Re Alaimo

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Calogero (Charlie) Alaimo

2026 CIRO 04

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: August 19, October 17 and November 14, 2025, in Toronto, Ontario (hybrid – via videoconference and in-person)
Decision: January 12, 2026

Hearing Panel:
Christopher Portner, Chair, Richard E. Austin and Michael Coulter

Appearances:
Alan Melamud, Senior Enforcement Counsel
Calogero (Charlie) Alaimo, (present)

REASONS FOR DECISION ON THE MERITS

I. OVERVIEW

[1] This proceeding involves the following individuals and entities:

a. Calogero (Charlie) Alaimo (the **Respondent**);

b. Royal Bank of Canada (**RBC**);

c. Royal Mutual Fund Inc., a wholly-owned subsidiary of RBC and the Respondent's employer (**RMFI**);

d. SB, the complainant and a client of the Respondent;

e. WP, a family friend of SB and SB's husband;

f. Karen Mills, a Senior Investigator employed by CIRO (**Mills**);

g. Claudio Cioffi, a Financial Planner at RMFI (the **Financial Planner**); and

h. Matthew Diodati, the Manager, Investment & Retirement Planning and Branch Compliance Officer of RMFI (the **Manager**).

[2] On January 29, 2025, the Canadian Investment Regulatory Organization (**CIRO**) issued a Notice of Hearing stating that a first appearance would be held before a hearing panel of CIRO (the **Panel**) pursuant to Mutual Fund Dealer Rule 7.3 to schedule a hearing in the matter of the Respondent and that the first appearance and the hearing would be subject to Mutual Fund Dealer Rule 7 and the Mutual Fund Dealer Rules of Procedure.

[3] Attached to the Notice of Hearing was a Statement of Allegations issued by Enforcement Staff of CIRO (**Staff**) in which they alleged that, between March 2021 and January 29, 2022, the Respondent failed to ensure

that an investment strategy that the Respondent recommended and implemented for the account of SB was suitable based on the essential facts relative to SB, contrary to Rule 2.2.1 of the Mutual Fund Dealers Association (the **MFDA**).[1]

[4] Staff also alleged that in March 2021, SB sold her home with the intention of using the proceeds of sale to repay a mortgage and downsize to a smaller home. SB was a vulnerable client by virtue of her age, serious health condition, lack of investment knowledge and very limited income and financial resources. The Respondent recommended that instead of using the proceeds from the sale of her home to purchase a new home, the proceeds be invested in a mutual fund and that SB obtain a mortgage to purchase a new home. The Respondent advised SB that the return on the mutual fund could then be used to make the mortgage payments with any additional growth retained as profit. SB followed the Respondent's recommendation some time later resulting in significant losses.

[5] Staff further alleged that the investment strategy recommended and implemented by the Respondent for the accounts of SB was a leveraged investment strategy and that the Respondent failed to ensure that the strategy was suitable by virtue of the Know-Your-Client (**KYC**) factors concerning SB described above. In addition, the Respondent failed to adequately explain the material risks and features of the leveraged investment strategy, including, among other things, how borrowing to invest could amplify losses and the risks that the mutual fund investment might not generate sufficient returns for SB to make the mortgage payments.

II. THE RESPONDENT

[6] The Respondent was registered in the securities industry commencing in August 2000. Between September 22, 2014 and September 18, 2023, the Respondent was registered in Ontario as a Dealing Representative of RMFI, a Dealer Member of CIRO and formerly a Member of the MFDA.

[7] The Respondent's registration was terminated by RMFI on September 18, 2023 as part of a corporate restructuring. At the time of his departure from RMFI, the Respondent was an Investment Retirement Planner.

III. PRELIMINARY MATTER

[8] At the commencement of the hearing, Mr. Melamud, Senior Enforcement Counsel for CIRO, advised the Panel that Staff would be relying on excerpts of a transcript of a sworn interview that Mills had conducted with SB prior to her death. The transcript is included in Staff's Compendium of documents that was only provided to the Panel at the commencement of the hearing. The Respondent stated that he was not aware that the transcript would be introduced and that he had not seen the full transcript. Mr. Melamud responded that the full transcript had been provided to the Respondent as part of Staff's disclosure. The Panel asked the Respondent to review the full transcript during the lunch break, at the conclusion of which the Respondent stated that he did not object to the inclusion of the excerpt into evidence. The Panel agreed to the inclusion of the excerpts of the transcript, subject to further consideration as the Panel had not previously seen the excerpt. Given the reasons that follow, we have not needed to rely on the transcript of SB's interview and, therefore, we do not address this issue.

IV. EVIDENCE

A. Staff

[9] The sole witness called by Staff was Mills who testified that, since 2015, she has been employed by CIRO as a Senior Investigator. The evidence-in-chief, cross-examination and redirect evidence of Mills and the documents to which she referred were substantially as follows.

[10] On June 21, 2022, WP sent a letter of complaint to the Manager (the **Complaint Letter**). The Complaint Letter stated that RBC had placed SB and her husband into an inappropriate financial planning strategy that led to financial losses, both realized and unrealized, and mental anguish.

[11] The Complaint Letter further stated that both SB and her husband were in poor health and unable to work and that SB used constant supplemental oxygen. Both SB and her husband had very limited financial

[1] On December 31, 2021, amendments to MFDA Rule 2.2.1 came into effect. As the conduct addressed in this proceeding took place prior to the amendments, the version of the Rule that was in effect prior to the amendments is applicable in this proceeding.

knowledge and their entire net worth came from the sale of their home on April 15, 2021. At that time, it was their intention to buy another house for less money with the balance being preserved for emergency purposes, future health needs and for minor shortfalls in their living expenses of approximately $32,000 per year which they paid with their annual household income of $35,000 per year.

[12] The Complaint Letter, which was sent by RMFI to CIRO, concluded by requesting that SB and her husband be put in the same position as if she had never been placed in the investment strategy and that she and her husband would like to receive nominal compensation for mental anguish.

[13] Shortly after CIRO received the Complaint Letter, SB was hospitalized following the collapse of a lung and was in a coma for six months. Mills interviewed SB after she recovered from her coma. It appeared that SB had originally met the Respondent when she went to his branch seeking help with her late mother's estate.

[14] SB advised the Respondent that she was also planning to sell her home and downsize to a smaller property and would use the proceeds from the sale of her home to pay off some small private mortgages and use the balance to purchase a new home. The Respondent had established an electronic collection of notes relating to SB (individually, a **Note** and, collectively, the **Notes**) which appeared to have been recorded contemporaneously with his discussions with SB. Latterly, both the Financial Planner and the Manager added summaries of their discussions with SB in the Notes. In a Note dated September 17, 2018, the Respondent recorded that he had met SB who was "looking to sell her home and downsize and will have proceeds to invest."[2]

[15] In a further Note dated December 6, 2020, the Respondent recorded that SB had listed her home and would be downsizing and would "be looking to invest proceeds to potentially provide additional income following up on her sale." And on April 13, 2020, the Respondent recorded that SB was expecting $1.3 million from the sale of her home and that they "discussed investing the funds for the long-term and getting a mortgage via a net worth program to purchase a house in the future. She will be renting for the foreseeable future."[3] SB's home was sold in April 2021.

