DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY OF SASKATCHEWAN ACT*

In the Matter of

The Securities Act, 1988

and

In the Matter of

Francois Paul Blouin

(the Respondent)

DECISION OF THE HEARING PANEL CONCERNING THE HEARING ON THE MERITS

Hearing on:	January 11, 12 and February 1, 2021
Before:	Howard Crofts, Panel Chairperson Honourable Eugene Scheibel Norman Halldorson
	(referred to as the "Panel")
Appearances:	Grace Hession David on behalf of Staff ("Staff") of the Financial and Consumer Affairs Authority of Saskatchewan (the "FCAA")
	Francois Paul Blouin, representing himself as the Respondent
Date of Decision:	April 1, 2021

I. BACKGROUND

1. An investigation into this matter began when a Saskatchewan resident, referred to in this decision as Tri View Client 5, made investments in an entity known as Olive Equity Group Inc. ("Olive Equity") through Francois Blouin ("Francois") while Francois was employed with and acted as a dealer for Tri View Capital Ltd. ("Tri View"). Throughout this time, the Olive Equity securities were not a product that Tri View was promoting or selling. As a result, acting on his own, and off the books from Tri View's product offerings, Staff alleges that Francois was not registered to act as a dealer to engage in the business of trading in securities of Olive Equity in Saskatchewan, therefore contravening various sections of *The Securities Act, 1988*, SS 1988-89, c S-42.2 [*Act*], and section 4.1 of *National Instrument 33-109 Registration Information* [*NI 33-103*], all outlined in the Statement of Allegations issued by Staff dated November 22, 2019, and in the Amended Statement of Allegations issued by Staff dated October 5, 2020.

2. On October 19, 2020, the Panel issued an Order granting Staff's motion to amend the original Statement of Allegations dated November 22, 2019 and to issue the Amended Statement of Allegations dated October 5, 2020. The changes to the original Statement of Allegations were, in general, to:

- restate the value of investments made by Tri View Investor 7;
- eliminate Other Investors 1 and 3 in the original Statement of Allegations as contained in the list of investors at paragraph 5(c);
- relabel Other Investor 2 as Other Investor 1 in the Amended Statement of Allegations;
- add Tri View Investors 17 and 18 to the Amended Statement of Allegations at paragraph 5(c);
- change the reference in paragraph 5(a) in the original Statement of Allegations from "also other individuals who were not clients of Tri View (the Other Investors)" to "and one other individual who was not a client of Tri View (the Other Investor)"; and
- change the reference in paragraphs 5(a), (b) and (c) from "Other Investors" to "Other Investor".

3. After receiving a call from Tri View Client 5, Investigator Ken Foster ("Investigator Foster") commenced an investigation on November 9, 2018. This call and the investigation that followed ultimately led to this Hearing on the Merits that was scheduled for December 14, 15 and 18, 2020. Prior to the hearing commencing on these dates, Francois applied for an adjournment for humanitarian reasons and the hearing dates were rescheduled for January 11, 12 and 14, 2021. Francois agreed that he would waive the delay caused by this adjournment request since the change in hearing dates was at his request.

4. Paragraphs 4 through 16 of the Amended Statement of Allegations detailed several allegations in respect to Francois, which are summarized below.

a. Alleged contraventions of subsection 27(2)(a) of the *Act*, with the material facts being that:

i. from in or around November 2013 to in or around November 2014 (the "Relevant Time"), Francois acted as a dealer as defined in the *Act* by engaging in the business of trading in securities of Olive Equity in Saskatchewan;

ii. while acting as a dealer noted above, Francois sold or assisted Tri View clients and one other investor to purchase Olive Equity securities having a total value of some $2,120,000;

iii. Francois presented these clients with subscription agreements for their investments in common non-voting shares in Olive Equity, assisted with the completion of these

agreements, had the clients sign the agreements, took payment for same from the clients, and forwarded the agreements and payments to Olive Equity;

iv. for his assistance in selling the Olive Equity securities, Francois was paid a commission of 7% on each sale either directly to him or to a business corporation controlled by him;

v. at no time during the Relevant Time was Tri View aware of or did it approve of the above-noted sales of Olive Equity shares; and

vi. while Francois carried out the acts indicated above, he was acting as a dealer in Saskatchewan, but was neither registered as a dealer as required by subsection 27(2)(a)(i) of the *Act*, nor was he registered as a representative of a registered dealer and acting on behalf of that registered dealer as required by subsection 27(2)(a)(ii) of the *Act*, thereby contravening subsection 27(2)(a) of the *Act*.

b. Alleged contraventions of subsection 33.1(1) of the *Act*, the material facts being that:

i. Francois had the Tri View clients sign subscription agreements which included the following phrase:

> The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell me whether this investment is suitable for me.

