

INVESTIGATION REPORT

Date: August 2, 2016
Complainant: Mr. E
Participating Firm: Sentinel Financial Management Corp. (Sentinel Financial)

CONFIDENTIALITY

This report is intended solely to assist the Complainant and Participating Firm (the Parties) in resolving their dispute and is not intended for broader use, circulation or publication. This document and its content is not to be provided to or discussed with anyone other than the Parties and their professional advisors such as lawyers and accountants, if any. The Parties are reminded of their confidentiality obligations set out in the consent letter signed by the Complainant and our Terms of Reference. The contents of our report are not intended to be, nor should they be interpreted to be, legal advice or opinion.

SUMMARY OF ISSUES, FINDINGS AND RECOMMENDATION

Issues:	<ul style="list-style-type: none"> ▪ Investment Suitability, Disclosure 	
Period:	<ul style="list-style-type: none"> ▪ 2010 to present 	
Key Conclusions:	<ul style="list-style-type: none"> ▪ Advisor O, while an investment advisor with Sentinel Financial, recommended that Mr. E purchase high-risk exempt market securities that were unsuitable given Mr. E's low-to-medium risk tolerance. ▪ Advisor O did not adequately disclose the risks and features of the high-risk exempt market securities. Had Mr. E understood the risks associated with these investments, he would not have purchased them. ▪ Mr. E incurred financial harm on the high-risk exempt market securities. ▪ Sentinel Financial is responsible for compensating Mr. E for the financial harm. 	
Recommendation:	\$128,799	Compensable losses

BASIS FOR DECISIONS

We resolve complaints using a standard that is based on law, accepted industry practice and principles of fairness, as set out in section 25 of our Terms of Reference:

OBSI shall make a recommendation or reject a Complaint with reference to what is, in OBSI's opinion, fair in all the circumstances to the Complainant and the Participating Firm. In determining what is fair, OBSI shall take into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct applicable to the subject matter of the Complaint and shall otherwise act in accordance with its Fairness Statement.

While we consider the rules and standards developed by other bodies, including regulatory bodies such as the securities regulators that form the Canadian Securities Administrators (CSA), the Investment Industry Regulatory Organization of Canada (IIROC), and the Mutual Fund Dealers Association of Canada (MFDA), our overriding guiding principle is what is fair between the parties in the particular circumstances of each case. We do not enforce or specifically investigate compliance with regulations. Therefore, our conclusions will not necessarily be the same as conclusions drawn by a regulator bound by specific rules or subject to a different standard.

BACKGROUND

Mr. E began investing with Advisor O in the early 1990s. In 1998, Advisor O moved investment firms to become an investment advisor with Sentinel Financial. Shortly thereafter, Mr. E opened an RRSP account at Sentinel Financial, transferred in his investments from his previous investment firm, and set up a pre-authorized contribution plan. In 2001, Mr. E opened an RESP account which does not form part of this complaint.

From 1998 to 2009, Mr. E held two mutual funds in his RRSP account: a low-to-medium risk fund and a medium risk fund. By December 31, 2009, the total value of these funds was \$26,590.

In early 2010, at age 48, Mr. E resigned as a researcher at a private company and joined his spouse to work full time on their family farm.

On February 16, 2010, Advisor O met with Mr. E to discuss Mr. E's plans for his group RRSP and the pension he would be receiving from his former employer.

On February 19, 2010, Advisor O sent a memorandum to Mr. and Mrs. E entitled "Information on alternative investments for Mr. E's pension" and enclosed information on various investments. In the memorandum, Advisor O recommended several exempt market securities, including Standard Resources Fund (SRF), and Optimus U.S. Real Estate Fund (Optimus), for "optimal diversification" from mutual funds and stocks. The memorandum states that the alternative investments Advisor O was recommending had a

“potential for above-average returns” and “generally low” risk since there was “no volatility” and “the risk/reward profile...very attractive (low risk...high returns)”. In the memorandum, Advisor O recommended investing “all or a good portion of [Mr. E’s] pension into these ideas”.

On March 1, 2010, Mr. E signed documents to transfer approximately \$41,633 from his group RRSP with his former employer to his Sentinel Financial RRSP account. He also signed a subscription form to purchase \$23,000 of SRF in his RRSP.