[16] The Respondent's Note on July 9, 2021, stated that he had presented SB with a select conservative proposal that compared her options of purchasing a home in cash or investing the funds and taking monthly withdrawals to pay the mortgage. He further wrote on January 17, 2022, that SB had used $88,000 of her funds for the down payment on a new home, that a mortgage specialist had arranged the mortgage and that the remaining funds would be for long-term investing and generating regular income. He also wrote that SB would be meeting with a financial planner later that month for a review.

[17] On June 24, 2021, the Respondent sent an e-mail message to SB summarizing the two options that they had discussed the day before. The first option was to purchase the home with cash and no mortgage, which would leave $350,000 to invest. The second option would require a 20% down payment of $180,000 and a mortgage of $720,000. This should leave $1,070,00 after closing costs to invest which would yield enough interest to pay the monthly mortgage costs. He included seven assumptions in his message including the assumptions that (i) the value of the house would increase 2% annually; (ii) the mortgage would have a 25-year amortization; (iii) the investment would be based on RBC's Select Conservative portfolio; and (iv) that the investment projections were based on historical returns and future performance was not guaranteed.

[18] The foregoing message from the Respondent also stated that the second option would, over the 25-year amortization period, pay for the mortgage and SB's investment would grow to $2,120,605. He also stated that "The value of your investment will fluctuate and can go below your initial investment, especially in the first couple of years, so you would need to be comfortable with some level of volatility in your portfolio."[4]

[19] On August 5, 2021, SB signed an Investment Account Application with RMFI and the Respondent signed as the Authorized Representative. The Application showed that SB had limited investment knowledge, had average risk tolerance and worked for a daycare centre where she earned less than $25,000 annually. However, SB stopped worked during the COVID pandemic and was receiving unemployment insurance at the time. Although the Application showed that SB lived in a two-income household, their mortgage application showed

[2] Staff's Compendium of documents entered into evidence as Tab 3 of Exhibit 4.
[3] *Ibid*.
[4] Ibid.

that her husband only earned $17,100 a year doing odd-jobs for friends, including WP, for cash. SB had no other financial resources.

[20] The Respondent stated in a Note dated August 6, 2021, that he had met SB and, as she had not found a new home, she decided to invest the proceeds of the sale of her prior home. The Respondent opened a tax-free savings account for SB in which $75,000 of the proceeds of sale were invested in the RBC Select Conservative Portfolio (the **Fund**) and a further $1.0 million was invested in the same Fund. An amount of $248,000 was invested in a cashable GIC for emergency use and a possible future down payment. The Respondent also noted that he had introduced SB to the Financial Planner. The transition of SB's accounts to the Financial Planner was approved on August 25, 2021.

[21] On January 17, 2022, the Respondent recorded a Note that SB had withdrawn $88,000 to pay the deposit on her new home. He also noted that she would meet the Financial Planner later that month. Notwithstanding the introduction to the Financial Planner, SB continued to communicate with the Respondent on a regular basis seeking assistance with her accounts and the account of her husband and the redemptions from the Fund to pay personal debts and unexpected repairs to the house. SB also set up a monthly withdrawal of $2,000 to make her mortgage payments.

[22] On May 9, 2022, the Respondent recorded a Note to the effect that SB was very concerned with market conditions and the losses in her investment. He noted that he had reviewed their initial conversation to the effect that there would be market corrections and that it would take time for the investment to recover. He recommended that SB stay invested which would be in her best interest as pulling out of the investment would solidify paper losses. He also noted that the original intent was for SB's funds to be invested for the long-term thereby creating income for her.

[23] On May 24, 2022, both the Financial Planner and the Manager recorded in the Notes that they had been in contact with SB over the previous two weeks following her receipt of a T3 income tax form relating to the year-end distribution by the Fund, which she had not expected. They recorded Noteswith repect to SB's frustration caused by her lack of understanding and that she asked if WP, who had a better understanding of investments, could contact them. The notes reflect numerous conversations by the Manager, the Financial Planner and the Respondent with SB and that a meeting with her and WP did not resolve the issues relating to SB's investment in the Fund.

[24] For several months from June 6, 2022, there were multiple redemptions from the Fund held in SB's non-registered account to pay income taxes, credit card debt and other expenses until December 13, 2022, when SB advised the Financial Planner that she did not want to make any further payments on her mortgage. Following discussions with the Financial Planner, SB instructed him to fully redeem her investment in the Fund and use the proceeds to pay out the mortgage. The Financial Planner advised her that there would be no fees to sell the investment and that he would request that RBC permit the payment of the balance of the mortgage without penalty.

[25] On December 6, 2022, the Manager sent what was described as a Final Warning Letter to the Respondent which stated that the letter was issued as corrective action as it related to RBC's Code of Conduct. The letter referred to the Complaint Letter "where it was confirmed [he] failed to follow procedures related to a leverage loan and used non-approved marketing material along with non-approved financial projections with the client."[5] The Respondent was financially penalized by RBC for his actions.

[26] Mills prepared a statement showing that the investment loss suffered by SB following the complete redemption of SB's investment was $63,935.16 and that the mortgage interest she paid was $23,714.01 for a total of $87,649.17.[6] RMFI agreed to reimburse SB for her losses on her investment in the Fund and RBC agreed that SB could repay the mortgage without penalty. After CIRO's intervention, SB was also reimbursed for the interest that she paid on the mortgage.

[27] On October 27, 2023, RMFI's Manager, Regulatory Investigations and Inquiries, responded to e-mail inquiries by Mills. He advised Mills that the Respondent had failed to comply with leverage loan procedures including his failure to complete or update SB's KYC to reflect the leveraging strategy. He also stated that it

[5] *Ibid*, Tab 15.

[6] *Ibid*, Tab 11.

had not been possible to advise Mills of what transpired when the Manager received the Complaint Letter as the Manager was on a leave of absence. He also indicated that the Respondent continued to assist SB with her withdrawal requests when he should have had the Financial Planner deal with her.

[28] RMFI's Policies and Procedures include extensive requirements relating to the use of borrowed money to buy securities. These include the following:

a. An assessment of KYC information...taking into account the client's investment knowledge, risk tolerance, age, investment time frame and overall financial circumstances including the client's total debt service after the investment loan.

b. Determining the suitability of a transaction also includes an assessment of whether it is appropriate to borrow money to finance a mutual fund purchase and whether the client fully understands the risk of borrowing to invest.

c. Investment Representatives are required to perform a suitability assessment for all leveraging strategies and transactions, regardless of whether the leveraging strategy was recommended or unsolicited. Clients must be provided with a balanced presentation of available options and the risks associated with the use of leverage must be clearly disclosed.

d. Prior to a leveraging strategy being proposed, a draft Leveraged Investing Analysis form must be prepared and discussed with the Branch Compliance Officer and a financial planner to review the suitability of the strategy. The form must then be approved by the Branch Compliance Officer and signed by the client and the KYC completed or updated to reflect the leveraging strategy. Investment Representatives must then "anchor' clients with a financial planner.

e. Leveraging is not appropriate for clients who have limited investment knowledge and should have at least average investment knowledge.

f. Clients should be able to withstand a considerable amount of fluctuation in the value of their capital and should have average or higher risk tolerance.

g. Clients should generally be under 60 years of age, have an investment time frame of five years or more, annual income that should not be under $50,000 and the amount of money borrowed for the purpose of purchasing investments should not exceed 30% of a client's net worth.

