations central to their expertise, including matters of sanction. For example, in Botha (at para. 48), the panel stated, *". . . the MFDA has specialized expertise in the standards of conduct expected of those under its oversight and in the interpretation and application of its own rules*."

120. As set out above, the Panel denied the Appellant's request to adduce fresh evidence for the reasons set out in our decision dated June 9, 2025. Accordingly, our review on this appeal is based on the evidence adduced at the Merits Hearing before the CIRO Panel.

F. Arguments of the Parties on the Amended Appeal

121. The Appellant raised two main arguments with respect to the findings on the four allegations by the CIRO Panel in the Merits Decision.

122. Kazina argued that he had done nothing wrong with respect to both the sale of his OBAs to the Co-Owners and his failure to disclose his OBAs to the Member, because he had a verbal or oral contract (the "verbal agreement") with the Member which he had made with Buhr in 1991. He argued that the CIRO Panel erred in not finding that the verbal agreement covered all aspects of his OBAs. He argued that due to the verbal agreement he was not bound by the rules or compliance procedures of either the Member or the MFDA pertaining to anything concerning the OBAs, and that he did not need to make any further disclosure on OBAs subsequent to 1991 due to the verbal agreement which he said "grandfathered" him. In addition, as he was self-employed, the MFDA Rules pertaining to his OBAs, including the

disclosure of same to the Member, did not apply to him. Additionally he argued that he had not been sufficiently supervised and trained by the Member.

123. Secondly, Kazina argued that the sale of "equity interests" in his OBAs to the Co-Owners were not trades in securities as they did not meet the definition of an "investment contract" under the Act. He argued that he had not sold investment contracts because the Co-Owners were allowed to provide business leads and feedback to him and that the CIRO Panel did not place sufficient weight on this aspect of the OBA Agreements.

We will deal with each of these arguments separately.

124. Kazina argued that with respect to his OBAs, he was not bound by the 1991 Agreement, the 2001 Agreement, the Agreement of Approved Person, or any rule, regulation, procedure or policy of the Member or of the MFDA pertaining to OBAs, because he made the verbal agreement with Buhr in a conversation in 1991, before he was hired as a consultant by the Member.

125. Kazina argued that the verbal agreement granted him the right to conduct his OBAs in any way he saw fit, from the time he was retained in 1991 through to the time he retired from the Member in 2017, without disclosing those OBAs to the Member, without complying with the Member's policies and procedures and without adhering to any of the rules and regulations of the MFDA. With regard to the MFDA, Kazina argued that it did not have "privity of contract" with regard to his verbal agreement with the Member and accordingly, he was not required to adhere to the Rules and requirements of the MFDA.

126. We reviewed the testimony of Buhr, who was called by Kazina to give evidence at the Merits Hearing. The evidence Buhr provided was limited and insufficient to support the position of Kazina that a verbal agreement existed. The following evidence is set out in the Transcript of the Merits Hearing on November 17, 2022. At page 29, lines 11 to 17, with Kazina questioning Buhr:

> "Q. Okay. And I --- I believe our agreement was that I would work no more than eight to ten hours on average per week on my accounting practice. Do you recall that?

A. Well, I believe the corporate standard at the time was if you spent less than ten hours per week, that was satisfactory." (emphasis added)

127. Kazina led no other evidence to support his position as to the existence of a verbal agreement or the terms of this verbal agreement.

128. Kazina did not testify. As the CIRO Panel had advised him and as this Panel advised him, his arguing the facts as he believed them to be during oral arguments did not put those facts into evidence.

129. To be legally binding, an oral contract requires more than an initial discussion, where only one of the parties obtains a benefit.

130. Even if a form of verbal agreement had existed between Buhr and Kazina, it was overridden by the 1991 Agreement, the 2002 Agreement, and the Agreement of Approved Person. All of those documents were executed by Kazina after his conversation with Buhr. He is bound by the terms of those documents which meet the legal requirements for written contracts.

131. Kazina argued that he had once disclosed his OBAs to the Member, after he spoke to Buhr, in a conversation he had with Jeffrey Schewe ("Schewe"), who was his Division Director, at some point between 2009 and 2015. Kazina called Schewe to testify at the Merits Hearing. In his testimony, Schewe said that while he did recall a conversation with Kazina about income tax work, he had no knowledge that Kazina had not disclosed his OBAs to the Member and received approval for them, as was required. Schewe had no knowledge of the business names KFS or Eagle Franchising. Schewe testified that at the time of the conversation, he had assumed Kazina had received the necessary approvals from the Member for his OBAs.