ii. when selling the Olive Equity securities, Francois was registered in Saskatchewan as a dealing representative under the exempt market dealer category and, as such, he was required pursuant to section 13.3 of *NI 31-103* to take reasonable steps to ensure that, before he accepted an instruction from a client to buy a security, the purchase was suitable for the client.

iii. By having the Tri View clients sign the subscription agreements which contained the phrase reproduced above in subparagraph 4(b)(i), Francois failed to deal fairly, honestly, and in good faith with his clients, contrary to subsection 33.1(1) of the *Act*.

c. Alleged contraventions of section 4.1 of *NI 33-109*, which required Francois, acting as a dealing representative, to maintain a current status regarding business and employment activities with his sponsoring firm (i.e. Tri View), the material facts being:

i. in or around April 2012, Francois applied for registration as a dealing representative of an exempt market dealer with the FCAA and, as such, in accordance with *NI 33-109*, filed a form 33-109F4 with the FCAA through the National Registration Database;

ii. the form 33-109F4 filed by Francois did not include any information with respect to any activities related to Olive Equity and at no time did Francois notify the FCAA of any change to the information related to his outside business activities related to Olive Equity; and

iii. in failing to update his form 33-109F4 to reflect the change in his outside business activities related to Olive Equity, Francois breached section 4.1 of *NI 33-109*.

5. As quoted from paragraph 17 of the Amended Statement of Allegations, Staff sought the following relief:

> a. Pursuant to clause 134(1)(d) of the *Act*, [Francois] shall cease trading in securities or derivatives in Saskatchewan for a period of seven years;
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> b. Pursuant to subsection 134(1)(d.l) of the *Act*, [Francois] shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan for a period of seven years;
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> c. Pursuant to clause 134(1)(e) of the *Act*, [Francois] shall cease giving advice respecting securities, trades or derivatives in Saskatchewan for a period of seven years;
>
> d. Pursuant to clause 134(1)(h)(iii) of the *Act*, [Francois] shall not be employed by any issuer, registrant or investment fund manager in any capacity that would allow him to trade in securities or derivatives in Saskatchewan for a period of seven years;
>
> e. Pursuant to clause 134(1)(h.1) of the *Act*, [Francois] is prohibited from becoming or acting as a registrant, and investment fund manager or a promoter for a period of seven years;
>
> f. Pursuant to section 135.1 of the *Act*, [Francois] shall pay an administrative penalty to the [FCAA], in the amount of $70,000.00;
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> g. Pursuant to section 135.6 of the *Act*, [Francois] shall pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondent's contraventions of Saskatchewan securities laws, in amounts to be determined; and
>
> h. Pursuant to section 161 of the *Act*, [Francois] shall pay the costs of or relating to a hearing in this matter.

6. Having regard for the ongoing COVID-19 pandemic, this matter proceeded by way of a virtual hearing on January 11, 2021 consistent with the procedures set out in the *Guidelines for Managing*

Hearings during a Pandemic [*Guidelines*]. These *Guidelines* supplement and amend, to the extent necessary, Part 11 and Rule 11.1 of the *Saskatchewan Policy Statement 12-602, Procedure for Hearings and Reviews* [*Local Policy*]. For the virtual hearing, the Panel, Staff counsel, Francois, and all witnesses appeared by way of WebEx.

II. PRELIMINARY MATTERS

7. At the commencement of the hearing on January 11, 2021, Francois raised an objection regarding the Panel's jurisdiction to hear the matter. Francois indicated that he presented himself as "Francois Paul Blouin", that he was a "Freeman on the Land", and that, as such, the rules of civil procedure do not apply to him. After adjourning the hearing and caucusing on the objection, the Panel concluded that Francois's objection was without merit and that the *Act* gave the Panel jurisdiction to hear the allegations in this matter.

8. Francois was also offered the opportunity for an adjournment to seek legal advice on the merits of his objection. Alternatively, the Panel told Francois that the hearing would proceed and that he would have the opportunity to present his defense after Staff finished presenting their evidence and/or in his closing arguments. He was then informed that the hearing would begin with Staff presenting Staff's case first. However, after continuing to object to the hearing moving forward and demanding that the matter be dismissed, and after the Panel continued to reject the objections and made repeated efforts to have the matter proceed in an orderly way, Francois ultimately chose to leave the hearing altogether by exiting from the WebEx platform.

9. The Panel will address Francois's "pseudo-legal" arguments and tactics more fully below, including why they are fundamentally without merit.

10. In addition to Francois's preliminary issue with jurisdiction, Staff, out of fairness to Francois considering he was unrepresented, raised the following two potential issues with regard to this Panel's jurisdiction to hear the allegations against Francois:

(a) whether there was inordinate delay in these proceedings that warrants a remedy; and

(b) whether the limitation period in section 136(2) of the *Act* has expired.