On March 18, 2010, Advisor O sent an email to Mr. E attaching the “new revised Offering Memorandum” for SRF. In the email, Advisor O said “you may not want to print it out”, but that he was “required by the Securities Commission to send it”. The email also requested Mr. E to sign a letter to acknowledge he received a copy of the amended Offering Memorandum of SRF dated March 16, 2010 and to return the letter as soon as possible.

On April 7, 2010, Mr. E met with Advisor O and signed a New Account Form to open a Locked-In Retirement Account (LIRA). On the same day, Mr. E signed documents to transfer the commuted value of his company pension, approximately \$84,181, to the LIRA.

On June 28, 2010, shortly after the pension transfer to the LIRA was completed, Mr. E signed subscription forms to invest \$59,850 in SRF and \$18,900 in Optimus. He also signed a trade ticket to invest \$5,000 in SaskWorks Resources (SaskWorks), a Labour Sponsored Venture Capital Corporation.

On February 18, 2011, Mr. E signed three subscription forms to invest a total of \$37,000 in Westpoint Capital High Yield Mortgage Investment Corporation (Westpoint) in his RRSP account: \$10,000 in a one-year term, \$10,000 in a three-year term, and \$17,000 in a five-year term. He also signed a trade ticket to purchase an additional \$5,000 of SaskWorks in his RRSP account.

On September 22, 2011, the Alberta Securities Commission issued a cease trade order on SRF because its Offering Memorandum was not completed in accordance with Alberta securities laws.

On November 7, 2011, Advisor O resigned from Sentinel Financial and on November 23, 2011, Sentinel Financial advised Mr. E that Mr. D had been assigned as his new investment advisor.

Although Advisor O had resigned from Sentinel Financial and was no longer Mr. E’s investment advisor, he continued to correspond with Mr. E about his investments. On May 8, 2012, Advisor O advised Mr. E by email that he would soon receive a letter of transmittal to convert his units of SRF to shares of Northern Patriot Oil and Gas (NPOG). SRF and NPOG subsequently merged and Mr. E’s SRF units were converted to NPOG shares.

On May 31, 2012, Mr. E redeemed his one-year term Westpoint units and received \$10,300.

On February 26, 2013, NPOG was placed in receivership.

On January 14, 2014 and February 13, 2015 respectively, Mr. E submitted requests to redeem his three-year and five-year term Westpoint units. These redemption requests were not processed. Westpoint has since undergone restructuring and informed its unitholders that any payouts will be completed in the order the redemption requests are received and that the timing of any payout will be based on the availability of funds. Mr. E's requests to redeem his three-year and five-year term Westpoint units have still not been processed.

On September 10, 2015, Mr. E redeemed all his Optimus units for \$17,202.

In December 2015, Mr. E attempted to transfer, in kind, all of his investments from Sentinel Financial. However, his new investment firm would not accept NPOG or Westpoint because they were exempt market securities.

COMPLAINT

In his letter to Sentinel Financial dated April 11, 2014, Mr. E complained that:

- After leaving his employer in 2010, he transferred his commuted pension and group RRSP to Sentinel Financial, and Advisor O advised him to invest a sizable portion of these proceeds into SRF and other high-risk investments that were unsuitable given his circumstances;
- Advisor O did not explain that these investments were exempt products or the nature of the exempt market, and he would never have invested in such securities had he been aware of the risks or that it was possible to lose his entire principal; and,
- He was always risk averse, particularly after he began farming full time. Given that farming itself entails considerable risk, he cannot afford to take additional risk with his investments/savings.

Mr. E asked Sentinel Financial to compensate him for his losses in SRF.

SENTINEL FINANCIAL'S RESPONSE

In its letter dated July 25, 2014, Sentinel Financial responded that:

- It had reviewed the suitability of the exempt market securities and concluded they were suitable based on the documents Mr. E had signed, which included:
 - An updated Know-Your-Client (KYC) document;

- A signed “Net Worth” document stating that Mr. E was an eligible investor;
 - Two separate completed and signed subscription agreements for SRF which included signed Risk Acknowledgements; and,
 - Signed Risk Acknowledgement forms for Westpoint and Optimus.
- Mr. E’s signatures were verified against other documents; and,
 - Mr. E received an email that provided him with a copy of the Offering Memorandum for SRF.

Sentinel Financial refused to compensate Mr. E.

