Re Tachauer

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Andrew David Tachauer

2024 CIRO 17

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: June 23, 2023, by electronic hearing
Decision: June 23, 2023
Reasons for Decision: January 15, 2024

Hearing Panel:
Thomas J. Lockwood, K.C., Chair
Edward Jackson, Industry Representative
Joseph Yassi, Industry Representative

Appearances:
Samantha Wu and Tyler Beazer, Enforcement Counsel, Canadian Investment Regulatory Organization, Mutual Fund Dealer Division
Justin Papazian, Counsel for the Respondent
Andrew David Tachauer, Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Hearing, dated the 19th day of December, 2022, the Mutual Fund Dealer Association of Canada ("MFDA") made the following Allegations against Andrew David Tachauer ("Respondent"):

> Allegation #1: Between December 2019 and February 2020, the Respondent failed to use due diligence to learn and accurately record the essential facts relative to a client, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.12 (as it relates to MFDA Rule 2.5.1).
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> Allegation #2: Between December 2019 and February 2020, the Respondent failed to use due diligence to ensure that investments that he recommended a client purchase using borrowed monies were suitable for the client, having regard to the client's Know-Your-Client information, contrary to the Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).
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> Allegation #3: Between December 2019 and February 2020, the Respondent failed to update a client's Know-Your-Client information when the Respondent became aware of a material change in the client's information, contrary to the Member's policies and procedures and MFDA Rules 2.2.4(b), 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).
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> Allegation #4: In February 2020, the Respondent failed to report to the Member that a client used

borrowed monies to invest, contrary to the Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1).

¶ 2 On January 1, 2023, the MFDA and the Investment Industry Regulatory Organization of Canada were consolidated into a single self-regulatory organization recognized under applicable securities legislation called the Canadian Investment Regulatory Organization ("CIRO" or the "Corporation"). CIRO adopted interim rules that, *inter alia*, incorporate the pre-amalgamation regulatory requirements contained in the by-laws, rules and policies of the MFDA.

¶ 3 The First Appearance in this matter took place before the Hearing Panel on February 2, 2023. At the First Appearance, the parties agreed to a further Interim Appearance on June 9, 2023. They further agreed that the Hearing on the Merits would take place, by videoconference, on June 21-23, 2023.

¶ 4 On February 23, 2023, the Respondent served and filed a Reply.

¶ 5 On June 9, 2023, an Interim Appearance took place. At that time, the parties advised the Hearing Panel that settlement discussions were being held. They jointly requested that, if a settlement was reached, the Settlement Hearing take place on June 23, 2023.

¶ 6 On June 19, 2023, the parties executed a Settlement Agreement. On June 21, 2023, public notice was given that the Settlement Hearing would take place on June 23, 2023.

¶ 7 On June 23, 2023, the Hearing Panel was formally presented with the Settlement Agreement. This Settlement Agreement had been prepared in accordance with Section 24.4 of MFDA By-law No. 1, with the exception that the notice of the Settlement Hearing did not comply with the time provisions set out in Rule 15.2(1) of the MFDA Rules of Procedure.

¶ 8 Rule 15.2(1) provides as follows:

> "15.2 Notice and Public Access
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> (i) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days' notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of MFDA By-law No. 1 specifying:
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> (a) the date, time and place of the settlement hearing; and
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> (b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement."

¶ 9 At the opening of the Settlement Hearing, MFDA Staff and the Respondent made a joint written and oral request that the Hearing Panel exercise its discretion pursuant to Rules 1.5 and 2.2(1)(a) of the MFDA Rules of Procedure to abridge the ordinary requirement set out in Rule 15.2 that a Settlement Hearing be heard upon 10 days' notice to the public. We were also mindful of the General Principles set out in Rule 1.3 of the MFDA Rules of Procedure.

¶ 10 Rules 1.3(1), 1.5(1)(b) and 2.2(1)(a) of the Rules of Procedure provide as follows:

> **"1.3 General Principles**
>
> (1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements of fairness."
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> **"1.5 General Powers of a Panel**
>
> (1) A Panel may:
>
> (b) waive or vary any of these Rules at any time, on such terms as it considers

appropriate."

"2.2 Extension or Abridgement of Time

(1) The time for performance of any obligation under these Rules may be extended or abridged:

(a) by a Panel, at any time on such terms as it considers appropriate;"

¶ 11 The parties jointly submitted that it was in the public interest that this Settlement Hearing be conducted in an expeditious manner and there would be no prejudice caused to members of the public if this request was granted because Settlement Hearings are held *in camera* and, therefore, even if the ordinary notice period was provided, members of the public would be excluded from the proceeding unless and until a settlement agreement was accepted by the Hearing Panel.

¶ 12 The Hearing Panel was also referred to a number of previous disciplinary decisions where this type of relief had been granted. These included:

(a) *Lee (Re)*, [2023] Hearing Panel of the Pacific District Hearing Committee of the Corporation, Corporation File No. 202182, Order dated March 20, 2023.

(b) *Gowan (Re)*, [2022] Hearing Panel of the Central Regional Council, MFDA File No. 202167, Panel Decision dated January 21, 2022, at paras. 6-9.

(c) *Wilcott (Re)*, [2019] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201896, Panel Decision dated March 7, 2019, at paras. 1-15.

(d) *Investia Financial Services Inc. (Re)*, [2019] Hearing Panel of the Central Regional Council, Panel Decision dated January 22, 2019, MFDA File No. 201881 at para. 35.

(e) *Quadrus Investments Services Ltd. (Re),* [2022] Hearing Panel of the Central Regional Council, Panel Decision dated January 20, 2022, MFDA File No. 202166, at paras. 3-11.

¶ 13 After considering both the written and oral submissions, as well as the appropriate legislative provisions and the applicable case law, the Hearing Panel was unanimously of the view that this matter should proceed and that we would exercise our discretion to abridge the 10 day notice period in Rule 15.2 of the MFDA Rules of Procedure.

¶ 14 The Hearing Panel then granted the joint request of the parties to move the proceedings "*in camera*" so that the Settlement Agreement could be considered in the absence of the public. This procedure is consistent with Rule 15.2(2) of the MFDA Rules of Procedure.

¶ 15 The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

¶ 16 After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on June 23, 2023. At that time, we advised that written Reasons would follow. These are those Reasons.

II. SETTLEMENT AGREEMENT

¶ 17 The salient portions of the Settlement Agreement are as follows:

"II CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

Between December 2019 and February 2020, the Respondent failed to:

(a) accurately record the essential facts relative to a client when opening a new client account for the client;

(b) update a client's Know-Your-Client ("KYC") information when the Respondent became aware of material changes to the client's circumstances and investment objective;

(c) ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information; and

(d) report to the Member that a client used borrowed monies to invest;

contrary to the Member's policies and procedures and MFDA Rules 2.2.1[1], 2.2.4(b)[2], 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.2.4(b), 2.1.1, 1.1.2, and 2.5.1).

III TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

(b) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

(c) the payment by the Respondent of the fine and costs shall be payable to the Corporation as follows:

(i) $25,000 (costs and fine) payable in certified funds upon acceptance of the Settlement Agreement;

(ii) monthly payments of $3,333.33 (fine) payable on or before the first day of every month for 6 consecutive months commencing on the first day of the month following the month when the Settlement Agreement is accepted; and

(d) if the Respondent fails to make any of the payments described above in sub-paragraph 5 (c)(ii) when the payments become due, then the unpaid balance of the fine and costs owed by the Respondent shall immediately become due and payable to the Corporation; and

(e) the Respondent shall attend on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV AGREED FACTS

Registration History

7. Since February 25, 2009, the Respondent has been registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the "Dealer Member"), formerly a Member of the MFDA (now a Dealer Member of the Corporation).

8. The Respondent has also been registered with the Dealer Member since October 7, 2020 in British Columbia and Alberta. The Respondent was registered with the Dealer Member from February 8, 2010 to October 1, 2022 in Prince Edward Island.

9. At all material times, the Respondent conducted business in the Etobicoke, Ontario area.

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[1] MFDA Rule 2.2.1 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

[2] MFDA Rule 2.2.4 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

The Dealer Member's Policies and Procedures

10. At all material times, the Dealer Member's policies and procedures required its Approved Persons to, among other things:

a. use due diligence to learn essential facts relative to every client and for every account, recommendation made, or transaction accepted to ensure that each order accepted or each recommendation made, including recommendations to borrow to invest, was suitable for the client;

b. carry out the following 3-stage process in sequence to determine the suitability of a particular recommendation:

   i. conduct due diligence by collecting information specific to clients and accounts to determine Know-Your-Client ("KYC") information and record accurate information. In addition, make notes of discussions with clients with respect to KYC information, and document the considerations taken into account when assessing the accuracy of the recorded KYC information;

   ii. apply judgment in order to make suitable investment recommendations. Approved Persons' responsibilities to ensure that their investments recommendations are suitable cannot be transferred to clients. If trade orders from clients are unsuitable, Approved Persons should advise against proceeding with them and record their advice, particularly if clients do not follow Approved Persons' recommendations. Approved Persons also should advise clients in writing, detailing why the unsuitable trades requested by the client are not in their best interest. Approved Persons' advice always has to be in clients' best interest; and

   iii. provide disclosure with respect to recommended investments, ensuring that it is balanced and objective so that clients fully understand the risks of the transaction or recommendation, and document the disclosure and clients' understanding;

c. keep KYC information up-to-date and accurate to ensure that investment recommendations provided to clients and portfolios of clients are suitable;

d. be aware of material changes in client circumstances that result in changes to the client's time horizon or investment objective;

e. re-assess, including by using an Investor Profile Questionnaire ("IPQ"), and update KYC information upon becoming aware that a material change in client circumstances has arisen that could result in a change to time horizon or investment objective;

f. complete a KYC update form to update KYC information;

g. only make leverage recommendations if,

   i. the recommendation is suitable and in the best interest of clients;

   ii. clients have, at minimum, fair investment experience as documented on the client application or the KYC update form. Leverage should never be recommended to clients with novice investment experience;

   iii. clients have a high risk tolerance;

   iv. clients have a minimum time horizon of 6 to 10 years; and

   v. Approved Persons fully disclose all potential risks of leveraged investing to clients, including by providing them with a risk disclosure document and ensuring that they signed a risk disclosure form; and

h. when assessing the suitability of leveraged investment recommendations and to support leverage recommendations, complete a Personal Financial Review document, Investment Profile Questionnaire, risk disclosure form, new client application if the leverage proceeds were to be applied to a new account, and detailed notes of client meetings and discussions regarding the use of leveraged investment strategy, and obtain emails from head office (i.e. Compliance) approving leveraged investment recommendations;

i. submit documentation respecting leverage recommendations to the branch manager and Compliance for review and approval of leveraged investment recommendations; and

j. report clients' investment of borrowed monies in order to enable IG to identify leveraged client accounts by:

   i. labeling client accounts with leverage indicators; and

   ii. indicating on investment instruction forms that clients are investing using borrowed monies.

Failure to Accurately Record a Client's KYC Information and Use Due Diligence to Ensure Suitability

The Opening of a TFSA

11. On September 19, 2017, the Respondent began servicing client MS's accounts at the Dealer Member.

12. At all material times, client MS had limited investment knowledge and experience, and relied on the Respondent for investment recommendations and advice.

13. At their initial meeting on September 19, 2017, the Respondent obtained information from client MS in order to complete an Account Application and Investor Profile Questionnaire ("IPQ") to facilitate the opening of a Tax Free Savings Account ("TFSA"). The Account Application and IPQ were forms developed by the Dealer Member to assist Approved Persons to gather accurate KYC information applicable to each account so that the Approved Person and the Dealer Member can fulfill their regulatory obligations to ensure that all investment recommendations made to the client are suitable for the client.

14. In the Account Application and IPQ, the Respondent recorded that, among other things, client MS's investment knowledge was novice, her primary investment objective was to save for retirement, and her investment time horizon was more than 10 years.

The Client's Plan To Renovate Her Home

15. By 2019, client MS planned to renovate her house to accommodate her parents, who would be moving into her home. The initial plan was to commence the renovations in September 2019, but ultimately the project was delayed until May 2020.

16. The cost of the renovations were estimated to be approximately $453,369 plus taxes.

17. On or about September 27, 2019, client MS obtained a second mortgage that entitled her to borrow $313,056, which she intended to apply towards payment of a portion of the renovations.

The Client's Investment Of The Proceeds From Her Loan

18. On or about December 16, 2019, client MS informed the Respondent that she had obtained a second mortgage on her home in order to finance a loan to pay for the planned renovations on her home and she told the Respondent that she wished to invest monies that she would eventually require to pay for renovations to her home, and asked the Respondent for his advice on investing these monies for a period of 3 to 5 months.

19. The Respondent subsequently met with client MS on February 6, 2020 to discuss investing $380,000, which client MS informed the Respondent included borrowed monies that were the proceeds of the second mortgage on her home, as described above.

20. Client MS also informed the Respondent that she would eventually require all the monies invested to pay for the renovations commencing in March 2020, and that she would need to access the monies that she was investing in order to make ongoing payments towards the cost of the renovation until approximately July 2020.