[29] The accounts for SB were not marked as leveraged and the Respondent did not complete a Leveraged Investment Analysis form for SB. In fact, the Respondent did not comply with any of RMFI's policy requirements relating to leveraged transactions and failed to update SB's KYC. In this regard, when Mills interviewed SB and the Respondent, each of them indicated that she should have been shown on her KYC as a low risk investor and not an average risk investor.

[30] Mills read into the record excerpts from her interview of the Respondent under oath on January 23, 2024 during the investigation. The Respondent acknowledged that SB's investment experience was limited to GICs when she was in the process of settling her mother's estate. He also stated that, when making investment recommendations to SB, the assumption was that her money would be invested throughout the course of the mortgage, as mortgage rates were low and mutual funds would provide a better return than the rate she would be paying on the mortgage. This would permit SB to use the investment returns to make mortgage payments and pay other household expenses and allow the invested amount to increase her net worth over the long-term.

[31] The Respondent also stated that, at the time, he did not see his investment option as a leveraged investment because the money was in the account for several months. He questioned whether the investment strategy was a leveraged investment because it could be argued that anyone investing money when they have a mortgage could be looked at as a leveraged investment. He added that he had discussed with SB that the investment could be assessed after five years and she always had the option of cashing out of the Fund and paying off the mortgage or continuing with the strategy depending on where interest rates were at the time.

[32] Mills also read into the record excerpts from her interview of SB under oath on January 9, 2024.

[33] SB stated that she did not finish grade 12 in high school and, when she met the Respondent, she thought that he was a nice man and that he repeatedly told her to trust him. SB said that it was her intention

to buy another house after the sale of her existing house but the Respondent told her that she could buy the new house with a mortgage and would earn $60,000 a year if the sales proceeds were left in the bank which would pay her mortgage, her taxes and the upkeep of the house. However, it "backfired" because she had to pay $4,000 or $5,000 out of pocket [for taxes] because of the investment. She added that she didn't know a thing about what the Respondent was talking about.

[34] SB stated that the Respondent only disclosed the risks of the Fund after it declined in value and denied that the Respondent had discussed with her the need to be comfortable with some level of volatility in her portfolio. She also stated that she would not have made the investment had the Respondent told her what would happen if the money from the investment wouldn't cover the mortgage payments and that he didn't tell her that she would have to pay tax on the income received from the Fund.

[35] SB stated that, other than the investment in the Fund, she only had two RRSP accounts totalling $12,000 and an interest in her mother's estate which she thought was $72,000 or $75,000. She added that the Respondent knew that she would not be able to return to her former job at a daycare centre after the COVID pandemic as she had COPD and was on oxygen.

[36] When asked by the Respondent during his cross-examination of Mills whether SB was showing any mental disabilities following her six-month coma, Mills testified that nothing was identified, although she had concerns that might have been the case. Mills added that SB was able to fully participate and that the only thing SB struggled with was the technical side of things but WP helped her with that.

[37] Mills testified that SB denied receiving the Respondent's email message of June 24, 2021 which set out the details of the two options that he had discussed with SB. The email message had attached graphs showing the performance of the Fund over five, ten and 25-year periods that showed fluctuations in value. SB also denied that she had discussed the matter with WP's wife even though the Respondent said there was evidence to this effect.

[38] The Respondent again asked Mills about SB's mental faculties and whether Mills had asked a doctor to confirm that she was of sound mind. Mills testified that SB was able to participate and that her memory was excellent.

[39] Mills acknowledged that the 2% growth in the value of the new house that the Respondent had used was not unreasonable, however, there was nothing in the Respondent's projections that indicated that values might decline. The Respondent responded that he had used 2% to offset any downturn in the economy as the market was increasing by 10% to 15%.

[40] Mills also acknowledged that she had not interviewed the Financial Planner because he was not the subject of the investigation and was not involved while the investment recommendation was being made. She also testified that CIRO had received comprehensive written statements from the Financial Planner that she did not ask SB whether she had a rental agreement for her rental accommodation.[7]

[41] When Mr. Melamud conducted a redirect examination, Mills testified that the Respondent made the investment recommendation to SB and processed the investment, that the Respondent received a commission and processed SB's redemptions from the Fund. She also testified that, in her experience, most people struggle to recollect events.

[42] After the redirect examination, the Panel agreed that the Respondent could pose one more question to Mills relating to his discussions with SB about the two options he proposed to SB that are described in paragraph 17 above. Mills acknowledged that SB did recall her discussion with the Respondent with respect to the two options and was able to talk Mills through them but said that she could not recall receiving the Respondent's email message dated June 23, 2021.

B. The Respondent

[43] The Respondent's opening statement, evidence-in-chief and cross-examination were substantially as follows.

[44] SB started to express concern about the markets following the Russian invasion of Ukraine. She had

[7] The written statements by the Financial Planner were not entered into evidence by Staff.

done that before when her portfolio lost about $5,000, however, the portfolio was up by about $14,000 by the end of the year.

[45] He and the Financial Planner made several attempts to speak with SB before the date of the Complaint Letter to determine if she wanted to make a formal complaint. Because of his experience working for Price Waterhouse Cooper, WP drafted the Complaint Letter to create the illusion that SB was vulnerable and included references to SB's 77-year-old husband, even though he never spoke to or met him. Moreover, SB did not want her husband involved in financial decisions and her COPD and use of oxygen did not prevent her from moving on with her life.

[46] He did not suggest a variable rate mortgage, as suggested by SB, and used a five-year fixed rate mortgage rate because the payments would remain the same and SB did not have to worry about the mortgage. He also referred SB to a mortgage specialist to discuss the terms and conditions of the mortgage and program that he had suggested to her. Because SB was being out-bid on properties she was interested in buying, she decided to lock into a one-year rental agreement and wait for the market to cool down.

[47] He explained to SB that the Fund had a historical rate of return of 6% and that his Notes clearly indicate that he did not guarantee the rate of return and clearly explained to SB that the value of her investment would fluctuate below the initial investment and that she could lose some of her principal if there was a market downturn. He had also discussed mutual funds with SB at the time she met him to discuss her mother's estate, so she had time to research and get up to speed on what the Fund was all about. He tried to educate her as much as possible and gave her the resources to educate herself as well.

[48] The conversations with SB intensified once she couldn't find a house and she was going to be renting for a while. That's when he and SB looked at the option of taking on a mortgage and having her money invested. He discussed with SB and all of his clients the 2008, 2009 downturn in the market to make sure they were aware of that and were comfortable with that type of fluctuation before he even considered putting them into the Fund.