11. These issues will be dealt with in turn.

i. Francois's Pseudo-Legal Jurisdictional Arguments are Without Merit and an Abuse of Process

12. In response to Francois's objection to the Panel not having jurisdiction to hear this matter on the basis that he is a 'Freeman on the Land', the Panel looked to a number of authorities to better understand the nature of his objection. The Panel also received submissions from Staff as to the merits of Francois's objection. For the following reasons, it is clear that Francois's decision to employ what some courts have termed "pseudo-legal" tactics are without merit and an abuse of process.

13. To begin, we note that a Panel of the FCAA has not yet had a litigant appear before it that attempted to use pseudo-legal tactics. However, there is ample case law in Canada that has articulated what these types of intentionally disruptive arguments and tactics entail, why litigants attempt to use them, and how they should be rejected as being without merit. In addition, the case law explains how use of such arguments and tactics amounts to an abuse of process.

14. In Canada, one of the most often referred to cases in respect to pseudo legal arguments and tactics is *Meads v Meads*, 2012 ABQB 571, 543 AR 215 [*Meads*]. In *Meads*, Associate Chief Justice for the Court of Queens Bench in Alberta, Rooke ACJ, issued a lengthy ruling analyzing pseudo-legal arguments ad tactics which he referred to as "Organized Pseudolegal Commercial Arguments" ("OPCAs"). His ruling attempted to explain and categorize the proliferation of OPCAs that were repeatedly appearing in Alberta courts and to provide guidance in how decision makers may want to deal with OPCAs when they are advanced as well as the litigants that advance them.

15. At several places in *Meads*, Rooke ACJ discussed some of the concepts espoused and tactics used by litigants by way of OPCAs. Particularly helpful portions of Rooke ACJ's judgment in respect to Francois's OPCAs are set out below.

(a) <u>The concept of "Double/Split Persons"</u>

> 417 A strange but common OPCA concept is that an individual can somehow exist in two separate but related states. This confusing concept is expressed in many different ways. The 'physical person' is one aspect of the duality, the other is a non-corporeal aspect that has many names, such as a "strawman", a "corporation", a "corporate entity", a "corporate fiction", a "dead corporation", a "dead person", an "estate", a "legal person", a "legal fiction", an "artificial entity", a "procedural phantom", "abandoned paper work", a "slave name" or "slave person", or a "juristic person".

(b) <u>Use of different/confusing names and identification:</u>

> 245 Another common motif is that an OPCA litigant will engage in various peculiar comments that relate to names and identification. For example, an OPCA litigant may refuse to identify themselves by name, instead stating they are an agent or representative

of an entity identified by the litigant's name, typically these entities are described in a manner such as:

> • a 'person' of the litigant's name,
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> • a corporation or a 'dead corporation' with the litigant's name,
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> • a 'legal fiction' or 'fictitious corporation' with the litigant's name,
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> • a trust, named after the litigant,
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> • an estate, named after the litigant;
>
> • a deadman, or
>
> • a 'strawman'

See: *Hajdu v. Ontario (Director, Family Responsibility Office)*, 2012 ONSC 1835; *Canada v. Galbraith*, 2001 BCSC 675 at paras. 26-28, 54 W.C.B. (2d) 504; *Turnnir v. The Queen*, 2011 TCC 495 at paras. 5-6; *Canada (Minister of National Revenue - M.N.R.) v. Stanchfield*, 2009 FC 99 at paras. 2-4, 340 F.T.R. 150; *Canada (Minister of National Revenue - M.N.R.) v. Camplin; M.N.R. v. Camplin*, 2007 FC 183 at paras. 8-9, 28, [2007] 2 C.T.C. 205; *Bank of Montreal v. McCance*, 2012 ABQB 537 at para. 9; this proceeding.

(c) General argumentative tactics:

251 A particularly difficult category of OPCA litigant are those who adhere to the OPCA concept that all interactions between the state, courts, and individuals are contracts. As is later explained in greater detail, persons who adopt this concept will interpret almost any invitation by the court or compliance with court procedure as the formation of a contract. For example, members of this Court have observed that litigants who apply the OPCA 'everything is a contract' strategy will refuse simple court directions and processes, such as to pass the bar, sit, stand, or acknowledge their identity.

252 Similarly, litigants who refused to identify themselves but claim to represent an entity related to the litigant will often maintain this role in the face of strong court warning. These OPCA litigants are often very argumentative.

253 The manner in which the refusal occurs is often highly formalistic. Mr. Meads, for example, made this bizarre response to my suggestion of cooperation on a point:

> ... you're treating the person Dennis Meads with all of these statements, and not the living soul. You are enticing me into slavery ... [Emphasis added.]