21. During the February 6, 2020 meeting, the Respondent reviewed multiple short-term, conservative, savings and fixed income investment options with client MS, and recommended that client MS purchase certain mutual funds (the "Mutual Funds") in the TFSA that client MS already held at the Dealer Member, and in a new non-registered account that client MS would open at the Dealer Member, as described below:

Mutual Fund	**Account**	**Amount of Purchase**
IG Core Portfolio Income Balanced - Series B Fund	TFSA	$65,000
IG Core Portfolio – Income Focus – Series B Fund	Non-registered	$265,000
IG Core Portfolio – Income – Series B Fund	Non-registered	$50,000
	Total	**$380,000**

22. According to the Prospectus and Fund Facts, each of the Mutual Funds was suitable for investors who intended to invest their monies for the "long-term".

Material Changes In Client MS's Circumstances That Required Her KYC Information For Her TFSA To Be Updated

23. As of January 1, 2020, client MS held investments and cash in her TFSA with a value of approximately $4,744. When Client MS contributed $65,000 in proceeds from the second mortgage on her home to invest in her TFSA, the value of the Mutual Fund purchased in her TFSA with the loan proceeds represented approximately 93% of the total account holdings.

24. When client MS informed the Respondent that she intended to invest her monies in her TFSA for a brief period of 3 to 5 months and that she required the monies invested to pay the costs of renovations, the Respondent became aware that client MS's time horizon was no longer more than 10 years, and her primary investment objective was no longer retirement savings. This information amounted to a material change that required the Respondent to update client MS's KYC information in respect of her existing TFSA that was on file since 2017, as described above at paragraphs 13 and 14, which was no longer accurate.

Inaccurate Recording Of Client MS's KYC Information for New Non-Registered Account

25. As described above, the Respondent reviewed multiple short-term, conservative, savings and fixed income investment options with client MS, and recommended that client MS also purchase Mutual Funds in a new non-registered account. The Respondent recorded in the Account Application, among other things, that client MS had a 1 to 3 years investment time horizon and novice investment knowledge.

26. The Respondent's recording of the client's time horizon for the new non-registered account was inaccurate because client MS had informed the Respondent that she intended to use the invested money to pay renovation costs less than 1 year from the date of the investment.

27. As a result of the Respondent's failure to update the KYC information applicable to the existing TFSA and his failure to accurately record the client's true time horizon on the Account Application, the purchases of the Mutual Funds by client MS in her TFSA and in the new non-registered account appeared to be suitable for her when the purchases were inconsistent with her actual

investment objectives and time horizon.

Failure To Explain Risks Of Leveraged Investments

28. As described above, client MS used borrowed monies to invest in the Mutual Funds described above. The Respondent failed to explain to client MS the risks of using borrowed monies to purchase mutual funds, including:

a) the risk that the value of the investments could fall below the amount that she had borrowed, and consequently, in the event of such a decline, she could have insufficient monies to pay the anticipated renovation costs or to repay the loan;

b) the risk that interest costs payable on the second mortgage could exceed the returns received from investments purchased with the borrowed monies; and

c) the magnification of her investment risk arising from having more money invested in Mutual Funds that could go down in value and the additional costs of borrowing that the client would be incurring if she borrowed money to invest in mutual funds.

29. Contrary to the policies and procedures of the Dealer Member and MFDA Rule 2.2.1(c) and (f), the Respondent failed to provide client MS with the mandatory risk disclosure document respecting leveraged investments that he was required to have her sign to understand and acknowledge the risks of a leveraging strategy prior to processing the mutual fund purchases that he recommended that she make with borrowed money, as described above, contrary to the policies and procedures of the Dealer Member.

Period After Investments Were Made

30. The Respondent received $2,849 in commissions as compensation for processing client MS's purchases of the Mutual Funds.

31. On February 26, 2020, approximately three weeks after purchasing the Mutual Funds, client MS raised concerns with the Respondent about the decline in value of her investments, asked about other investment options to preserve her capital, and reminded the Respondent that she required monies shortly to begin paying her anticipated renovation costs. The Respondent reassured her that the market downturn would be short-term.

32. On March 12, 2020, client MS redeemed one of the Mutual Funds that she had purchased in her non-registered account in order to pay the first instalment of her renovation costs.

33. On March 30, 2020, client MS complained to the Dealer Member about the decline in the value of her investments in the Mutual Funds. In her complaint, client MS expressed the view that the Respondent's investment recommendations were unsuitable and inconsistent with her investment objective and time horizon, and sought compensation for her investment losses.

34. On April 3, 2020, client MS redeemed the balance of her investments in her non-registered account and TFSA. Due to the decline of the value of the Mutual Funds, client MS incurred a loss of $34,007.05 on the proceeds from the loan that she had invested.

35. Contrary to MFDA Rule 2.2.1 and the policies and procedures of the Dealer Member, the Respondent failed to use due diligence to ensure that investments that he recommended that client MS purchase using borrowed monies were suitable given that:

(a) the Respondent's recommendations were inconsistent with her investment objectives and client MS's actual KYC information, including: her time horizon of 3 to 5 months, her intention to use all the invested monies to pay for the renovation, her limited investment knowledge and experience, and her low risk tolerance; and

(b) he failed to fully and adequately explain to client MS the risks of using borrowed monies to purchase mutual funds, as described above at paragraph 28.

36. By virtue of the foregoing, the Respondent admits that he failed to accurately record the essential facts relative to client MS, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.1.1, 1.1.2, and 2.5.1).

37. By virtue of the foregoing, the Respondent admits that he failed to use due diligence to ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.1.1, 1.1.2, and 2.5.1).

Failure to Update Material Changes on KYC Update Forms

38. As described above, in December 2019 and February 2020, client MS informed the Respondent that she wished to invest her monies for 3 to 5 months, and she required these monies, commencing in March 2020, to pay for her renovation.

39. The Respondent did not arrange for client MS to complete a new IPQ or complete a KYC update form in respect of her TFSA and he did not update the time horizon and investment objectives that had previously been recorded with respect to her TFSA when it was opened in 2017 even though he had been informed that 93% of the money invested in this account was subject to a different time horizon and investment objective.

40. By virtue of the foregoing, the Respondent admits that he failed to update a client's Know-Your-Client information when the Respondent became aware of a material change in the client's information, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.4(b), 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.4(b), 2.1.1, 1.1.2, and 2.5.1).

Failure to Report Investment of Borrowed Monies

41. As described above, in February 2020, client MS informed the Respondent that the monies that she intended to invest included proceeds from a second mortgage on her home.

42. The Respondent failed to report to the Dealer Member that client MS was investing borrowed monies, or label the account with leverage indicators as the Dealer Member's policies and procedures required. This affected the Dealer Member's ability to ensure that regulatory obligations that are applicable to leveraging recommendations were complied with and to ensure the suitability of the account and the holdings for client MS.

43. By virtue of the foregoing, the Respondent admits that he failed to report to the Dealer Member a client's investment of borrowed monies, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.1, 2.2.1, 1.1.2, and 2.5.1).