132. Staff Counsel submitted that Kazina's arguments for relying on the verbal agreement did not address the findings of the CIRO Panel that:

a. Kazina never disclosed Eagle Franchising or Bullseye to the Member or to the MFDA;
b. Kazina ignored the Business Standards Manual and the Compliance Manual throughout his time with the Member;
c. Kazina did not follow the MFDA Rules and regulations after executing the Approved Person Agreement; and

d. Kazina made material misstatements on the Annual Attestations for over ten years.

133. We note the findings in the Merits Decision at paragraphs 358, 359, 360 and 361 which read:

> ¶ 358 The Respondent has also acknowledged that he never disclosed information about or the existence of Eagle Franchising or any outside business activity to the Member after being hired in 1991.
>
> ¶ 359 Although the Respondent discussed his accounting practice with Mr. Buhr in 1991 upon initially becoming registered with the Member, we find there is no evidence that he ever disclosed any subsequent outside business activities to the Member or ever obtained written approval for such activities.
>
> ¶ 360 In particular we find there is no evidence that the Respondent ever disclosed Eagle Franchising to the Member. We also find that the activity carried out by Eagle Franchising which included providing marketing and franchising consulting services, was a completely separate activity from the outside business activity which the Respondent disclosed to Mr. Buhr when he was hired in 1991.
>
> ¶ 361 Even if we accept that Mr. Kazina disclosed the existence of an accounting practice when he was first hired by the Member in 1991, therefore, we find that he clearly failed to inform the Member of material changes to his outside business activities as required by the Member's policies and the MFDA's Rules.

134. Kazina argued that the CIRO Panel had erred in determining that his sales of equity interests in his OBAs to the Co-Owners were trades in securities as defined in the Act. In support of his position he noted that;

a. he was selling ownership interests in a business, which he argued did not constitute the sale of a security;
b. the verbal agreement he claimed to have made with Buhr, allowed him to sell an interest in his OBAs, without having to comply with the Member's requirements or the MFDA Rules;
c. he did not issue tax forms from the OBAs to the Co-Owners;
d. the return to be received by the Co-Owners under the OBA contracts provided for a variable return from year to year; and
e. as a self-employed person, what he sold as an interest in his OBAs could not be a security.

135. In the alternative, Kazina argued that because the Co-Owners had the right, under the OBA Agreements, to provide feed-back to him on the activities of the OBAs and to provide potential

business leads, their interest did not meet the requirements of an investment contract as set out in *Pacific Coast Coin Exchange (*supra*)*.

136. Staff Counsel noted that none of the arguments raised by Kazina addressed the findings of the CIRO Panel that his sale of interests in his OBAs were securities within the meaning of the Act. Staff Counsel submitted that ownership interests can be securities (in fact securities are most often called "shares" or "equity interests"), securities can have variable rates of return, the fact that tax forms are not sent out does not change whether something is a security, and being self-employed does not prevent someone from selling securities within the meaning of the Act. This Panel agrees. These are all facts that should be known by everyone in the securities industry, including those that are registered to sell mutual funds, as the Appellant was throughout his career.

137. The fact that someone is self-employed does not change their obligations to meet the requirements of the SRO they are registered with and to adhere to the requirements of all applicable legislation. That is the situation of most professionals in self-regulated organizations.

138. We note that the purpose of the Act, as is the case with all provincial securities legislation, is to protect the investing public and foster confidence in the markets. Accordingly a broad meaning is to be applied to the interpretation of the provisions of the Act. As noted by the Ontario Capital Markets Tribunal in *NVest Canada Inc*. (Re) 2024 ONCMT 25 (CanLII);

> "[44] In deciding whether an investment is a security, we must give the term a broad and purposive meaning, given that the Act is remedial legislation intended to protect the investing public. The Act must be "read in the context of the economic realities to which it is addressed" and "substance, not form, is the governing factor". Investor protection is the "overarching lens" through which we should view the attributes of an alleged security."

139. The Act defines "security" as follows:

> **"security"** includes
>
> (a) any document, instrument, or writing commonly known as a security,
>
> (b) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company,
>
> (c) any document constituting evidence of an interest in an association of legatees or heirs,
>
> (d) any document constituting evidence of an option, subscription, or other interest in or to a security,

(e) any bond, debenture, share, stock, note, unit, unit certificate, participation certificate, certificate of share or interest, pre-organization certificate or subscription,

(f) any agreement providing that money received will be repaid or treated as a subscription to shares, stocks, units or interests at the option of the recipient or of any person or company,

(g) any certificate of share or interest in a trust, estate or association,

(h) any profit-sharing agreement or certificate,

(i) any certificate of interest in an oil, natural gas or mining lease, claim or royalty, or a royalty voting trust certificate,

(j) any oil or natural gas royalties or leases or fractional or other interest therein,

(k) any collateral trust certificate,

(m)any investment contract, including an investment contract as defined in Part XVI, and

(n) any document constituting evidence of an interest in a scholarship or education plan or trust,

(o) [repealed] S.M. 1996, c. 73, s. 77;

whether any of the foregoing relate to a person, proposed company or company, as the case may be.