16. Francois employed these OPCAs from the outset of the hearing. For example, as the hearing got underway, he stated for the record:

> I'm presenting myself to this panel as Francois Paul Blouin, a living man, not the dead entity that was fraudulently or unlawfully converted at my … at my coming to the world through the birth certificate. As a living man, the rules of civil procedure do not apply.

(Francois Blouin Virtual Hearing Transcript, January 11, 2021 at 7, lines 8 – 14)

17. Francois then continued to use OPCAs throughout his short involvement in the hearing. When the Panel ruled against his objections, he continued and even escalated his disruptive and argumentative behaviour. At one point, the Panel warned Francois that his behaviour was bordering on an abuse of process. Shortly thereafter, once it was clear that the Panel would not accept his OPCAs and that hearing would proceed, Francois opted to leave the proceeding altogether by exiting the virtual hearing. He did not return.

18. As was made thoroughly clear in *Meads*, Francois's OPCAs and disruptive tactics are without merit and constitute an abuse of process. While *Meads* was a decision of the Alberta Court of Queen's Bench and not directly binding on this Panel, *Meads* has been cited with approval in many cases across Canada, including in this jurisdiction. When faced with OPCAs, both the Saskatchewan Court of Appeal and Court of Queen's Bench have consistently rejected them, noting *Meads* and its instructive nature in respect to the issues. A sampling of such cases include: *R v d'Abadie*, 2016 SKCA 72, 480 Sask R 161 (leave to appeal ref'd [2017] SCCA No 299 (QL)); *R v Blerot*, 2015 SKCA 69; *CIBC v Radoux*, 2018 SKQB 112 citing, *inter alia*, *Canadian Imperial Bank of Commerce v Hartloff*, 2016 SKQB 155; *Bank of Nova Scotia v Radoux*, 2018 SKQB 111; *R v Jastrebske*, 2013 SKQB 150, 419 Sask R 15. While none of these cases are securities related matters, in each proceeding a pseudo-legal defense was advanced, and no matter what OPCAs concepts were advanced, they were rejected as not being legitimate and having no foundation in law. This Panel likewise takes that position.

19. Perhaps one of the most pointed rejection of OPCAs as some sort of legal defense or objection was articulated by Myers J. of the Ontario Superior Court of Justice in *Ei v. Morlog*, 2016 ONSC 4476 where he wrote:

> [3] All litigants are entitled to be treated with respect and with simple human decency before the court. The OPCA positions that they adopt are not. In my view, it is more respectful to OPCA plaintiffs to truthfully tell them that they are engaged in a despicable enterprise that cannot be tolerated than to pretend that there is some merit which deserves academic debate and response. In my view, precious judicial time should be spent on resolving real matters. Simply taking judicial time to respond seriously to OPCA claims gives the claimants a measure of success in advancing their improper purposes. Associate Chief Justice Rooke spent more than enough of his very valuable time creating a textbook of abusive OPCA practices in *Meads v. Meads*. In my view, not another moment of judicial resources or party expense should be invested on OPCA claims. They should be summarily nipped in the bud with reference to *Meads v. Meads* and no more as set out in paragraph [2] above.

20. The Panel echoes this reasoning and does not think it is useful to spend any more time on this issue in this decision. For the foregoing reasons, Francois's OPCAs and jurisdictional objection are dismissed.

ii. Delay

21. In closing submissions, Staff raised the issue of delay as a possible jurisdictional issue. In those submissions, Staff identified a timeline for this matter that commenced with the date Investigator Foster opened his investigation file on November 9, 2018 and ended on the date of the original scheduled hearing on December 14, 2020. The total delay then amounts to 25 months.

22. There are many cases that have considered whether there has been inordinate delay in an administrative matter. The leading case from the Supreme Court of Canada on the issue is *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307, and Saskatchewan's Court of Appeal very recently analyzed the issue in *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81 (leave to appeal granted [2020] SCCA No 306 (QL)). In addition, a Panel of the FCAA recently considered the issue in *Financial and Consumer Affairs Authority v Gaetan Blouin*, January 13, 2021 [unreported]: <https://fcaa.gov.sk.ca/public/plugins/pdfs/3452/blouin_gaetan_merit_decision_january_13_2021.pdf> [*Gaetan Blouin*] at paras 8-18.

23. The Panel does not propose to go through a lengthy analysis of the issue for a key reason. In each of the authorities cited above, it is made clear that in order for there to be inordinate delay, there must be evidence of prejudice resulting from the delay. In this case, there is no evidence of any prejudice to Francois resulting from the delay. That, in and of itself, is enough based on the current state of the law to resolve the potential delay issue in this case.