Additional Factors

44. The Respondent has not previously been the subject of disciplinary proceedings commenced by the MFDA or the Corporation.

45. Client MS incurred a loss of $34,007.05[3] on the investments that the Respondent recommended that she purchase with the proceeds from a loan.

46. The Dealer Member compensated client MS for the investment losses that she incurred. The Respondent's errors and omissions insurer reimbursed the Dealer Member for a portion of the amounts that were paid to client MS as compensation and the Respondent paid the deductible

[3] This was the amount by which the value of the Mutual Funds purchased with the loan proceeds declined. It did not include interest or any other costs associated with the loans.

applicable to his insurance policy.

47. The Respondent benefited financially from his conduct, receiving $2,849.79 in commissions as compensation arising from client MS's purchases of the Mutual Funds. The Respondent was not asked to return the compensation that he earned from the transactions.

48. The Dealer Member issued a warning letter to and conducted a warning call with the Respondent and expressed, among other things, its view that contrary to his regulatory obligations and the policies and procedures of the Dealer Member, the Respondent failed to accurately record KYC information applicable to the investment accounts of client MS and he failed to use due diligence to ensure the suitability of investment recommendations that he made to client MS, and he failed to report to the Dealer Member that investments were purchased by client MS using borrowed monies.

49. The Respondent states that due to the financial implications of on-going divorce proceedings and the costs of raising his three children, the Respondent requires additional time to pay the fine that he has agreed to pay pursuant to the terms of this Settlement Agreement.

50. By entering into the Settlement Agreement, the Respondent has saved the Corporation the time, resources, and expenses associated with conducting a contested hearing of the allegations."

III. THE LAW

A. Know Your Client and Suitability Obligations

¶ 18 MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.2.1) states, in part, as follows:

> **2.2.1 "Know-Your-Client**
>
> 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;
>
> [...]"
>
> MFDA Rule 2.2.1.

¶ 19 In *Lamoureux (Re)*, the Alberta Securities Commission described the "Know-Your-Client" and "Suitability" obligations as follows:

> The "know your client" and "suitability" obligations are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are often used interchangeably.
>
> The "know your client" obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance.
>
> The "suitability" obligation is the obligation of a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match.
>
> *Lamoureux (Re)*, [2001] ASCD No. 613, at pp. 13-14.

20. Canadian securities authorities and MFDA Hearing Panels have established a three-stage KYC and suitability process that a registrant must complete in the following sequence:

(a) Due Diligence – involves a registrant engaging in due diligence to know essential facts about the clients ("KYC information") whose accounts the registrant is servicing and important information about the products ("KYP information") including the associated risks of purchasing any product that the registrant may recommend;

(b) Applying Judgment – involves a registrant applying "sound professional judgment" to identify and recommend investment products and strategies for particular clients that are suitable for the client bearing in mind the applicable KYC and KYP information obtained during the due diligence stage of the process; and

(c) Disclosure of Material Risks and Benefits – involves a registrant making the client aware of the material negative and positive factors involved in any investment transaction that was recommended to or discussed with the client during the second stage of the process to ensure that the client is able to make an informed decision about whether to proceed.

Lamoureux (Re), *supra*, at pp. 18-19.

Suitability – Research Paper on Canadian Securities Regulatory Authority Decisions, MFDA Bulletin #0713-P, issued on January 24, 2017.

DeVuono (Re), [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201102, Panel Decision (Misconduct) dated November 22, 2012, at para. 55.

Davidson (Re), [2021] Hearing Panel of Prairie Regional Council, MFDA File No. 202071, Panel Decision dated August 24, 2021, at para. 32.

¶ 20 The collection of accurate KYC information is paramount. As was stated by the Hearing Panel in *Popovich (Re)*:

> "[...] the completion of a KYC form alone does not insulate advisors from a finding that the first stage of the suitability process has not been performed. The KYC form is merely one tool to facilitate fulfillment of the advisor's obligation. Of course, a KYC form filled out by or with the involvement of the advisor in a perfunctory, incomplete, or inaccurate way undermines the validity of the suitability analysis. Equally important, the mischaracterization by an advisor of the client's experience, investment horizon or objectives in a way that is designed to validate an otherwise unsuitable investment recommendation amounts to a serious breach of an advisor's obligation to act in the client's best interests."
>
> *Popovich (Re)*, [2015] Hearing Panel of the Central Regional Council, MFDA File No. 201240, Panel Decision (Misconduct) dated January 14, 2015, at para. 161.

¶ 21 Where, as here, leveraging is involved, the registrant must assess whether the client would have the ability to meet debt obligations and tolerate losses in the event of a market downturn. The registrant must also ensure that the client understands the risks of borrowing to invest.

John Daubney et al, 2008 LNONOSC 338 at paras. 24-25.

DeVuono (Re), supra at para. 57.

Pretty, [2014] Hearing Panel of the Atlantic Regional Council, MFDA File No. 201128, Panel Decision (Misconduct) dated January 30, 2014, at para. 105.

¶ 22 MFDA Rule 2.2.4(b) (now Mutual Fund Dealer Rule 2.2.4(b)) makes it clear that KYC and suitability obligations are ongoing. If an Approved Person learns of a material change in a client's circumstances, or that earlier information was inaccurate, the KYC information must be updated.

¶ 23 MFDA Rule 2.5.1 (now Mutual Fund Dealer Rule 2.5.1) requires Members to establish policies and procedures to ensure that the handling of its business is in compliance with the MFDA (now CIRO)'s By-Laws,

Rules and Policies, and applicable securities legislation. It is well established that, pursuant to MFDA Rule 1.1.2 (now Mutual Fund Dealer Rule 1.1.2), Approved Persons have a corresponding obligation to comply with the Member's policies and procedures.

¶ 24 As the MFDA Hearing Panel stated in its Reasons for Decision in *Franco (Re)*:

> "The obligation of the Approved Persons to comply with the policies and procedures of the Members that they are registered with is a cornerstone of the self-regulatory system. MFDA Members are expected to be aware of their regulatory obligations and to implement policies and procedures to ensure compliance. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interest of clients and the public is undermined."
>
> *Franco (Re)*, [2011] Hearing Panel of the Prairie Regional Council, MFDA File No. 201016, Panel Decision dated May 6, 2011, at para. 38.

¶ 25 It is clear that when Approved Persons fail to comply with their KYC and suitability obligations, such conduct is a violation of the standard of conduct applicable to registrants in the mutual fund industry under MFDA Rule 2.1.1, which requires that Approved Persons deal fairly, honestly and in good faith with clients, observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 26 It is, further, incontrovertible that an Approved Person's failure to comply with the policies and procedures of a Dealer Member constitutes a contravention of the standard of conduct under MFDA Rule 2.1.1.