[49] The Respondent disputes WP's assertion in the Complaint Letter that SB did not have any cash reserves given that he had set aside $250,000 in a cashable GIC for emergency funds, a down payment for a house and whatever else she needed. SB also had about $20,000 or $50,000 in her bank account.

[50] He did not believe that SB's account was leveraged, given the MFDA's definition of leverage as borrowing to invest. In the case of SB, the money she used to invest came from the proceeds of the sale of her house and the mortgage was strictly to purchase the home and not the investments. Moreover, SB did not pledge the investment for the mortgage. Given that SB did not have any debt, had a large net worth and liquidity with $50,000 in GICs, he recommended a conservative portfolio which met her KYC.

[51] There was a five to six month gap between the investment and the mortgage which was solely for the purchase of the new house. If the transactions were not leveraged, SB met the suitability rules.

[52] He did not include the Financial Planner in the early stages of his relationship with SB as she was only invested in GICs. Once she decided to invest in a mutual fund, he was obligated to transfer the relationship to a financial planner. He did introduce SB to the Financial Planner but continued to co-manage the relationship with SB because she trusted him and he kept the Financial Planner informed.

[53] RMFI's financial settlement with SB was never discussed with him and the issue of leverage was only raised with him when he received the Final Warning Letter.

[54] At the conclusion of his evidence-in-chief, the Respondent was cross-examined by Mr. Melamud. The Respondent acknowledged that SB's cash reserves were much less than the $20,000 or $50,000 he mentioned. He disputed the suggestion that SB was a vulnerable investor given her limited investment knowledge and education but did acknowledge that SB did not have the knowledge, experience or education to do a leveraged investment.

[55] He also acknowledged that he probably did not review the redemption form and KYC with SB when she requested the funds for the down payment on her new house, that SB was unemployed at the time and that, if the investment recommendation he made to SB is considered a leveraged investment, it was unsuitable for SB.

V. SUBMISSIONS

A. Submissions by Staff

[56] The standard of proof in administrative proceedings, such as those instituted pursuant to Mutual Fund Dealer Rule 7.3, is the civil standard of a balance of probabilities. The Supreme Court of Canada has rejected the notion that the seriousness of the allegations or consequences change the standard of proof. In all civil cases, the trial judge must scrutinize relevant evidence with care to determine whether it is more likely than not that an alleged event occurred. Evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test, but there is no objective standard to measure sufficiency.

Brauns (Re)[8]

F.H. v. McDougall[9]

[57] The Respondent failed in the fundamental obligation of all Approved Persons, ensuring that all recommendations made to a client are suitable. The Respondent recommended to a vulnerable and unsophisticated client that she engage in leveraged investing. Specifically, instead of using the proceeds of the sale of the client's home to purchase a new home, the Respondent recommended that the client invest the proceeds and obtain a mortgage to purchase a new home. The return on the investment could, according to the Respondent, be used to make the mortgage payments. This strategy was unsuitable for the client given her age, serious health condition, lack of investment knowledge and experience, and her very limited income and financial resources.

[58] At all material times, RMFI's Policies and Procedures required that, when recommending a leveraged strategy, Approved Persons:

(a) complete a draft Leveraged Investing Analy, which required a suitability analysis on the basis of the criteria set out below;

(b) prior to recommending the strategy to the client, review the suitability of the strategy with the Branch Compliance Officer-Financial Planning and the Regional Financial Planning Consultant;

(c) update the form based on the foregoing review and obtain the Branch Compliance Officer's pre-approval; and

(d) when implementing the strategy for the client, complete or update the client's KYC information to reflect that the client's account is "leveraged".

[59] RMFI's Policies and Procedures also set out criteria to assist Approved Persons to determine the suitability of leveraged investing, including that:

(a) clients should have at least "Average" investment knowledge and "Average" or higher risk tolerance;

(b) clients should be under 60 years of age and have an investment time frame of five years or more;

(c) Clients' annual income should not be under $50,000 and they should have sufficient after-tax disposable income to meet loan payments;

(d) the amount borrowed for the purpose of purchasing investments should not exceed 30% of a client's net worth;

(e) investment loans should not exceed 50% of the client's estimated liquid assets and total debt interest payment should not exceed 40% of the client's gross income;

(f) leveraged investing may not be appropriate for clients who are unemployed, retired, or without stable income; and

(g) leveraged investing may not be appropriate for investors with Secure or Very Conservative Investor Profiles if additional risks are being taken on.

[8] 2013 LNCMFDA 68 at para. 15

[9] [2008] 3 S.C.R. 41 at paras 40, 45, 46 and 49

[60] SB was a vulnerable client by virtue of the following:

(a) she was 64 years old and suffered from a serious and chronic illness;

(b) she had worked in a daycare which had been shut down due to COVID-19 and was unable to return to work due to her health condition;

(c) she was earning approximately $8,800 per year in retirement income, had limited education and little to no knowledge of investing; and

(d) she had a low risk tolerance and, save for the proceeds from the sale of the home, had limited financial resources.

[61] The Respondent's projections failed to illustrate the impact of a market downturn or the risks associated with the mutual fund investment failing to generate sufficient returns to fund SB's projected mortgage payments.

[62] The Respondent never completed a Leveraged Investing Analysis, conferred with the Branch Compliance Officer or the Financial Planner, obtained pre-approval or indicated on the documentation for SB's accounts that a leveraging strategy had been implemented as required by RMFI's Policies and Procedures. Had a Leveraged Investment Analysis been completed, it would have revealed that a leveraged investment strategy did not meet RMFI's requirements to be suitable as reflected in the following comparison:

RMFI's Policies	**SB**
At least average investment knowledge	Limited investment knowledge
Average or higher risk tolerance	Low risk
Annual income should not be under $50,000	Annual income of approximately $25,000, including husband's income
Leverage should not exceed 30% of client's net worth	45.87%
Leverage should not exceed 50% of client's estimated liquid assets	60.92%
Total debt service ratio should not be greater than 40%	89.9%
May not be appropriate for persons who are unemployed, retired or without a stable income	Retired
May not be suitable for investor with secure or very conservative investor profiles	Conservative

[63] The evidence establishes that the strategy recommended by the Respondent to SB was a leveraged investment strategy. There is no dispute that SB's original intention was to use the proceeds from the sale of her home to purchase a smaller home. There is also no dispute that without getting a mortgage to purchase her new home, SB would not have had sufficient funds to maintain her investment.[10] While the Respondent attempts to rely on the investment and the mortgage being two distinct events, both the Respondent's contemporaneous Notes and his email message to SB make clear that his recommendation conjoined the two.