24. Given the foregoing, the Panel is of the view that the elapsed time of 25 months (eight months of which the Panel notes is attributable to the extraordinary circumstances of the Covid-19 pandemic), to investigate and bring the matter to a hearing when there is no evidence of any prejudice to Francois resulting from the delay does not amount to inordinate delay. Therefore, the Panel finds that it did not lose jurisdiction in this matter as a result of inordinate delay.

iii. Limitation Period

25. Staff also raised the potential for an expired limitation period as a preliminary issue for the Panel's consideration. Similar to the delay issue, Staff raised this limitation period issue out of fairness to Francois who was self-represented at the commencement of these proceedings. That said, for clarity, Francois did not raise or advance any argument in respect to a limitation period issue.

26. In the *Act*, the applicable limitation period is found in subsection 136(2) which reads as follows:

> 136(2) Notwithstanding *The Limitations Act*, no proceedings pursuant to this Act are to be commenced before the Commission later than six years from the date of the occurrence of the last material event on which the proceedings are based.

27. Staff invited the Panel to provide a deeper analysis of this limitation period considering there is not yet any jurisprudence in Saskatchewan in respect to section 136(2). However, as explained below, the evidence readily shows when the last material event occurred in this case and so an exhaustive interpretative exercise of subsection 136(2) is not necessary. Moreover, the Panel would reiterate comments it made in its *Gaetan Blouin* decision that a deeper analysis of this limitation period is best left to a case where there is a live issue or question regarding whether a limitation period has expired. As the below shows, the evidence demonstrates that this is not one of those cases.

28. Section 136(2) of the *Act* states that no proceedings pursuant to the *Act* are to commenced later than six years from the date of the occurrence of the last material event on which the proceedings are based. These proceedings were commenced when Staff filed the original Statement of Allegations on November 22, 2019. From a perspective most beneficial to Francois then, the earliest the limitation period time clock could begin to run is six years prior to November 22, 2019, which would be November 22, 2013. If a material event occurred after November 22, 2013, whether or not it is the "last material event", then the limitation period in section 136(2) in respect to this matter could not have expired before these proceedings were commenced.

29. The evidence shows that Tri View Client 5 made his investment, which is a material event on which these proceedings are based, on November 26, 2013. As such, the investment date occurred after November 22, 2013, resulting in these proceedings being commenced within the limitation period. Accordingly, the limitation period has not expired and this Panel did not lose jurisdiction as a result of an expired limitation period.

III. WITNESS TESTIMONY AND EVIDENCE

30. Janine Gillespie, Chief Compliance Officer for Tri View Capital Ltd., testified at the hearing as follows:

(a) She responded to questions raised in Investigator Foster's December 6, 2018 letter to Tri View that requested documentation and information in conjunction with his investigation of a complaint against Francois by Tri View Client 5 and his holding company. She testified that a letter dated January 4, 2019 written by Ms. Gillespie's predecessor, Jessica Mitchell, responded to

Investigator Foster's questions about: Tri View's involvement in raising capital for Olive Equity as well as due diligence performed regarding Olive Equity; Tri View's suitability assessment of Olive Equity shares for Tri View Client 5 and his holding company; and, any complaints Tri View had received about Francois. (Jessica Mitchell's January 4, 2019 letter and attachments were entered as evidence).

(b) She explained that Tri View was registered to act as a dealer in Saskatchewan and Francois was employed with Tri View from October 3, 2013 to sometime in 2019, which was during the time of the alleged violations of the *Act* (documentary evidence entered into evidence was corroborative of this testimony, including the National Registration Database registration forms).

(c) She also explained that Olive Equity was a company that was not part of Tri View's exempt market product offerings and therefore Tri View did not perform any due diligence procedures on this company.

(d) She confirmed a list of Tri View clients that were investors and further which clients Francois served as dealer representative from that list during the period from October 2013 to October 2014. Tri View Investor 5 was listed as being one of those clients that Francois served.

31. Tri View Client 5 testified that:

(a) He was referred to Francois by Francois's bookkeeper. This bookkeeper also worked for Francois's holding company. In addition, Francois was the bookkeeper's life partner.

(b) Francois wanted to talk to Tri View Client 5 about an investment.

(c) Upon being referred, he met with Francois who discussed an investment in a modular home manufacturing business named System Built Developments Inc. ("SBDI") that he and his brother, Gaetan Blouin, had started. Tri View Client 5 was told that Francois and his brother had invested significant amounts of money in this project. Tri View Client 5 put faith in what Francois told him with respect to the viability and success of the investment.

(d) On November 26, 2013, he made an investment of $50,000 in SBDI and that this investment was made through Olive Equity.

(e) He did not understand the corporate structure and relationship between Olive Equity and SBDI, but was told that the investments were made in Olive Equity which in turn invested in SBDI on his behalf.