140. Staff Counsel noted that the Act does not define what an investment contract is. The leading case is *Pacific Coast Coin Exchange (supra)* where the Supreme Court of Canada (SCC), in adopting the test set out in a US decision known as "*Howey*", held that an investment contract is comprised of four elements:

a) an investment of money;

b) with a view to a profit;

c) in a common enterprise where the success or failure of the enterprise is interwoven with, and dependent on, the efforts of persons other than the investors; and

d) the efforts made by those others significantly affect the success or failure of the enterprise.

141. Staff Counsel further argued that the Howey test does not require that the efforts to the enterprise are to be solely from one entity. As the SCC held, at pages 128 and 129;

"In the case at bar, it is obvious that an investment of money has been made with an intention of profit. The questions before us are the following: Is there a common enterprise? Are the profits to come solely from the efforts of others? These two questions are so interwoven that I will be endeavouring to answer them together.

The word 'solely' in that test has been criticized and toned down by many jurisdictions in the United States. It is sufficient to refer to *SEC v. Koscot Interplanetary*[and to *SEC v. Glen W. Turner Enterprise, Inc.* As mentioned in the *Turner* case, to give a strict interpretation to the word "solely" (at p. 482) "would not serve the purpose of the legislation. Rather we adopt a more realistic test, whether the efforts made by those other than the investor are the

undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise". In the same case of *Turner,* the expression "common enterprise" has been defined to mean (p. 482) "one in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties". These refinements of the test, I accept." (emphasis added)

142. There are numerous cases which have applied the Howey test to determine whether an investment contract exists. We note *Re Braun* 2018 BCSECCOM 332 (CANLII) where the British Columbia Securities Commission held:

> 91. "All of that suggests that the "significant efforts of others" aspect of the test must focus on how material the decisions and efforts of others are to failure or success and not on the quantum or length of those efforts. Further, that the "common enterprise" aspect of the test must focus on how interwoven and dependent the investor's returns are on the success or failure of the efforts of a third party."

143. In *Re Ward* 2022 ABASC 139 (CanLII) at para 81 the Alberta Securities Commission held, in reviewing the common enterprise test, that *"...the case law has construed it as meaning an investment of money in a common enterprise with an expectation of profits derived primarily from the efforts of others."*

(See also: *Re Zhang* 2024 BCSECCOM 394 (CanLII), *NVest Canada Inc.* 2024 ONCMT 25 (CanLII) *Re Hogg* 2024 ONCMT 15 (CanLII), *Re Ellis* 2024 ABASC 50 (CanLII), *Re Neufeld, et. al.* MSC (January 4, 2023), *Re Ward* 2022 ABASC 139, *Re Black Box Mgmt. Corp.,* 2025 ABASC 113, and *Re Cawaling* 2024 ABASC 194 (CanLII)).

144. The evidence on the record supports the finding of the CIRO Panel that Kazina sold investment contracts to the Co-Owners. We find the CIRO Panel's application of the law to the facts of this matter, as set out in the evidentiary record, to be correct. Even if we were to accept the argument Kazina raised at the appeal, that the Co-owners could provide feedback and potential business leads, for which there was no evidence on the record, we would still determine that the Co-Owners had entered into investment contracts with Kazina. The wording of the OBA Agreements, which Kazina prepared, makes it clear that all decisions pertaining to the business would be made by Kazina and all significant work conducted in the OBAs would be done by Kazina. The Appellant led no evidence that the Co-Owners played any role in either KFS or in Eagle Franchising.

145. We accept the argument of Staff Counsel that the OBA Agreements were also securities within the meaning of the definition of security at subsections a), e) and h).

146. During the oral arguments, Kazina raised a new issue as to the name of one of his OBAs. He argued that all references in the CIRO decisions to 'Kazina Financial Services" were incorrect. He submitted that the correct name of the entity was actually titled "Kazina Accounting and Business Services" and that it later evolved into Eagle Franchising. He made this argument without reference to any evidence. The evidence on the record, including the OBA Agreements, all reference Kazina Financial Services. The statements made by Kazina in the November 2019 Interview referred to Kazina Financial Services. In Kazina's oral arguments to the CIRO Panel, he referenced Kazina Financial Services. For the purposes of this appeal, it is our opinion that nothing turns on this and the name of the entity is irrelevant to the matters before us on the Amended Appeal.