[64] The Notes recorded by the Respondent all state that the Respondent discussed with SB the strategy of investing her money for the long-term, obtaining a mortgage to purchase a new home and using the return from the investment to make the mortgage payments. The Respondent's email message to SB dated June 24, 2021 compared the two options of purchasing a new home using cash from the sale of the old home or, alternatively, obtaining a mortgage to purchase a new home and investing that cash, the return from which

[10] SB's only substantial sum of money outside the proceeds of the house sale was approximately $70,000 she received from her mother's estate.

would be used to make the mortgage payments. In his email message, the Respondent recommended the "borrowing" option.

[65] Due to happenstance, the fact that SB invested first and borrowed second is irrelevant. So too is the Respondent's unsubstantiated and self-serving assertion that SB had entered a long-term rental. To achieve the public interest and client protection aims of the suitability rule, the Panel ought to look at the substance of the Respondent's recommendation and not the technicalities of what occurred when SB followed that recommendation. The Respondent's recommendation was that SB obtain a mortgage when purchasing a home so that she could have an investment. Accordingly, the Respondent recommended a leveraged investment strategy.

[66] The KYC and suitability obligations are codified by MFDA Rule 2.2.1, which, at the material time, stated that:

> Each Member and Approved Person shall use due diligence:
>
> (a) to learn the essential facts relative to each client and to each order or account accepted;
>
> (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
>
> (c) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account.

[67] In the leading case, *Lamoureux (Re)*, the Alberta Securities Commission referred to the KYC Rule as the "Cardinal Rule" and as a cornerstone obligation of an Approved Person's dealings with clients. The Commission went on to find that the KYC and suitability obligations have the following three stages:

> (a) Due Diligence – Involves an Approved Person engaging in due diligence to know the clients and the products involved.
>
> (b) Applying Judgment – Involves an Approved Person using information obtained under the "Know Your Client" and "Know Your Product" obligations and applying "sound professional judgment" to identify appropriate investment products or strategies for particular clients.
>
> (c) Disclosure of Material Risks and Benefits – Involves an Approved Person disclosing the material negative and positive factors involved in the transaction to the client for the purpose of assisting them in making an informed decision about whether to proceed.
>
> *Lamoureux (Re)*[11]

[68] The Respondent failed to satisfy his obligations at all three stages. First, the Respondent did not understand that his recommendation to SB constituted a leveraged investment recommendation. As held by the Ontario Securities Commission in *Daubney (Re)*, a particular investment approach, such as a leveraging strategy, is part of the "product". By failing to understand his own investment recommendation, the Respondent put SB at risk and undermined the supervision and client protection obligations of RMFI and did not follow the steps mandated by RMFI's Policies and Procedures. He did not indicate on the new account application forms that the accounts were leveraged thereby denying RMFI the ability to undertake the additional analysis and care necessary for leveraged accounts.

> *Daubney (Re)*[12]
>
> *Harrigan (Re)*[13]

[69] As part of the first stage, the Respondent also failed to know his client. The Respondent admitted that while he recorded SB as having "average" risk tolerance, it would have been more appropriate to record a "low" risk tolerance. While the Respondent relies on SB's answers to the questions on the form he recorded, as

[11] [2001] ASCD No. 613 at paras. 40, 57-65, 75-80
[12] 2008 LNONOSC 338 at paras. 23-25.
[13] 2018 LNCMFDA 360 at para. 146.

held by the Alberta Securities Commission in *Lamoureux (Re)*, an Approved Person cannot substitute the use of a form for their own application of due diligence to know the client. The Respondent also failed to learn that SB did not intend to return to work due to her health concerns. The Respondent denies being told this by SB, but it is clear that her status as retired was recorded on the mortgage application. When the Respondent later processed the redemption for the down payment on the new home, the Respondent neglected to review SB's KYC information with her.

Lamoureux (Re)[14].

Mortgage Application, Exhibit 4, Tab 10.

Redemption Form, Exhibit 4, Tab 9.

[70] Second, the Respondent failed to adequately apply judgment. SB lacked the requisite investment knowledge, risk tolerance and financial resources necessary to engage in leveraged investing. SB's circumstances did not satisfy the criteria set out in MFDA Staff Notice 0069 (MSN-0069) which provides guidance to the industry concerning suitability of leveraged investing, nor the substantially similar criteria contained in RMFI's policies. As previously stated by the MFDA Hearing Panel in *Pretty (Re)*, "an investment product or strategy is not appropriate for a client unless the client has the sophistication necessary to understand the risk, the willingness to accept the risk and the capacity to withstand the potential adverse consequences." With leveraged investing, hearing panels have additionally highlighted the need for the client to be capable of affording the expense of carrying the loan if the return from the investment becomes insufficient to do so. SB lacked all these characteristics that would make engaging in the strategy recommended by the Respondent suitable.

Pretty (Re)[15]

Karas (Re)[16]*Hetherington (Re)*[17]

[71] Third, the Respondent failed to adequately explain the material risks of the strategy he proposed. The email message that the Respondent sent to SB comparing her alternatives included no analysis of what could occur if there was a downturn in the value of the investment or in the real estate market. As stated in MSN-0069, "where projections are provided to clients, any assumptions on which a projection is based must be clearly stated, with examples of positive and negative results." While the Respondent's email message did note the potential for fluctuations in the value of the investment and his Notes record that he once discussed potential downturns in the market with SB, this was not sufficient for a leveraged investment recommendation.

[72] Accordingly, the Respondent failed at all three stages of the suitability obligations, contrary to MFDA Rule 2.2.1. The leveraged investment strategy was unsuitable for SB and she was unable to withstand the losses she suffered when there was a downturn in the market.

[73] Having regard to all of the evidence and the facts, the allegations against the Respondent set out in the Notice of Hearing and Statement of Allegations has been established on a balance of probabilities.

B. Submissions of the Respondent

[74] This case is not simply about an investment decision—it is about the fair and accurate application of regulatory definitions and professional judgment. The central issue is whether the transaction in question qualifies as a leveraged trade.

[75] CIRO defines borrowing to invest—commonly referred to as leveraging or margin investing—as:

> Using borrowed funds to buy investments with the expectation that the returns will exceed the cost of borrowing.

[14] *supra* at paras. 70, 74 and 89-90

[15] 2014 LNCMFDA 6 at paras. 100-105

[16] 2015 LNCMFDA 158 at para. 41

[17] 2025 LNCIRO 26 at paras. 11 and 14

CIRO, *Guidance on Borrowing for Investment Purposes and Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds*, ciro.ca

[76] Under CIRO's definition, leverage exists when an investor uses borrowed funds to make an investment. The facts here are unequivocal: the client did not borrow money. She invested her own proceeds from the sale of her home—funds that were fully hers, held in a GIC, and unencumbered by any loan or credit facility. A leveraged trade exists only when a client uses borrowed capital—such as a margin loan, line of credit, or other debt—to make an investment. Since the client's investment was made entirely with her own funds, this transaction cannot be categorized as leveraged under CIRO's rules or industry practice. Accordingly, this transaction does not meet the regulatory definition of a leveraged investment.