(f) He was provided a 24 page package of documents that included a letter from Olive Equity detailing that his $50,000 would be invested in SBDI, a photocopy of a share certificate naming his holding company as the holder of 50 Class A shares in Olive Equity, a Risk Acknowledgement form signed by him, a copy of his holding company's cheque dated November 26, 2013 in the amount of $50,000, and a copy of the executed Subscription Agreement for 50 Class B Olive Equity shares (as opposed to Class A shares per the copy of the share certificate).

(g) He received a letter dated January 6, 2015 signed by Gaetan Blouin indicating that on October 30, 2014, SBDI had filed a proposal to creditors under the *Bankruptcy and Insolvency Act* and efforts were being undertaken to reorganize the affairs of SBDI to resurrect its operations to be able to save the company.

32. Investigator Foster testified in respect to the commencement of his investigation, witness interviews, and the documents he obtained through the witness interviews that were relevant to this case. The documents were entered as evidence in these proceedings and supported the dates and events relating to the testimony of Ms. Gillespie and Tri View Client 5. Investigator Foster testified that he:

(a) received a complaint from Tri View Client 5, interviewed him on November 9, 2018, and commenced an investigation on that same date.

(b) wrote to Tri View's Chief Compliance Officer on December 6, 2018 to inform her of the complaint against Francois and requested information from Tri View relative to his investigation.

(c) interviewed Francois on July 16, 2019 to obtain his compelled statement regarding the complaint of Tri View Client 5 – a transcript of the compelled statement was entered as evidence.

(d) while obtaining the compelled statement from Francois, he was presented with, among other documents, a list of Tri View clients that Francois sold Olive Equity shares to while he was registered as a dealer for the Exempt Market Dealer, Tri View. During the same compelled statement, Francois confirmed those clients on the list.

33. As noted above, Francois left the hearing before any evidence was called by Staff and did not appear on February 1, 2021 when Staff completed their closing arguments. Thus, no evidence was

presented by Francois in his own defense. Staff entered Francois's compelled statement, taken under oath by Investigator Foster on July 16, 2019, into evidence. That statement, and the documentary evidence referenced therein which Staff also entered into evidence during the hearing, provided significant information in relation to the allegations which ultimately resulted in the bringing of the original and Amended Statements of Allegations.

IV. ANALYSIS OF THE EVIDENCE AND DECISIONS ON THE MERITS

i. Contraventions of clause 27(2)(a) of the *Securities Act*

34. This allegation is presented at paragraphs 4 and 5 of the Amended Statement of Allegations. Section 27(2)(a) prohibits a person from acting as a dealer unless that person is registered as a dealer or "(i) is registered as a representative of a registered dealer *and is acting on behalf of that dealer*" (emphasis added). Section 2(1) of the *Act* provides definitions in respect to the terms "dealer", "trade", and "security" as follows:

> 2(1)(n) "dealer" – means a person or company engaging in or holding himself or herself out as engaging in the business of trading in securities as principal or agent.
>
> 2(1)(vv) "trade" includes:
>
> (i) any transfer, sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, …
>
> …
>
> (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
>
> s. 2(1)(ss) "security" includes:
>
> (i) any document, instrument or writing commonly known as a security;
> …
>
> (ii) any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company;
> whether any of the foregoing relate to an issuer or proposed issuer, but does not include a derivative.
>
> …

35. In regard to the allegations that Francois contravened section 27(2)(a) of the *Act*, the Panel finds the following evidence to be particularly important:

(a) in Francois's compelled statement (at pages 2-3, lines 55-57, 69-73, 79, and page 13, lines 328-31), he confirmed that in conjunction with his employment at Tri View, he acted as a dealing representative selling exempt market products.

(b) Francois's employment with Tri View during the relevant time was further confirmed by evidence entered as Exhibit 2 – FCAA 1812014 B, the National Registration Database filing for Francois Blouin, at pages 13 and 18 of that document, and again confirmed by testimony from Ms. Gillespie as noted above.

(c) Francois's compelled statement confirms that during the relevant time, he sold Olive Equity shares to Tri View clients 1-18, and Other Investor 1. All of these references, and the Subscription Agreement (evidence entered as Exhibit 11 - FCAA 1812014 K) for Olive Equity shares sold to Tri View Client 5's holding company on November 26, 2013, confirm his dealing and trading activity in Olive Equity shares.

(d) The subscription agreements relating to Olive Equity share sales for four other Tri View clients that Francois confirmed he was associated with.

(e) Francois confirmed in his compelled statement that he marketed Olive Equity shares to Tri View clients.