¶ 27 The facts admitted by the Respondent are outlined in great detail in paragraphs 4 to 43 of the Settlement Agreement. They clearly establish that the Respondent acted contrary to the policies and procedures of his Dealer Member and contravened MFDA Rules 2.2.1, 2.2.4(b), 2.1.1 and 1.1.2.

IV. PRINCIPLES AND FACTORS REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 28 Investor protection is the primary goal of securities regulation. In addition to protecting investors from unfair, improper or fraudulent practices, the goals of securities regulation include fostering public confidence in the capital markets and the securities industry. Settlements play an important and necessary role in meeting these objectives.

> *Pezim v British Columbia (Superintendent of Brokers*), [1994] 2 SCR 557.
>
> *Breckenridge* (*Re*), 2007 CanLII 80232 (CMFDA) at para. 10.
>
> *Lewis* (*Re*), 2018 CanLII 43822 (CMFDA) at paras. 16–17.

¶ 29 In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 30 Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

(i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors.

(ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement.

(iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence.

(iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future.

(v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets.

(vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA.

(vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Jacobson (Re), [2007], Hearing Panel of the Prairie Regional Council, MFDA File No. 200712, Reasons for Decision, dated July 13, 2007, at para. 70.

¶ 31 Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

(a) The seriousness of the allegations proved against the Respondent.

(b) The Respondent's past conduct, including prior sanctions.

(c) The Respondent's experience in the capital markets.

(d) The level of the Respondent's activity in the capital markets.

(e) Whether the Respondent recognizes the seriousness of the improper activity.

(f) The harm suffered by investors as a result of the Respondent's activities.

(g) The benefits received by the Respondent as a result of the improper activity.

(h) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction.

(i) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities.

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

(k) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets.

(l) Previous decisions made in similar circumstances.

Headley [*Re*], 2006, Hearing Panel of the Central Regional Council, MFDA File No. 200509, Reasons for Decision dated February 21, 2006 at para.85.

¶ 32 When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the MFDA's Sanction Guidelines ("Guidelines") which came in to effect on November 15, 2018. The Guidelines are not mandatory or binding on the Hearing Panel but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Guidelines.

V. CONSIDERATIONS IN THE PRESENT CASE

Nature of Misconduct

¶ 33 We agree with the submissions of Staff that the Respondent's failure to satisfy both his KYC and suitability obligation by failing to accurately record a client's KYC information, failing to update a client's KYC information, failing to disclose risks of leveraged investments, and making suitable investment recommendations constitutes very serious misconduct. The misconduct was of a fundamental nature, surprising in a person, such as the Respondent, who had significant industry experience, having been registered for more than 14 years.

The Respondent's Past Conduct

¶ 34 The Respondent has not previously been the subject of MFDA disciplinary proceedings.

The Respondent's Recognition of the Seriousness of the Misconduct

¶ 35 Based on his extensive admissions, it is clear that the Respondent has acknowledged that his conduct constitutes a serious contravention of the Rules of the MFDA. By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and has saved CIRO the time, resources and expenses associated with conducting a contested hearing of the Allegations.

Harm Suffered by Investors

¶ 36 After the client complained to the Dealer Member about the conduct of the Respondent, she redeemed the balance of her investments in her non-registered account and TFSA. She incurred a loss of $34,007.05. The Dealer Member compensated her for her losses. The Respondent's errors and omissions insurer reimbursed the Dealer Member for a portion of the amounts that were paid to the client as compensation. The Respondent paid the deductible applicable to his insurance policy.

Financial Benefits Received by the Respondent

¶ 37 The Respondent received $2,849.79 in compensation for processing the client's purchases of the Mutual Funds. The Respondent was not asked to return the compensation that he earned for the transactions.

Deterrence

¶ 38 Deterrence is intended to capture both the specific deterrence of the wrongdoer, as well as the general deterrence of other participants in the capital markets in order to protect investors.

¶ 39 With respect to specific deterrence, the Dealer Member issued a disciplinary letter to the Respondent. It also conducted a warning disciplinary call with him, as described in paragraph 48 of the Settlement Agreement. In our view, these two steps, along with the proposed penalty, will specifically deter the Respondent from engaging in similar activity in the future.

¶ 40 The proposed penalties will also demonstrate to other Approved Persons that failure to comply with KYC and suitability obligations will result in serious consequences.

¶ 41 In our view, the proposed penalties will also improve overall compliance with regulatory requirements by Approved Persons, and foster confidence among investors and other stakeholders in the mutual fund industry as a whole.

Previous Decisions Made in Similar Circumstances

¶ 42 Staff provided the Hearing Panel with a detailed chart seeking to show that the proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances.

¶ 43 The following cases were discussed:

(a) *Singer* (*Re*), [2016] Hearing Panel of the Pacific Regional Council, MFDA File No. 201636, Panel Decision dated March 7, 2017.

(b) *Lumbers* (*Re*), [2019] Hearing Panel of the Central Regional Council, MFDA File No. 201825, Panel Decision dated May 6, 2010.

(c) *Del Rosario* (*Re*), [2018] Hearing Panel of the Central Regional Council, MFDA File No. 201758, Panel Decision dated December 7, 2018.

(d) *Salina* (*Re*), [2022] Hearing Panel of the Pacific Regional Council, MFDA File No. 202081, Panel Decision dated August 30, 2022.

VI. DECISION

¶ 44 After a thorough review of the factors by which we should be guided, and the facts of this case, as

reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

VII. ORDER

¶ 45 After accepting the Settlement Agreement, we made the following Order:

(a) The Respondent shall pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

(b) The Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

(c) The payment by the Respondent of the fine and costs shall be payable to CIRO as follows:

  (i) $25,000 (costs and fine) payable in certified funds on the date of the Order;

  (ii) monthly payments of $3,333.33 (fine) in certified funds payable on or before the first day of every month for 6 consecutive months commencing on the first day of August, 2023;

(d) If the Respondent fails to make any of the payments described above in paragraph (c) when the payments become due, then the unpaid balance of the fine and costs owed by the Respondent shall immediately become due and payable to CIRO; and

(e) If at any time a non-party to this proceeding, with the exception of the bodies set out in the Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information, as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division, of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

DATED this 15th day of January, 2024.

"Thomas J. Lockwood"

Thomas J. Lockwood, K.C.

"Edward Jackson"

Edward Jackson

"Joseph Yassi"

Joseph Yassi

DM 910850v1

Appendix "A"

Settlement Agreement

File No. 202255

IN THE MATTER OF:

The Mutual Fund Dealer Rules[i]

and

Andrew David Tachauer

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA ("CIRO" or the "Corporation") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to section 24.4 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.4), a hearing panel (the "Hearing Panel") should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO ("Staff") and Andrew David Tachauer (the "Respondent").