[77] Had he intended to implement a leveraged investment strategy, he would have recommended a structured approach such as the Smith Maneuver, a widely recognized strategy in Canada for legally leveraging home equity to invest. At no point did he propose such a strategy, because the client's circumstances and objectives called for a non-leveraged, prudent investment approach. This underscores that the transaction was deliberately non-leveraged and aligned with her risk tolerance and financial goals.

[78] The evidence shows the investment was conducted with care and professionalism, stemming from a long advisory relationship spanning nearly two years. Discussions during this period focused on the client's evolving financial situation, not on any borrowing or short-term opportunity. When the client ultimately decided to invest, it was after thoughtful consideration and guidance, with full awareness and oversight from the Branch Compliance Officer and other internal partners.

[79] Importantly, his Branch Compliance Officer, along with several compliance peers, reviewed this transaction following the client complaint and did not classify it as leveraged. Their independent assessment confirms the trade was consistent with regulatory standards and professional practice, and highlights that where no borrowing occurs, the rules around leveraged trades can be open to interpretation.

[80] At the time of the investment, SB had expressed concerns about being consistently outbid on homes; as such, she decided to delay the purchase of a new property. She had entered into a one-year lease, demonstrating no immediate intent to buy.

[81] Discussions regarding borrowing arose solely in response to her mortgage qualification concerns and were never intended as a recommendation to borrow for investment purposes. In addressing her concerns, he provided information about the bank's Net Worth Lending Program, a legitimate, bank-sanctioned solution designed to assist clients with significant assets but lower income. Any discussion comparing purchasing a home outright versus investing and later taking a mortgage was meant to provide the client with comprehensive information for an informed decision. At no point was borrowing suggested to increase investment returns; it was strictly discussed in the context of potential home financing options.

[82] The transaction was structured based on the client's circumstances at the time, which included her decision to postpone purchasing a home until the market stabilized. This context is critical when evaluating suitability. The Net Worth Lending Program is specifically designed for clients with established investment assets, where borrowing is intended solely for the home purchase. Under this program, the investments remain liquid, and any potential mortgage default would affect only the property—not the investments.

[83] At the time of the trade, he had the option to recommend a higher-commission product—the Bank's Income Builder GIC—which would have benefited him financially. Instead, he chose a strategy prioritizing the client's interests: a mutual fund portfolio that was flexible, aligned with her goals, and appropriate for her risk profile. This decision underscores that his actions were guided by ethics and integrity, not compensation.

[84] The investment was suitable. SB had a long-term horizon, understood market risk, and received full disclosure of potential outcomes, including historical examples from the 2008–2009 downturn. The portfolio was conservative and consistent with her objectives. Oversight was thorough at every stage, the Branch Compliance Officer, mortgage specialists, and financial planners were all aware and involved in the process. The suitability of the recommendation is further demonstrated by the fact that the client chose to maintain her mutual fund investments within her TFSA and RRSP even after being fully compensated for market losses.

[85] It is also significant that the client suffered no loss. The Bank reimbursed all investment losses and

waived mortgage penalties, leaving her financially whole. There was no harm, no misuse of leverage, and no breach of trust or rule.

[86] Even after her relationship transitioned to another advisor, all subsequent transactions occurred solely at the client's request. These actions were fully communicated to the responsible relationship manager, and he had nothing to gain personally.

[87] Throughout the relationship, SB's goals and strategies evolved—she rented instead of buying, used funds for personal expenses, and purchased a home at a higher price than initially planned. These deviations reflect her changing circumstances and reinforce that all recommendations were made in context and in her best interests.

[88] Staff have cited cases such as *Popovich (Re), Brauns (Re), F.H. v. McDougall, Lamoureux* (Re), *Tachauer (Re), DeVuono (Re), Daubney (Re*), *Harrigan (Re*), *Pretty (Re), Karas (Re)*, and *Hetherington (Re*). In each, advisors had a clear intent to borrow for investment purposes, and borrowed funds were actually used to purchase investments. Here, there was no intent to borrow for investment, no borrowed funds, and the capital invested was the client's own money. These distinctions are material and demonstrate that the cited cases are inapplicable.

[89] This unresolved investigation has already had devastating professional consequences. Because the matter remains pending, he has been unable to secure employment with any financial institution, as all require resolution prior to hiring. Over the past two years, he has been effectively forced out of the industry to which he dedicated nearly twenty-five years of his career. During this period, his clients have naturally established new relationships with other advisors, eliminating the book of business he spent decades building.

[90] At fifty years of age, with no book of business and with both his Mutual Fund license and Professional Financial Planner (PFP) designation now lapsed, returning to the industry has become virtually impossible. These consequences have occurred even though the evidence demonstrates no client harm, no misuse of leverage, and compliance with regulatory obligations—resulting in significant and lasting hardship.

[91] He has a long-standing record of professionalism and ethical conduct, with no prior complaints. This case is not about negligence, misconduct, or misuse of leverage—it is about an incorrect classification of a compliant, client-focused transaction. The facts are clear, the definitions are clear, and the outcome is clear: there was no leverage, no rule breach, and no harm. He respectfully requests that all allegations be dismissed and that his professional record be cleared of any suggestion of wrongdoing.

C. Reply Submissions of Staff

[92] The Respondent's arguments as outlined in his submissions fail to address two critical issues, one factual and one of principle. Factually, the Respondent's assertion that his recommendations concerning the investment and mortgage were somehow separate is inconsistent with his own contemporaneous Notes and his comparison email message, all of which presented the investment and the mortgage as a common strategy. It is undisputed that SB originally intended to use the proceeds from the sale of her home to purchase a new home. But for the Respondent's recommendation that she obtain a mortgage, SB would not have had the funds available to invest.

[93] In support of his position, the Respondent argues that under the Net Worth Lending Program, the "borrowing is intended solely for the home purchase", such that "any potential mortgage default would affect only the property-not the investments". Such a separation, however, was impossible in SB's circumstances. SB could only afford the mortgage payments by relying on returns from the investment or drawing down on the principal. Factually, for SB, the mortgage and the investment were inextricably linked.

> Alaimo interview transcript, p 24 of Exhibit 4, Tab 21.

[94] The Respondent's argument that SB had decided to delay the purchase of a new property is unsubstantiated. Other than the Respondent's self-serving statement, there is no evidence of a one-year lease or any long-term intention by SB to rent, as SB would have had months left on such a lease when she closed on her new home which occurred within a year of the sale of her old home.

[95] After making the investment in August 2021, SB continued to search for a new home as recorded by the Respondent in his Note in October 2021. SB found a home in December 2021 and there is no evidence that she

ever paused or ceased looking for a new home.

[96] Finally, on principle, the Respondent's arguments rest on a technical and strict definition of leverage, requiring that the borrowed funds can be traced directly into the investment. Such a strict approach would undermine the investor protection aims of the Mutual Fund Dealer Rules and there is no basis for such an approach in the Rules or in any industry guidance.

[97] The Respondent's argument concerning the views of his Branch Compliance Manager and other compliance peers is inconsistent with the evidence. During the hearing, the Respondent testified that half of the Branch Compliance Officers saw the transaction as leveraged and half saw it as not leveraged which does not support the Respondent's contention of any industry standard. In any event, such evidence is hearsay and none of the other individuals testified and, in the Final Warning Letter, RBC stated that the Respondent's recommendation was a leverage loan.