ANALYSIS

In the course of our investigation, we reviewed all the information Mr. E and Sentinel Financial provided us. We interviewed Mr. E and Advisor O. We also discussed this complaint with Sentinel Financial’s VP Compliance & Operations and its President & Chief Compliance Officer.

When we interviewed Advisor O, we found he lacked credibility. For example, he told us he did not promote any particular product and that he was paid the same commission regardless of the product. However, we confirmed that Advisor O recommended and sold over \$10 million of SRF to his clients between July 2009 and June 2011 in transactions ranging from \$1,000 to \$210,000. On earlier transactions, Advisor O earned 3.5% in commissions (50% of the 7.0% in commissions Sentinel Financial received), however, on later purchases he received 5.6% in commissions (80% of the 7.0% in commissions Sentinel Financial received)¹. We have also confirmed that Advisor O was paid higher commissions for selling SRF than he was paid for selling other securities.

We found Mr. E to be credible in his interview and subsequent discussions with us. For example, while knowing it could negatively affect his case, Mr. E acknowledged that he agreed to purchase SaskWorks and that he knew at the time of purchase that it was a high-risk investment.

Therefore, where their evidence conflicted, we generally believed Mr. E over Advisor O. However, throughout our investigation we scrutinized what all parties told us against the available independent evidence.

When making investment recommendations to their clients, investment advisors and their firms have several regulatory obligations, including:

1. Learning each client’s personal and financial circumstances, investment knowledge

¹ In total Advisor O was paid \$468,400 of the \$767,414 in commissions paid to Sentinel Financial.

and experience, investment objectives, risk tolerance and investment time horizon (known as “Know Your Client” or “KYC” information);

2. Knowing the risks and characteristics of the investments and/or investment strategies they are recommending;
3. Recommending investments and/or investment strategies that are suitable for their clients given their KYC information; and
4. Disclosing the characteristics and risks of the investments and/or investment strategies they are recommending to allow clients to make informed investment decisions.

Accordingly, we examined the following key issues in respect of Mr. E’s complaint:

1. What was Mr. E’s KYC information and were the SRF, Optimus and Westpoint investments suitable?
2. Were the characteristics and risks of SRF, Optimus and Westpoint appropriately disclosed?
3. If the investments were unsuitable and/or their characteristics and risks were not appropriately disclosed, did Mr. E incur financial harm?
4. If Mr. E incurred financial harm, who bears responsibility?

Issue 1 – Were the investments suitable for Mr. E?

When assessing the suitability of investments and/or investment strategies, we first determine the Complainant’s actual KYC information at the relevant time. Documents, such as account opening documents and KYC forms signed by the Complainant, are central to this determination. However, we also collect and consider additional evidence by interviewing the parties and conducting research to determine if the information recorded on the KYC forms reflects the Complainant’s actual KYC information during the period of time in question.

Once we have determined the Complainant’s KYC information, we analyze the investments and strategies recommended by the investment advisor to determine if they were suitable given the Complainant’s KYC information.

KYC Determination

Personal and Financial Circumstances

In early 2010, when Mr. E began purchasing the exempt market securities in question, he had just left his employer and started working full time on the family farm. He was 48 years of age with a spouse who also worked on the family farm and a 12 year old son.

On March 1, 2010 and February 18, 2011, Mr. E signed “Client Information” forms which listed his assets and liabilities and estimated his net worth to be \$953,000 and \$1,020,500 respectively.

While Mr. E does not recall completing the Client Information forms with Advisor O, he agrees that the estimated net worth values are approximately accurate. However, he told us that all of his assets and liabilities were held jointly with his wife and the documents he provided us support that. Therefore, his personal net worth at the time was approximately \$500,000.

From 2001 through February 2011, numerous documents titled: “Know Your Client Form”, “Client Profile”, and “KYC Standard Profile” forms (collectively the KYC documents) were completed for Mr. E’s accounts. The KYC documents consistently indicated Mr. E’s annual income was \$50,000 to \$100,000, with the exception of the February 2010 KYC which showed \$25,000 - \$50,000.

Mr. E says he agrees with the documented income. Based on his Notices of Assessment, Mr. E’s taxable income was \$74,781 in 2009, the last full year he worked at the private company. When he began farming in 2010, his taxable income declined significantly to \$19,596. In 2011, 2012 and 2013, Mr. E’s taxable income was \$57,120, \$56,108 and \$45,694, respectively. He never again earned the level of income he made while working at his former employer.