36. The Olive Equity shares that Francois was marketing were not part of Tri View's product offerings and Tri View only became aware that he was selling such shares to its clients after the fact. Francois admitted in his compelled statement that when he disclosed his involvement with Olive Equity to Richard Korble, Tri View's Chief Compliance Officer, Mr. Korble told him that "you guys should not have done this and… if you [were] paid commission you are probably off side" (compelled statement page 52, lines 1427-1428).

37. Evidence confirming Tri View's lack of knowledge of these sales is also present in the testimony of Ms. Gillespie as noted above. And, further evidence was presented in the National Registration Database (NRD) filing for Francois (form 33-109F4) at pages 13 and 18, whereon Francois had the opportunity to disclose his outside business activities from Tri View to both Tri View and the FCAA, but did not do so, thus selling Olive Equity shares off book from Tri View's product offerings.

38. Given the evidence and foregoing analysis, the decision of the Panel is that for the purpose of selling Olive Equity shares to Saskatchewan residents, Francois acted as a dealer in Saskatchewan, but was neither a registered dealer nor was he registered as a representative of a registered dealer and acting on behalf of that registered dealer, in this case Tri View, as required by section 27(2)(a)(ii) of the *Act*. Francois therefore contravened section 27(2)(a) of the *Act*.

ii. Contraventions of subsection 33.1(1) of the *Act*

39. This allegation, detailed at paragraphs 9 – 11 of the Amended Statement of Allegations, speaks primarily to the issue of Francois needing to deal with his clients fairly, honestly, and in good faith when he sold Olive Equity shares to them. The allegation focuses on the following statement that was included in the "Risk Acknowledgement" forms that Francois asked the clients to sign in respect to those transactions:

> The person selling me these securities is not registered with a securities regulatory authority or regulator and has no duty to tell me whether this investment is suitable for me.

40. The statement on the Risk Acknowledgement forms noted above is correct in part in that Francois was not registered with a securities regulator *for the purpose of marketing Olive Equity shares*. However, during the time he dealt with Tri View clients in respect to these investments, Francois *was* an employee of Tri View and *was* registered with a securities regulator, i.e. the FCAA. As such, the Panel finds that including the above clause in the Risk Acknowledgment forms and having clients sign those forms under the impression that he was not registered with a securities regulator was dishonest and unfair to his clients. Moreover, if Francois received the forms as boilerplate and did not independently review them to ensure their accuracy as it pertained to him and his clients (as the below indicates was the case), this serious carelessness and cavalier approach to his duties and responsibilities was also unfair and departs from his duty to deal with his clients in good faith.

41. In his compelled statement (at pages 49-50, lines 1352-1364 and page 55, lines 1500-1522), Francois stated that the Subscription Agreement and Risk Acknowledgement forms that included the above noted statement came to him from Ricky Arshi at Olive Equity as blank documents. Francois also confirmed in his compelled statement that for every person he referred to Olive Equity that purchased shares, he would complete the forms with/on behalf of those clients and have them sign them.

42. In receiving the blank Subscription Agreement and Risk Acknowledgement forms, Francois indicated in his compelled statement (at page 19, lines 516-535; at page 21, lines 565-583; at page 23, lines 634-644; at page 52, lines 1420-1433, and at page 61, lines 1680-1703) that he relied totally on the representations of Ricky Arshi at Olive Equity and had done nothing to ensure that it was appropriate for him to be selling Olive Equity shares as a representing agent of Olive Equity.

43. It is troubling that in his compelled statement (at the referenced pages and lines in paragraph 42 above), Francois repeatedly referred to his enquiries of Ricky Arshi to suggest that everything he was doing was appropriate and above board. Francois attempted to deflect blame and suggested he was not responsible for any regulatory issues because Ricky Arshi was the one that was to ensure that all regulatory matters regarding him marketing Olive Equity shares were in order and taken care of. The Panel rejects this position. As a professional working in the securities industry, Francois should have understood for himself the regulatory environment that he worked in. Deference to Ricky Arshi for assurances that all regulatory matters regarding him marketing Olive Equity shares were in order and taken care of is not an appropriate defence.

44. This view is supported by the decision of a Panel written by Marcel de la Gorgendière, Q.C. *In the Matter of Darcy Lee Bergen*, (September 14, 2000), Saskatchewan Securities Commission [unreported] [*Bergen*] at pages 20 and 21 where he wrote:

> We do not accept what happened as a justification of Bergen's conduct in those instances. We think that Bergen's fundamental problem is that he still doesn't understand that a registrant cannot absolve himself for responsibility for his conduct because he relies on others and says as he did, "I'm a commissioned salesperson, I get paid by commissions and I sell product." While he may be paid commissions, his responsibility as a registrant is more than to sell product. It is to properly exercise his duties in a manner compatible with his fiduciary duty to his customer. He cannot carry out this duty if he doesn't understand the nature of what he is selling. He clearly admits he had no understanding of "Barclay" and "Mariner." While not understanding these limited partnership offerings, while they were clearly different from mutual funds, he did have access to offering memorandums that clearly warned, on their face page, that they were speculative.
>
> …
>
> We also do not think a salesman can remove himself from his fiduciary duty by saying others were involved in making the sale, that all he did was refer customers on to others. Here we have more evidence than just referring. WE have a payment of an 8.5% commission for a mere referral. It was not just a token $100 “thank you” regardless of results. …