[98] The Respondent's assertion that he had the option of recommending an Income Builder GIC, which would have provided greater compensation than a mutual fund investment is without any evidentiary basis.

[99] The Respondent's argument that SB was not harmed is erroneous. RBC's compensation of SB does not detract from the fact that the Respondent's conduct caused harm and the Respondent's assertions concerning the consequences he has suffered are irrelevant to the issue of misconduct.

VI. ANALYSIS

[100] Only two oral witnesses, the Respondent and Mills, testified at the hearing in this proceeding. Excerpts from the notes and transcripts of the sworn interviews by Mills of the Respondent and the complainant, SB, formed part of Exhibit 4 to which reference is made above. The Respondent was not represented by legal counsel at his interview or at the hearing. SB was accompanied by her friend, WP, when she was interviewed by Mills. As noted above, we did not rely on the excerpts of the interview of SB conducted by Mills before SB's death (which took place at some point following the interview) for three reasons. First, the interview occurred approximately two years following the resolution of the issues raised in the Complaint Letter and she remained a vulnerable individual. Second, SB was, at the very least, assisted by WP during the interview. Third, the Panel accepted the testimony of Mills with respect to her interview of SB even though it was hearsay as Mills' testimony was forthright and the Panel had no reason to doubt its legitimacy. We note that it would have been helpful to the Panel, but not determinative, to have had the comprehensive written statements that the Financial Planner provided to CIRO included in Staff's Compendium of documents as Staff were aware that the Financial Planner would not be called as a witness by either Staff or the Respondent.

[101] Much of the evidence heard by the Panel was uncontroverted. What was controverted was the question of whether the investment strategy recommended to SB by the Respondent (the **Investment Strategy**) constituted a leveraged transaction. We deal with the leverage issue and the related evidence first.

A. Did the Investment Strategy Constitute a Leveraged Transaction

[102] The evidence establishes that SB planned to sell her house and use the net proceeds from the sale to purchase a smaller house. The Investment Strategy contemplated that SB would invest the proceeds from the sale of her house in the Fund and that she would finance the purchase of a smaller house with a mortgage. The investment return received by SB from the Fund would be used by SB to make her mortgage payments and help pay for her living expenses. Staff has characterized the two transactions, i.e. the investment of the sales proceeds of the first house and the financing of a second house with a mortgage, as a leveraged transaction which the Respondent disputes.

[103] The Respondent raised the Investment Strategy with SB as early as March 12, 2021 and, on June 24, 2021, he sent a detailed email message to SB comparing what he had discussed with her the day before and described as "Option 1-Purchase the home [for] cash" and "Option 2-Get a mortgage and invest your funds".[18] Although SB denied in her interview by Mills that she had received the Respondent's June 24, 2021 email message, on cross-examination by the Respondent, Mills testified that SB had discussed the Investment Strategy with the Respondent and she was able to discuss it with Mills.

[18] Ibid, Tab 4.

[104] SB sold her house in March 2021. Having been unable to find a new house to purchase, on August 6, 2021, SB agreed to implement the Investment Strategy while retaining enough cash, which was invested in a cashable GIC, for emergency use and as a downpayment on a new house. SB purchased her new house in January 2022 and obtained a mortgage to finance the purchase. Approximately 10 months elapsed from the time the Respondent first discussed the Investment Strategy with SB and the time she purchased the new house. Approximately five months elapsed from the time SB agreed to implement the Investment Strategy and the time she purchased the new house.

[105] Staff submits that the two transactions described as Option 2 should be considered together regardless of the lapse of time between the two stages as SB always intended to purchase a second house and was only renting for a period of time until the real estate market stabilized.

[106] Staff further submits that, without getting a mortgage to purchase her new house, SB would not have had sufficient funds to make or maintain her investment. In addition, both the Respondent's contemporaneous Notes and his June 24, 2021, email message to SB make clear that the Investment Strategy "conjoined" the investment and the mortgage.

[107] Staff also submits that, to achieve the public interest and client protection aims of the suitability rule, the Panel ought to look at the substance of the Investment Strategy and not the technicalities of what occurred when SB first implemented the Respondent's recommendation.

[108] The Respondent submits that, as CIRO defines leveraging as the use of borrowed funds to buy investments, the Investment Strategy did not involve the use of borrowed money to invest in the Fund as SB used the proceeds from the sale of her house to do so.

[109] Although the Respondent did not refer to it, Section 2.4 of RMFI's Policies and Procedures states that "Leveraging – borrowing money to buy securities - magnifies the gain or loss on the investment and therefore involves greater risk than investing with cash resources alone."[19]

[110] In alleging that the Investment Strategy constituted a leveraged transaction, Staff relies in substantial part on the decision of the Ontario Securities Commission in *Daubney (Re)* in which the Commission stated as follows:

> **23** Knowing the product "involves carefully reviewing and understanding the attributes, including associated risks, of the securities that they are considering recommending to their clients" (*ReLamoureux, supra* at 14).
>
> **24** With respect to "knowing the product," we agree that a particular investment approach, such as the leveraging strategy recommended by Daubney, is part of the "product."
>
> **25** Where a registrant recommends leveraging, i.e. borrowing money to invest in a recommended product, the registrant is obliged to assess whether the client's circumstances are such that they have the ability to meet debt obligations and tolerate losses under different market scenarios. Because leveraging can magnify losses, it is critical that the registrant ensures the client understands the risks of borrowing to invest, in particular the risks of using collateral, including investments made with monies borrowed, as security for loans.

[111] Although Staff has not been able to cite any prior decisions of hearing panels of CIRO (or its predecessors the Investment Industry Regulatory Organization of Canada and the MFDA) with facts comparable to the Investment Strategy, we have concluded that the Investment Strategy did constitute a leveraged transaction notwithstanding (i) the time lapse between the two stages of the Investment Strategy that are described above; (ii) what is likely to be the generally understood definition of leverage; and (iii) RMFI's Policies and Procedures on which the Respondent may have relied. We have reached our conclusion for essentially three reasons.

[112] First, had the two stages of the Investment Strategy occurred at the same time, we would have concluded that the investment of the sales proceeds of SB's house in the Fund and the mortgage on the second house were essentially transparent, i.e., the fact that the sales proceeds were invested rather than the

[19] *Ibid*, Tab 17.

mortgage proceeds would be irrelevant. In that regard, the two stages constituted "one product" as contemplated by *Daubney (Re)*.

[113] Second, at the time the Respondent first proposed the Investment Strategy to SB, it should have been clear to him that it could only be achieved by borrowing money by means of a mortgage.

[114] Third, we agree with Staff's submission that the public interest and client protection aims of the rules relating to suitability require that we look at the substance of the Respondent's recommendation and not the technicalities of what occurred when SB implemented the Investment Strategy.