Based on the available evidence, we conclude that Mr. E had a personal net worth of approximately \$500,000. While his income was stable when he worked for the private company, when Mr. E started farming full time, his income declined significantly and varied from year to year.

Investment Knowledge and Experience

Between May 2001 and December 2011, Mr. E’s KYC documents indicate he had “average” or “moderate” investment knowledge with the exception of his KYC document dated February 17, 2010 which indicates his investment knowledge was “minimal”.

The evidence indicates that, prior to 2010, Mr. E’s only investment experience was purchasing mutual funds through Advisor O and in his group RRSP at his former employer. While at Sentinel Financial, he purchased two mutual funds: a low-to-medium risk fund and a medium risk fund. For his group RRSP, Mr. E says he just selected mutual funds from a list the plan administrator provided.

Mr. E says that at one point he thought his investment knowledge was average or moderate but he now believes “minimal” is more accurate. Mr. E says he trusted and relied on Advisor O for investment advice. He says he always followed Advisor O’s recommendations except on one occasion when Advisor O recommended Mr. E invest in “Grasswood”, farmland which Mr. E learned much later was an investment not approved by Sentinel Financial. Mr. E says he declined the investment because he felt investing in another farm would be in direct conflict with his own farming activities.

In contrast, Advisor O described Mr. E as someone who had “good, if not excellent” investment knowledge. He says they often talked about the economy and about risk. However, Advisor O was not able to explain how Mr. E obtained “good, if not excellent” investment knowledge and has no notes from his discussions with Mr. E. Advisor O acknowledged that Mr. E relied on him for investment advice and followed his recommendations.

In our interview with Mr. E, we found he had difficulty explaining investment terminology and did not understand the differences between various investments, such as stocks, mutual funds and bonds. Mr. E could also not differentiate between low risk and high risk investments.

Based on the evidence, we conclude that Mr. E had limited investment experience and minimal investment knowledge. He relied on Advisor O for investment advice and almost always followed his recommendations.

Investment Objectives, Risk Tolerance and Time Horizon

Mr. E and Advisor O agree that Mr. E’s investment objective was “growth” and that his investments were his retirement savings. However, they disagree regarding Mr. E’s risk tolerance.

All of Mr. E’s KYC documents prior to February 2010 (when Advisor O started recommending the exempt market securities) indicate Mr. E’s risk tolerance was medium. Starting in February 2010, Mr. E’s risk tolerance was documented as high. Below is a summary of Mr. E’s documented risk tolerance while he was at Sentinel Financial:

Table 1: Mr. E’s Risk Tolerance as Shown on his KYC Documents

	May 2001	Sep. 2003	Jan. 2005	Mar. 2006	Jan. 2008	Feb. 2010	Mar. 2010	Apr. 2010	Feb. 2011	Dec. 2011
RRSP	Medium					50% High, 50% Moderate- High	75% High, 25% Moderate	No Update	100% High	
LIRA	N/A					N/A	N/A	100% High		No Update

Despite the KYC documents, Mr. E told us that his risk tolerance was always “low-to-moderate”. He says he wanted his investments to grow, but not at the expense of losing his original investment. He says he did not want to take risks with his investments because he would be pursuing farming full-time and farming already entailed considerable uncertainty and risk.

Mr. E says he does not recall ever discussing his risk tolerance with Advisor O. He says Advisor O often asked him to sign incomplete documents and said he would have his assistant “take care of the rest”. He says he did not realize the significance of the KYC forms until he complained. He says he does not recall signing the December 2011 KYC document with Mr. D and only spoke with Mr. D over the phone on a few occasions. He

says that after he complained and met with Sentinel Financial staff, he saw that his KYC documents were completed in different ink, which may indicate that not all of the information was completed at the same time or in his presence.

Mr. E says he purchased the exempt securities that Advisor O recommended because he thought they were low risk. Mr. E says he purchased SaskWorks knowing the investment was high risk because he would receive a tax credit which would mitigate the risk, it represented a small portion of his investments, and it would support the local economy.