147. Although he did not address it during his oral presentation to the Panel, Kazina argued in his Amended Appeal document that the MFDA could have nothing to do with his OBAs because he had discussed them with Buhr and entered into the verbal agreement with Buhr. This resulted in the MFDA not having the required "privity of contract" with respect to his OBAs. He also raised certain defences relative to criminal law principles. He made similar arguments to the CIRO Panel. The CIRO Panel found these arguments to be irrelevant and inapplicable to the matter before them. This Panel also finds these arguments to be irrelevant and inapplicable to the matters before us on the Amended Appeal.

148. We find that the CIRO Panel properly considered all of the relevant evidence in making its findings on the four allegations in the Notice of Hearing, and made considered and comprehensive findings on each of the Allegations. The findings of the CIRO Panel are all supported by the evidence adduced during the Merits Hearing.

149. We find also that the CIRO Panel did not overlook any material evidence and did not err in law in making its findings on the four allegations.

G. Penalty Decision – sanctions assessed

150. As noted above, the CIRO Panel, after hearing from the parties, ordered sanctions which included a permanent prohibition from registration, a disgorgement order, an additional fine, and an order of costs.

151. Kazina argued that the sanctions imposed in the Penalty Decision were excessive and unfair. He appealed all of the sanctions except the permanent registration ban.

152. Staff Counsel argued that the sanctions were reasonable in all of the circumstances and that the CIRO Panel properly applied sanctions that are supported by relevant jurisprudence for similar serious misconduct offences.

153. Staff Counsel submitted that we should direct ourselves to the decision *Bansal (Re)* 2017 BCSECCOM 144 (CanLII), where the commission found that:

> ¶38 This Commission has held that the determination of appropriate penalties is at the discretion of the hearing panel, and should not be disturbed on review where a hearing panel makes considered and comprehensive findings that support a reasonable sanction decision,"

154. As Staff Counsel argued, and we accept, the law is clear that as an appeal tribunal we should show great deference to the administrative tribunal of first instance on the issue of sanctions, as it is the expert tribunal in the area. (See *Julien Robert Ricci* (supra) at para 35.)

155. CIRO disciplinary hearing panels have a specialized and unique knowledge of the role of CIRO and its regulatory obligations to ensure that its registrants meet all regulatory requirements necessary to protect the public interest. The proper functioning of the securities industry in Canada depends upon the honesty and integrity of its registrants. In this case, given the serious misconduct on the part of the Appellant over an extended period of time, and given his continued failure to accept responsibility for his breach of the rules and regulations of both the Member and the MFDA significant sanctions are appropriate.

156. In this case the CIRO Panel properly reviewed the applicable Rules and caselaw relative to cases of serious misconduct. The misconduct in this case had carried on for ten (10) years. They properly applied the requirements to make an order of permanent prohibition from registration, a disgorgement order and a fine. They also made a reasonable finding as to the costs of the investigation and hearing to be borne by the Appellant. In our view, the costs assessed were minimal given the length of the investigation and hearing, however, as noted in the caselaw above, it is not our place to substitute findings we may have made had this matter been bought to us at first instance.

157. We find that the CIRO Panel, in the Penalty Decision, made considered and comprehensive findings, and thoroughly reviewed all relevant factors and case law in making its decision on sanctions. The sanctions are appropriate and proportionate to the conduct of this Appellant.

H. Conclusion

158. We have reviewed all of the appeal materials that were filed, including the transcripts of the CIRO Merits Hearing, the transcripts of the arguments of the parties before the CIRO Panel at the Merits Hearing and at the Penalty hearing, and the Merits Decision and the Penalty Decision. We also considered the written materials filed on August 28, 2025 and the oral arguments of the parties on September 4, 2025.

159. The CIRO Panel provided detailed and well-reasoned decisions in both the Merits Decision and the Penalty Decision.

160. We have determined that there is no basis upon which to find that the CIRO Panel made any errors of fact or of law or that the CIRO Panel overlooked any material evidence in either the Merits Decision or the Penalty Decision.

161. We further determine that the CIRO Panel did not proceed on any incorrect principles and that its perception of the public interest does not conflict with that of this Panel.

162. The Amended Appeal is dismissed in its entirety.

163. If the parties cannot agree on the costs of the Amended Appeal before the MSC, including the motion for fresh evidence, they may bring the matter of costs back to the Panel.

"L. Vincent"
L. Vincent
Panel Chair

"D. Metcalfe"
D. Metcalfe
Vice-Chair