[115] By coming to the foregoing conclusion, we are not suggesting that a different finding could result if there was a matter in which a significant or indefinite lapse of time between two or more stages of a transaction that would otherwise constitute a leveraged transaction if the stages occurred at the same time.

B. KYC and Suitability

[116] We now turn to the issue of the suitability of the Investment Strategy.

[117] As noted by Staff in its submissions, KYC and suitability obligations are codified by MFDA Rule 2.2.1, which, at the material time, stated that:

> Each Member and Approved Person shall use due diligence:
>
> (a) to learn the essential facts relative to each client and to each order or account accepted;
>
> (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice
>
> (c) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account.

[118] At all material times, RMFI's Policies and Procedures required that, when recommending a leveraged strategy, Approved Persons:

(a) complete a draft Leveraged Investing Analysis, which required a suitability analysis on the basis of the criteria set out below;

(b) prior to recommending the strategy to the client, review the suitability of the strategy with the Branch Compliance Officer-Financial Planning and the Regional Financial Planning Consultant;

(c) update the form based on the foregoing review and obtain the Branch Compliance Officer's pre-approval; and

(h) when implementing the strategy for the client, complete or update the client's KYC information to reflect that the client's account is "leveraged".

[119] RMFI's Policies and Procedures also enumerate the following criteria, among others, to assist in the determination of the suitability of leveraged investing:

(a) clients should have at least "Average" investment knowledge and "Average" or higher risk tolerance;

(b) clients should be under 60 years of age and have an investment time frame of five years or more;

(c) clients' annual income should not be under $50,000 and they should have sufficient after-tax disposable income to meet loan payments;

(d) the amount borrowed for the purpose of purchasing investments should not exceed 30% of a client's net worth;

(e) investment loans should not exceed 50% of the client's estimated liquid assets and total debt interest payment should not exceed 40% of the client's gross income;

(f) leveraged investing may not be appropriate for clients who are unemployed, retired, or without stable income; and

(g) leveraged investing may not be appropriate for investors with Secure or Very Conservative Investor Profiles if additional risks are being taken on.

[120] The issues relating to suitability were very effectively summarized by an MFDA hearing panel in *Pretty (Re)*. The following findings of that hearing panel are as relevant today as they were when the decision was written:

> **100** Turning to the suitability obligations, these have been considered in numerous cases which establish the basic elements of this obligation. Essentially, the suitability obligation entails using the information from the client to fulfil the Know-Your-Client obligation and using it to identify investment products and strategies appropriate in the light of the client's personal and financial circumstances.
>
> **101** The suitability obligation rests solely on the Approved Person and cannot be substituted, avoided or transferred to the client even by obtaining from the client acknowledgement that they are aware of negative material factors or risks.
>
> **102** The suitability obligation is a particularly important protection for clients whose investment experience and sophistication is insufficient to enable them to fully recognize or assess the risks inherent in an investment or strategy. Further, an investment product or strategy is not appropriate for a client unless the client has the sophistication necessary to understand the risk, the willingness to accept the risk and the capacity to withstand the potential adverse consequences.
>
> **103** As well, an Approved Person must know what probability of loss is acceptable to the investor, i.e. the Approved Person must truly "know his client". While only foreseeable factors fall into suitability determination, it ought to be reasonably foreseeable to any investment advisor that there might, at almost any time, be a market downturn that might prove to be of minor or major proportion and would impact, potentially substantially, the performance of an equity based mutual fund. Such an event would not necessarily be foreseeable to an investor.

[121] The evidence establishes quite clearly that SB was the very definition of a vulnerable individual. She suffered from poor health, possibly as a result of COPD, was constantly using supplemental oxygen, did not complete high school and was completely unsophisticated with respect to investment matters. SB was unemployed at the relevant time having been unable to return to her work at a daycare centre as a result of her health following the COVID pandemic. She was earning approximately $8,800 a year in retirement income and, other than her investment in the Fund, SB had limited or no financial resources.

[122] The Respondent failed to comply with RMFI's suitability requirements including the preparation of a Leveraged Investment Analysis and the required internal approvals.

[123] We accept as correct the table prepared by Staff, which is replicated in paragraph 62 above, which shows how SB's status as an investor compared to RMFI's requirements for leveraged transactions. As the table reveals, SB failed to comply with every requirement.

[124] As stated by the MFDA hearing panel in *Karas (Re)*:

> 41 We think that in order for a leveraged investment to be suitable for a client, at the very least, the client must be capable of affording the expense of carrying the loan in the event that distributions become insufficient to do so. At the most basic, consideration of the ratio of debt obligations to income and the ratio of total investment debt to net worth are very relevant and important.

[125] Having never considered that the Investment Strategy constituted a leveraged transaction, the Respondent failed to comply with RMFI's suitability requirements and the KYC requirements of MFDA Rule 2.2.1. Fundamentally, the Respondent failed to fully apprise SB of the risks entailed in using her investment returns to meet her monthly mortgage payments and, given the minimal household income of SB and her husband, a decline in the value of the Fund would mean that she would have to partially redeem her

investment to avoid a financial crisis. We agree with Staff's submissions that SB lacked the requisite investment knowledge, risk tolerance and financial resources necessary to engage in leveraged investing.

[126] Even if the Investment Strategy was not a leveraged transaction, the Respondent failed in his fundamental obligations to know his client and ensure that his recommendation was within the bounds of good business practice and suitable for SB based on the essential facts relating to her. Stated simply, SB was unwell, unemployed and retired and did not have a stable or adequate income to meet her financial needs.

[127] The Panel is of the view that even if the Investment Strategy had not been implemented, the Respondent's recommendation of the Investment Strategy to SB given her situation amounted to a breach of the suitability requirements. We speculate that CIRO chose to launch an enforcement action in this instance because of the adverse impact the implementation had on SB and her husband and possibly because there do not appear to have been comparable cases reported in the past.

[128] We reject the Respondent's submissions that (i) the Investment Strategy was suitable for SB and that she understood the risks that it entailed; (ii) the transaction was structured based on SB's circumstances; and (iii) SB had a long-term horizon which the evidence establishes was not the case.

[129] We also reject the Respondent's submission that SB suffered no loss. The fact that RMFI compensated SB for her losses and that RBC allowed her to repay the mortgage without penalty after she fully redeemed her investment in the Fund does not detract from the harm that SB suffered as a result of the Investment Strategy recommended by the Respondent.

VII CONCLUSIONS

[130] For the foregoing reasons, we find that the Investment Strategy recommended and implemented by the Respondent for the accounts of SB was a leveraged investment strategy and that the Respondent failed to ensure that the Investment Strategy was suitable by virtue of the KYC factors concerning SB described above. In addition, the Respondent failed to adequately explain the material risks and features of the leveraged investment strategy including, among other things, how borrowing to invest could amplify losses and the risks that the mutual fund investment might not generate sufficient returns for SB to make her mortgage payments.

DATED at Toronto this 12th day of January, 2026.

"Christopher Portner"

Christopher Portner, Chair

"Richard Austin"

Richard E. Austin

"Michael Coulter"

Michael Coulter