In contrast, Advisor O says Mr. E was willing to take 100% high risk with all of his investments. He says Mr. E had a long term time horizon and was comfortable taking risk in his every day activities as a farmer, therefore he was prepared to take risk with his investments. Advisor O says he always completed the KYC documents in Mr. E's presence and had him sign them. Advisor O also says Mr. E understood the exempt market securities he recommended were high risk.

Until February 2010, Mr. E had always held low-to-medium and medium risk mutual funds in his Sentinel Financial accounts. Upon leaving his permanent job at his former employer, Mr. E took on a much less stable career in farming. Advisor O has no explanation as to why it would be suitable for Mr. E to start investing all his retirement savings in high risk securities at that time.

Advisor O described the Know Your Client process as "quite Mickey Mouse". He says he always had detailed discussions with his clients long before they signed KYC documents to determine their "fears and worries" and that they "chat about the philosophy" before completing any documents. However, Advisor O has no notes from any of his conversations with Mr. E about his risk tolerance.

As explained in more detail in the following section of this report, we find that Advisor O significantly downplayed the risks associated with the exempt market securities he began recommending in February 2010. Therefore, the fact that Mr. E agreed to purchase those investments is not an indication he was willing to take high risk with his investments.

While Mr. E alleges the KYC documents he signed were sometimes blank, we cannot determine whether that was the case. In any event, it was Advisor O's responsibility, as Mr. E's investment advisor, to determine Mr. E's ability and willingness to accept risk. Advisor O's only explanation regarding his position that Mr. E had a high risk tolerance is that because Mr. E was willing to start farming full-time, which would be risky, he was also willing to accept high risk with his investments. Advisor O does not have any notes from his conversations with Mr. E to support his position regarding Mr. E's risk tolerance.

Given Mr. E's personal and financial circumstances, including that he was leaving a stable job to pursue farming full-time, we conclude it was unsuitable for him to take high risk with his retirement investments. Based on the available evidence, particularly the February 19, 2010 memorandum (discussed below), we accept that Mr. E reasonably believed the exempt market securities he purchased were lower risk. We also accept Mr.

E's explanation that, with the exception of SaskWorks, he was only willing to take low-to-medium with his investments.

For the reasons outlined above, we conclude that Mr. E's investment objective was growth and that he had low-to-medium risk tolerance and we have used these parameters in our suitability analysis.

Suitability

While Mr. E met the securities law eligible investor requirements to purchase SRF, Optimus, and Westpoint, this does not mean they were suitable investments for him.

SRF, Optimus and Westpoint were sector-focused exempt market securities. In each of their Offering Memorandums, these investments were described as "highly speculative, lacking a history in business operations, with a lack of liquidity." Sentinel Financial's policies and procedures indicate that exempt securities are high-risk investments that "should be sold only to clients who have an aggressive investment profile". Therefore, SRF, Optimus and Westpoint were unsuitable for Mr. E given his low-to-medium risk tolerance.

Conclusion

Mr. E had limited investment experience and minimal investment knowledge. He relied on Advisor O for investment recommendations and followed his advice. While Mr. E's investment objective was growth, his risk tolerance was low-to-medium. Therefore SRF, Optimus and Westpoint, as high risk exempt securities, were unsuitable for him.

Issue 2 – Were the characteristics and risks of SRF, Optimus and Westpoint appropriately disclosed?

When determining if the characteristics and risks of investments and/or investment strategies were appropriately disclosed, we consider whether there was complete and clear disclosure of important information about the investment or strategy, including a balanced presentation of the risks involved to allow the Complainant to make an informed investment decision. We will also consider the context in which the disclosure was made and Complainant's level of investment knowledge and experience in determining if the disclosure was appropriate.

On February 19, 2010, three days after Advisor O and Mr. E met to discuss investing in exempt market securities, Advisor O sent a memorandum to Mr. and Mrs. E entitled "Information on alternative investments for Mr. E's pension". The memorandum states that as a follow up to their discussion, Advisor O is enclosing information on various alternative investment opportunities for Mr. E's pension. In the memorandum, Advisor O states that he is recommending these investments to most of his clients, that he thinks these investments are appropriate for Mr. E, and that:

1. The alternative investments have no or little correlation to the stock market, so they provide the optimal diversification to investors who currently hold mutual

funds and/or individual stocks. Greater diversification = lower overall risk for the portfolio.