45. The *Bergen* decision also addresses Francois’s claimed lack of knowledge of the Olive Equity shares he was marketing (compelled statement pages 48-49, lines 1322-1349), where Tri View clients were investing in SBDI, but were actually purchasing shares of Olive Equity. From his compelled testimony, Francois stated that he deferred to Ricky Arshi and did not understand the business structure or corporate relationship between Olive Equity and SBDI. As noted, this is not an appropriate defence.

46. Given the foregoing evidence and testimony, the Panel concludes that Francois did not act fairly, honestly and in good faith when dealing with Tri View clients and therefore contravened subsection 33.1(1) of the *Act.*

iii. Contraventions of section 4.1 of National Instrument 33-109 *Registration Information* [*NI 33-103*]

47. This allegation focuses on whether Francois kept the FCAA updated on any changes to information submitted in his National Registration Database (NRD) filings. These filings are designed to at all times keep the regulator informed of all of a dealing representative's current business and employment activities, including activities with a sponsoring firm (Tri View in this case) and any other employment and business activities outside of the sponsoring firm. When there is a change to one's status, a dealing representative is required to update their information in accordance with section 4.1 which reads as follows:

> 4.1 Notice of Change to an Individual's Information
> (1) Subject to subsection (2), a registered individual must notify the regulator of a change to any information previously submitted in respect of the individual's Form 33-109F4 as follows:
>
> (a) For a change of information previously submitted in items 4 (Citizenship) and 11 (Previous Employment) of Form 33-109F4, within 30 days of the change;
>
> (b) For a change of information previously submitted in any other items of Form 33-109F4 within 10 days of the change.

48. Staff entered Francois's form 33-109F4 (Exhibit 2 – FCAA 1812014 B) into evidence which relates to his application on October 3, 2013 (when he commenced employment at Tri View) to the FCAA for registration as a dealing representative of an exempt market dealer. Investigator Foster testified that he reviewed this filing during his interview with Francois and which revealed that Francois did not disclose his outside business activities relating to the sale of Olive Equity shares during the relevant period. In light of this evidence, the Panel finds that Francois failed to disclose changes of information (the business activates relating to Olive Equity) as required and thereby breached section 4.1 of NI 33-109.

V. CONCLUSION

49. After considering the testimony provided by witnesses and supporting documentary evidence, which the Panel found to be credible, and after considering the evidence provided by Francois through his compelled statement (which was played for the Panel and entered as evidence during the hearing), the Panel is satisfied that Staff has sufficiently proven the allegations brought against Francois.

50. The next step in these proceedings is for the Panel to receive submissions from the parties in respect to the requested sanctions, including the administrative penalty, and costs (see *Local Policy*, s 19.3 & Part 20). In this regard, the Panel directs that Staff provide its written submissions on costs within thirty

(30) days of this decision and Francois provide his written submissions within thirty days (30) after Staff serves him with Staff's submissions. Should Staff wish to file a reply to Francois's written submissions, Staff may do so within ten (10) days of being served with Francois's written submissions.

51. The Panel is cognizant that the timelines for filing written submissions set out above are more generous than those found in section 19.3 of the *Local Policy*. With an eye to subsection 1.3(3) of the *Local Policy*, and considering the nature of these proceedings, the nature of the requested sanctions (including an administrative penalty requested by Staff), and the fact that Francois is self-represented, the Panel is of the view that it is in the public interest to proceed on the basis of the above noted timelines. In accordance with subsection 19.3(2) of the *Local Policy*, after consulting with the parties, the Registrar will set a date for a hearing in respect to the issue of sanctions that is beyond the time frames set out above. If the parties wish, they can also address the issue of costs at this hearing.

52. Finally, in respect to Staff's request pursuant to section 135.6 of the *Act* that the Respondent pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondent's contraventions of Saskatchewan securities laws, the Panel directs that this issue be the subject of a future hearing in accordance with the procedures set out in Part 13 of the *Local Policy*.

53. "This is a unanimous decision of the Hearing Panel.

Dated at Regina this 1 day of April, 2021.

"Howard Crofts"

_____

Howard Crofts, Hearing Panel Chairperson

"Norman Halldorson"

_____

Norman Halldorson

"Honourable Eugene Scheibel"

_____

Honourable Eugene Scheibel