¶ 2 Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

¶ 3 Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

¶ 4 The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

Between December 2019 and February 2020, the Respondent failed to:

(a) accurately record the essential facts relative to a client when opening a new client account for the client;

(b) update a client's Know-Your-Client ("KYC") information when the Respondent became aware of material changes to the client's circumstances and investment objective;

(c) ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information; and

(d) report to the Member that a client used borrowed monies to invest;

contrary to the Member's policies and procedures and MFDA Rules 2.2.1[1], 2.2.4(b)[2], 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.2.4(b), 2.1.1, 1.1.2, and 2.5.1).

[1] MFDA Rule 2.2.1 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021

[2] MFDA Rule 2.2.4 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

III. TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent to the following terms of settlement:

(a) the Respondent shall pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

(b) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

(c) the payment by the Respondent of the fine and costs shall be payable to the Corporation as follows:

i. $25,000 (costs and fine) payable in certified funds upon acceptance of the Settlement Agreement;

ii. monthly payments of $3,333.33 (fine) payable on or before the first day of every month for 6 consecutive months commencing on the first day of the month following the month when the Settlement Agreement is accepted; and

(d) if the Respondent fails to make any of the payments described above in sub-paragraph 5 (c)(ii) when the payments become due, then the unpaid balance of the fine and costs owed by the Respondent shall immediately become due and payable to the Corporation; and

(e) the Respondent shall attend on the date set for the Settlement Hearing.

¶ 6 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule "A".

IV. AGREED FACTS

Registration History

¶ 7 Since February 25, 2009, the Respondent has been registered in Ontario as a dealing representative with Investors Group Financial Services Inc. (the "Dealer Member"), formerly a Member of the MFDA (now a Dealer Member of the Corporation).

¶ 8 The Respondent has also been registered with the Dealer Member since October 7, 2020 in British Columbia and Alberta. The Respondent was registered with the Dealer Member from February 8, 2010 to October 1, 2022 in Prince Edward Island.

¶ 9 At all material times, the Respondent conducted business in the Etobicoke, Ontario area.

The Dealer Member's Policies and Procedures

¶ 10 At all material times, the Dealer Member's policies and procedures required its Approved Persons to, among other things:

(a) use due diligence to learn essential facts relative to every client and for every account, recommendation made, or transaction accepted to ensure that each order accepted or each recommendation made, including recommendations to borrow to invest, was suitable for the client;

(b) carry out the following 3-stage process in sequence to determine the suitability of a particular recommendation:

i. conduct due diligence by collecting information specific to clients and accounts to determine Know-Your-Client ("KYC") information and record accurate information. In addition, make notes of discussions with clients with respect to KYC information, and document the considerations taken into account when assessing the accuracy of the recorded KYC information;

ii. apply judgment in order to make suitable investment recommendations. Approved

Persons' responsibilities to ensure that their investments recommendations are suitable cannot be transferred to clients. If trade orders from clients are unsuitable, Approved Persons should advise against proceeding with them and record their advice, particularly if clients do not follow Approved Persons' recommendations. Approved Persons also should advise clients in writing, detailing why the unsuitable trades requested by the client are not in their best interest. Approved Persons' advice always has to be in clients' best interest; and

iii. provide disclosure with respect to recommended investments, ensuring that it is balanced and objective so that clients fully understand the risks of the transaction or recommendation, and document the disclosure and clients' understanding;

(c) keep KYC information up-to-date and accurate to ensure that investment recommendations provided to clients and portfolios of clients are suitable;

(d) be aware of material changes in client circumstances that result in changes to the client's time horizon or investment objective;

(e) re-assess, including by using an Investor Profile Questionnaire ("IPQ"), and update KYC information upon becoming aware that a material change in client circumstances has arisen that could result in a change to time horizon or investment objective;

(f) complete a KYC update form to update KYC information;

(g) only make leverage recommendations if,

i. the recommendation is suitable and in the best interest of clients;

ii. clients have, at minimum, fair investment experience as documented on the client application or the KYC update form. Leverage should never be recommended to clients with novice investment experience;

iii. clients have a high risk tolerance;

iv. clients have a minimum time horizon of 6 to 10 years; and

v. Approved Persons fully disclose all potential risks of leveraged investing to clients, including by providing them with a risk disclosure document and ensuring that they signed a risk disclosure form; and

(h) when assessing the suitability of leveraged investment recommendations and to support leverage recommendations, complete a Personal Financial Review document, Investment Profile Questionnaire, risk disclosure form, new client application if the leverage proceeds were to be applied to a new account, and detailed notes of client meetings and discussions regarding the use of leveraged investment strategy, and obtain emails from head office (i.e. Compliance) approving leveraged investment recommendations;

(i) submit documentation respecting leverage recommendations to the branch manager and Compliance for review and approval of leveraged investment recommendations; and

(j) report clients' investment of borrowed monies in order to enable IG to identify leveraged client accounts by:

i. labeling client accounts with leverage indicators; and

ii. indicating on investment instruction forms that clients are investing using borrowed monies.

Failure to Accurately Record a Client's KYC Information and Use Due Diligence to Ensure Suitability

The Opening of a TFSA

¶ 11 On September 19, 2017, the Respondent began servicing client MS's accounts at the Dealer Member.

¶ 12 At all material times, client MS had limited investment knowledge and experience, and relied on the Respondent for investment recommendations and advice.

¶ 13 At their initial meeting on September 19, 2017, the Respondent obtained information from client MS in order to complete an Account Application and Investor Profile Questionnaire ("IPQ") to facilitate the opening of a Tax Free Savings Account ("TFSA"). The Account Application and IPQ were forms developed by the Dealer Member to assist Approved Persons to gather accurate KYC information applicable to each account so that the Approved Person and the Dealer Member can fulfill their regulatory obligations to ensure that all investment recommendations made to the client are suitable for the client.

¶ 14 In the Account Application and IPQ, the Respondent recorded that, among other things, client MS's investment knowledge was novice, her primary investment objective was to save for retirement, and her investment time horizon was more than 10 years.

The Client's Plan To Renovate Her Home

¶ 15 By 2019, client MS planned to renovate her house to accommodate her parents, who would be moving into her home. The initial plan was to commence the renovations in September 2019, but ultimately the project was delayed until May 2020.

¶ 16 The cost of the renovations were estimated to be approximately $453,369 plus taxes.

¶ 17 On or about September 27, 2019, client MS obtained a second mortgage that entitled her to borrow $313,056, which she intended to apply towards payment of a portion of the renovations.

The Client's Investment Of The Proceeds From Her Loan

¶ 18 On or about December 16, 2019, client MS informed the Respondent that she had obtained a second mortgage on her home in order to finance a loan to pay for the planned renovations on her home and she told the Respondent that she wished to invest monies that she would eventually require to pay for renovations to her home, and asked the Respondent for his advice on investing these monies for a period of 3 to 5 months.