2. The alternative investments that I deal with generally have potential for above-average returns. Investors are eager to invest into investments that are generating good – excellent returns, as their mutual funds have not done (sic) so in the last 10 years.
3. The risk level of the alternative investments is generally low. There is no volatility. The biggest risk is typically illiquidity and time. The risk/reward profile of the alternative investment that I offer my clients is very attractive (low risk ... high returns).
4. The alternative investments that I deal with allow investors to participate in business ventures that they normally would not be able to do so on their own (due to lack of funds, lack of time and/or lack of expertise). Ventures such as land development, oil production, and commercial properties are generally very profitable ventures that few investors can partake in.”

In the memorandum, Advisor O also says “this (SRF) investment is projected to pay out a quarterly cash flow of 18 – 25% per year”. Finally, he says these alternative investments are “very diversified”, would be great compliments to mutual funds and that “I am recommending that you consider investing all or a good portion of your pension fund into these ideas.”

Mr. E says he did not receive the Offering Memorandum for SRF until after the purchase took place. He does not recall ever receiving Offering Memorandums for Optimus or Westpoint. He says Advisor O downplayed the importance of the SRF Offering Memorandum and did not review the risks with him.

As part of the subscription agreements Mr. E signed to purchase SRF, Optimus and Westpoint, he signed “Risk Acknowledgement” forms. The forms state, among other things, that these investments are risky, that one could lose all the money invested and that the investor would only be able to sell the securities in very limited circumstances.

Mr. E says he did not read the documents he signed as Advisor O would provide multiple documents at once and would merely indicate where he needed to sign without explaining the relevance and/or importance of the documents.

Mr. E says he purchased the exempt market securities because Advisor O told him they were “like his RRSP” but had a better return. He says Advisor O explained that they were “low risk” and that the downside was never explained. He says had he known that he could lose most or all his principle he would not have invested.

Advisor O says he explained all the associated risks of these investments to Mr. E, as he would with all his clients. When we asked about the February 19, 2010 memorandum where he describes the recommended investments as “low risk”, he says that Mr. E would

not have based his investment decisions on the memorandum, but on many discussions they had where he explained these investments were high risk. Advisor O has no notes from those discussions.

On March 18, 2010, after Mr. E had completed a subscription form to purchase \$23,000 worth of SRF, Advisor O sent Mr. E an email attaching a copy of SRF's Offering Memorandum. Instead of explaining the importance of the Offering Memorandum and encouraging Mr. E to read it, Advisor O says in his email: "Please find attached a new revised Offering Memorandum for the Standard Capital Resource (previous name for SRF) fund, outlining their new oil well acquisitions. You may not want to print it out, as it is 230 pages thick! I am required by the Securities Commissions to send it to you." The email then says "Please sign the attached Acknowledgement letter and return it back to me A.S.A.P."

Mr. E provided OBSI with a copy of a brochure regarding SRF and one for Westpoint that he says he received from Advisor O prior to their purchase. The brochures provide some details about the investments, but do not state the investments were high risk or describe the risks associated with the investments.

Following Mr. E's purchase of SRF, Advisor O continued to send Mr. E emails highlighting the positive outlook for SRF but did not explain the risks.

Conclusion

While we cannot be certain what, if any, conversations Advisor O had with Mr. E regarding the risks associated with the exempt market securities he recommended, based on the evidence available we find it improbable that Advisor O explained that these investments were high risk. Three days after their February 16, 2010 meeting when they discussed the exempt market securities, Advisor O sent Mr. E a memorandum summarizing their discussion and describing the exempt market securities as "low risk". Further, the two brochures Advisor O provided Mr. E regarding SRF and Westpoint and Advisor O's follow up emails to Mr. E failed to explain that these securities were high risk. The bulk of the information provided by Advisor O presented these investments as low risk or did not discuss risk. Therefore, we conclude that Advisor O did not provide Mr. E with a balanced presentation of the risks associated with these investments.

We find that Mr. E had a trusting relationship with Advisor O and relied heavily on him for investment advice. Based on all the evidence, we find it reasonable that Mr. E believed the exempt market securities Advisor O recommended were not high risk. Given his low-to-medium risk tolerance (discussed above) we conclude that he would not have purchased these investments if the risks had been properly disclosed to him.

Issue 3 - Did Mr. E incur financial harm?