¶ 19 The Respondent subsequently met with client MS on February 6, 2020 to discuss investing $380,000, which client MS informed the Respondent included borrowed monies that were the proceeds of the second mortgage on her home, as described above.

¶ 20 Client MS also informed the Respondent that she would eventually require all the monies invested to pay for the renovations commencing in March 2020, and that she would need to access the monies that she was investing in order to make ongoing payments towards the cost of the renovation until approximately July 2020.

¶ 21 During the February 6, 2020 meeting, the Respondent reviewed multiple short-term, conservative, savings and fixed income investment options with client MS, and recommended that client MS purchase certain mutual funds (the "Mutual Funds") in the TFSA that client MS already held at the Dealer Member, and in a new non-registered account that client MS would open at the Dealer Member, as described below:

Mutual Fund	**Account**	**Amount of Purchase**
IG Core Portfolio Income Balanced - Series B Fund	TFSA	$65,000
IG Core Portfolio – Income Focus – Series B Fund	Non-registered	$265,000
IG Core Portfolio – Income – Series B Fund	Non-registered	$50,000
	Total	**$380,000**

¶ 22 According to the Prospectus and Fund Facts, each of the Mutual Funds was suitable for investors who intended to invest their monies for the "long-term".

Material Changes In Client MS's Circumstances That Required Her KYC Information For Her TFSA To Be Updated

¶ 23 As of January 1, 2020, client MS held investments and cash in her TFSA with a value of approximately $4,744. When Client MS contributed $65,000 in proceeds from the second mortgage on her home to invest in her TFSA, the value of the Mutual Fund purchased in her TFSA with the loan proceeds represented approximately 93% of the total account holdings.

¶ 24 When client MS informed the Respondent that she intended to invest her monies in her TFSA for a brief period of 3 to 5 months and that she required the monies invested to pay the costs of renovations, the Respondent became aware that client MS's time horizon was no longer more than 10 years, and her primary investment objective was no longer retirement savings. This information amounted to a material change that required the Respondent to update client MS's KYC information in respect of her existing TFSA that was on file since 2017, as described above at paragraphs 13 and 14, which was no longer accurate.

Inaccurate Recording Of Client MS's KYC Information for New Non-Registered Account

¶ 25 As described above, the Respondent reviewed multiple short-term, conservative, savings and fixed income investment options with client MS, and recommended that client MS also purchase Mutual Funds in a new non-registered account. The Respondent recorded in the Account Application, among other things, that client MS had a 1 to 3 years investment time horizon and novice investment knowledge.

¶ 26 The Respondent's recording of the client's time horizon for the new non-registered account was inaccurate because client MS had informed the Respondent that she intended to use the invested money to pay renovation costs less than 1 year from the date of the investment.

¶ 27 As a result of the Respondent's failure to update the KYC information applicable to the existing TFSA and his failure to accurately record the client's true time horizon on the Account Application, the purchases of the Mutual Funds by client MS in her TFSA and in the new non-registered account appeared to be suitable for her when the purchases were inconsistent with her actual investment objectives and time horizon.

Failure To Explain Risks Of Leveraged Investments

¶ 28 As described above, client MS used borrowed monies to invest in the Mutual Funds described above. The Respondent failed to explain to client MS the risks of using borrowed monies to purchase mutual funds, including:

(a) the risk that the value of the investments could fall below the amount that she had borrowed, and consequently, in the event of such a decline, she could have insufficient monies to pay the anticipated renovation costs or to repay the loan;

(b) the risk that interest costs payable on the second mortgage could exceed the returns received from investments purchased with the borrowed monies; and

(c) the magnification of her investment risk arising from having more money invested in Mutual Funds that could go down in value and the additional costs of borrowing that the client would be incurring if she borrowed money to invest in mutual funds.

¶ 29 Contrary to the policies and procedures of the Dealer Member and MFDA Rule 2.2.1(c) and (f), the Respondent failed to provide client MS with the mandatory risk disclosure document respecting leveraged investments that he was required to have her sign to understand and acknowledge the risks of a leveraging strategy prior to processing the mutual fund purchases that he recommended that she make with borrowed money, as described above, contrary to the policies and procedures of the Dealer Member.

Period After Investments Were Made

¶ 30 The Respondent received $2,849 in commissions as compensation for processing client MS's purchases of the Mutual Funds.

¶ 31 On February 26, 2020, approximately three weeks after purchasing the Mutual Funds, client MS raised concerns with the Respondent about the decline in value of her investments, asked about other investment options to preserve her capital, and reminded the Respondent that she required monies shortly to begin paying her anticipated renovation costs. The Respondent reassured her that the market downturn would be short-term.

¶ 32 On March 12, 2020, client MS redeemed one of the Mutual Funds that she had purchased in her non-registered account in order to pay the first instalment of her renovation costs.

¶ 33 On March 30, 2020, client MS complained to the Dealer Member about the decline in the value of her investments in the Mutual Funds. In her complaint, client MS expressed the view that the Respondent's investment recommendations were unsuitable and inconsistent with her investment objective and time horizon, and sought compensation for her investment losses.

¶ 34 On April 3, 2020, client MS redeemed the balance of her investments in her non-registered account and TFSA. Due to the decline of the value of the Mutual Funds, client MS incurred a loss of $34,007.05 on the proceeds from the loan that she had invested.

¶ 35 Contrary to MFDA Rule 2.2.1 and the policies and procedures of the Dealer Member, the Respondent failed to use due diligence to ensure that investments that he recommended that client MS purchase using borrowed monies were suitable given that:

(a) the Respondent's recommendations were inconsistent with her investment objectives and client MS's actual KYC information, including: her time horizon of 3 to 5 months, her intention to use all the invested monies to pay for the renovation, her limited investment knowledge and experience, and her low risk tolerance; and

(b) he failed to fully and adequately explain to client MS the risks of using borrowed monies to purchase mutual funds, as described above at paragraph 28.

¶ 36 By virtue of the foregoing, the Respondent admits that he failed to accurately record the essential facts relative to client MS, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.1.1, 1.1.2, and 2.5.1).

¶ 37 By virtue of the foregoing, the Respondent admits that he failed to use due diligence to ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.1, 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.1.1, 1.1.2, and 2.5.1).

Failure to Update Material Changes on KYC Update Forms

¶ 38 As described above, in December 2019 and February 2020, client MS informed the Respondent that she wished to invest her monies for 3 to 5 months, and she required these monies, commencing in March 2020, to pay for her renovation.

¶ 39 The Respondent did not arrange for client MS to complete a new IPQ or complete a KYC update form in respect of her TFSA and he did not update the time horizon and investment objectives that had previously been recorded with respect to her TFSA when it was opened in 2017 even though he had been informed that 93% of the money invested in this account was subject to a different time horizon and investment objective.