To determine if unsuitable investments and/or strategy caused financial harm, we compare the actual performance of the unsuitable investments or strategy over the relevant period to what the performance of suitable investments would have been. In our suitable performance calculations, we account for the timing of the actual trading activity,

deposits and withdrawals. We also account for actual or appropriate transaction fees or other costs.

To determine Mr. E's financial harm, if any, we considered how his investments would have performed had they been suitably invested. Mr. E's risk tolerance at the relevant time was low-to-medium and he believed the exempt market securities he purchased were lower risk. Therefore, we compared the performance of the unsuitable exempt market securities to the performance of a low-to-medium risk benchmark consisting of 60% DEX Universe Bond Index and 40% S&P/TSX Composite Total Return Index. We accounted for the timing of the investments in exempt market securities, including any buys and sells. In addition, the benchmark calculation was reduced by active management fees which would have been incurred for suitable mutual fund investments.

Tables 2 and 3 below compare the actual performance of Mr. E's exempt market securities in his RRSP and LIRA accounts to the suitable benchmark. We have excluded the losses from SaskWorks from our calculations as Mr. E was aware that the investment was high risk and that he could lose a portion of the investment.

Table 2: RRSP (Excluding SaskWorks) Actual vs. Suitable Performance

	Actual Performance	Suitable Performance
Value of the unsuitable exempt market securities on January 21, 2016 (including distributions)	\$25,850	\$54,789
Less: net capital invested in unsuitable exempt market securities	\$49,700	\$49,700
Return on investment	-\$23,850	\$5,089
The unsuitable exempt market securities underperformed the suitable portfolio by		\$28,939

Table 3: LIRA Actual vs. Suitable Performance

	Actual Performance	Suitable Performance
Value of the unsuitable exempt market securities on September 10, 2015 (including distributions)	\$19,663	\$94,086
Less: net capital invested in unsuitable exempt market securities	\$78,750	\$78,750
Return on investment	-\$59,087	\$15,336
The unsuitable exempt market securities underperformed the suitable portfolio by		\$74,423

As of January 21, 2016, Mr. E lost approximately \$82,937 (\$23,850 + \$59,087) based on the actual performance of his unsuitable investments. If Mr. E had been suitably invested, we calculate he would have earned approximately \$20,425 (\$5,089 + \$15,336). Therefore, his compensable financial loss is \$103,362 (\$82,937 + \$20,425).

Mr. E still has \$25,437 invested in Westpoint based on its stated current market value. However, Westpoint is not processing redemption requests at this time and has not indicated when, if at all, redemptions will resume. As Westpoint was an unsuitable investment at the time Advisor O recommended it to Mr. E and it remains unsuitable, we are recommending that Sentinel Financial purchase Mr. E's Westpoint units for \$25,437.

Issue 4 – Who bears responsibility for Mr. E's financial harm?

Investment dealers are vicariously liable to their clients for the actions of their investment advisors in regard to securities-related business. However, our fairness standard requires us to also consider whether complainants should bear partial or full responsibility for their losses.

With regard to suitability cases, we consider that regulators are clear that the responsibility to ensure recommendations are suitable for clients rests solely with the advisor and firm and cannot be transferred to the client, even by obtaining from the client an acknowledgement of the risks and characteristics associated with the investments.

In this case, Advisor O recommended the unsuitable investment to Mr. E and as such, Sentinel Financial is vicariously responsible for the financial harm Mr. E incurred as a result of the unsuitable recommendation.

As set out above, we have concluded that Mr. E had minimal investment knowledge and fully relied on Advisor O for information regarding the investments he recommended. We concluded further that SRF, Optimus and Westpoint were unsuitable for Mr. E and Advisor O did not provide Mr. E with a balanced presentation of the risks associated with the investments.

For the reasons outlined above, we conclude that Mr. E should not share responsibility for the losses he incurred as a result of the unsuitable investments in SRF, Optimus and Westpoint.

RECOMMENDATION

We are required to make a recommendation or reject a complaint based on what is, in our opinion, fair in all the circumstances. In this case, we recommend that Sentinel Financial compensate Mr. E \$103,362 for unsuitable investments and purchase Mr. E's remaining units in Westpoint at their current market price of \$25,437. Therefore, the total recommended amount for compensation is \$128,799 (\$103,362+\$25,437).