¶ 40 By virtue of the foregoing, the Respondent admits that he failed to update a client's Know-Your-Client information when the Respondent became aware of a material change in the client's information, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.2.4(b), 2.1.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.4(b), 2.1.1, 1.1.2, and 2.5.1).

Failure to Report Investment of Borrowed Monies

¶ 41 As described above, in February 2020, client MS informed the Respondent that the monies that she intended to invest included proceeds from a second mortgage on her home.

¶ 42 The Respondent failed to report to the Dealer Member that client MS was investing borrowed monies, or label the account with leverage indicators as the Dealer Member's policies and procedures required. This affected the Dealer Member's ability to ensure that regulatory obligations that are applicable to leveraging recommendations were complied with and to ensure the suitability of the account and the holdings for client MS.

¶ 43 By virtue of the foregoing, the Respondent admits that he failed to report to the Dealer Member a client's investment of borrowed monies, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.1.1, 2.2.1, and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.1, 2.2.1, 1.1.2, and 2.5.1).

Additional Factors

¶ 44 The Respondent has not previously been the subject of disciplinary proceedings commenced by the MFDA or the Corporation.

¶ 45 Client MS incurred a loss of $34,007.05[3] on the investments that the Respondent recommended that she purchase with the proceeds from a loan.

¶ 46 The Dealer Member compensated client MS for the investment losses that she incurred. The Respondent's errors and omissions insurer reimbursed the Dealer Member for a portion of the amounts that were paid to client MS as compensation and the Respondent paid the deductible applicable to his insurance policy.

¶ 47 The Respondent benefited financially from his conduct, receiving $2,849.79 in commissions as compensation arising from client MS's purchases of the Mutual Funds. The Respondent was not asked to return the compensation that he earned from the transactions.

¶ 48 The Dealer Member issued a warning letter to and conducted a warning call with the Respondent and expressed, among other things, its view that contrary to his regulatory obligations and the policies and procedures of the Dealer Member, the Respondent failed to accurately record KYC information applicable to the investment accounts of client MS and he failed to use due diligence to ensure the suitability of investment recommendations that he made to client MS, and he failed to report to the Dealer Member that investments were purchased by client MS using borrowed monies.

¶ 49 The Respondent states that due to the financial implications of on-going divorce proceedings and the costs of raising his three children, the Respondent requires additional time to pay the fine that he has agreed to pay pursuant to the terms of this Settlement Agreement.

¶ 50 By entering into the Settlement Agreement, the Respondent has saved the Corporation the time, resources, and expenses associated with conducting a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

¶ 51 This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.4) and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

¶ 52 The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.3.5) and Rule 15.2(2) of the Mutual Fund Dealer Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

¶ 53 The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the

[3] This was the amount by which the value of the Mutual Funds purchased with the loan proceeds declined. It did not include interest or any other costs associated with the loans.

date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

¶ 54 Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

(a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the Mutual Fund Dealer Rules of Procedure;

(b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of CIRO or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;

(c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

(d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to section 24.1.1 (Approved Person) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1 (Approved Persons) for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.5); and

(e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

¶ 55 If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

¶ 56 If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4), unaffected by the Settlement Agreement or the settlement negotiations.

¶ 57 The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 58 The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 19th day of June, 2023

"Andrew David Tachauer"

Andrew David Tachauer

"JP"

Witness - Signature

"JP"

Witness - Print name

"Charles Toth"

Staff of CIRO

Per: Charles Toth

Canadian Investment Regulatory Organization,

Vice-President, Enforcement (Mutual Fund Dealers)

Schedule "A'

Order

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Andrew David Tachauer

ORDER

WHEREAS on December 19, 2022, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4) in respect of a disciplinary proceeding commenced against the Andrew David Tachauer (the "Respondent");

AND WHEREAS on January 1, 2023, the MFDA and the Investment Industry Regulatory Organization of Canada ("IIROC") consolidated to form the New Self-Regulatory Organization of Canada, now called the Canadian Investment Regulatory Organization ("CIRO" or "Corporation");

AND WHEREAS on February 2, 2023, the first appearance was held by videoconference before a hearing panel of the Ontario District Hearing Committee of the Corporation (the "Hearing Panel") in this matter;

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the CIRO, a consolidation of IIROC and the MFDA dated June 16, 2023 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1 (now Mutual Fund Dealer Rules 7.3 and 7.4.1);

WHEREAS on [date], CIRO provided notice to the public of a Settlement Hearing in respect of the Respondent;

AND WHEREAS Staff and the Respondent made a joint request pursuant to Rule 2.2(1)(a) of the Mutual

Fund Dealer Rules of Procedure (the "ROP") for the abridgement of the 10-day notice period required by Rule 15.2 of the ROP in order to permit the Hearing Panel to proceed with the Settlement Hearing on June 23, 2023 as scheduled.

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that between December 2019 and February 2020, the Respondent failed to:

(a) accurately record the essential facts relative to a client when opening a new client account for the client;

(b) update a client's Know-Your-Client ("KYC") information when the Respondent became aware of material changes to the client's circumstances and investment objective; and

(c) ensure that investments that he recommended that a client purchase using borrowed monies were suitable for the client, having regard to the client's KYC information; and

(d) report to the Member that a client used borrowed monies to invest;

contrary to the Member's policies and procedures and MFDA Rules 2.2.1[4], 2.2.4(b)[5], 2.1.1 and 1.1.2 (as it relates to MFDA Rule 2.5.1) (now Mutual Fund Dealer Rules 2.2.1, 2.2.4(b), 2.1.1, 1.1.2, and 2.5.1).

IT IS HEREBY ORDERED THAT the 10-day notice period required by Rule 15.2 of the ROP is abridged in accordance with Rules 1.5 and 2.2(1)(a) of the ROP and the Settlement Agreement is accepted, as a consequence of which:

¶ 1 The Respondent shall pay a fine in the amount of $40,000, pursuant to s. 24.1.1(b) of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

¶ 2 The Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

¶ 3 The payment by the Respondent of the fine and costs shall be payable to the Corporation as follows:

i. $25,000 (costs and fine) payable in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel;

ii. monthly payments of $3,333.33 (fine) payable on or before the first day of every month for 6 consecutive months commencing on the first day of the month following the month when the Settlement Agreement is accepted by the Hearing Panel; and

¶ 4 If the Respondent fails to make any of the payments described above in sub-paragraph 3 (ii) when the payments become due, then the unpaid balance of the fine and costs owed by the Respondent shall immediately become due and payable to the Corporation

¶ 5 If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3 (formerly section 23 of MFDA By-law No. 1), requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the ROP.

DATED this [day] day of [month], 202[ ].

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[4] MFDA Rule 2.2.1 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

[5] MFDA Rule 2.2.4 was amended on December 31, 2021. As the conduct addressed in this disciplinary proceeding pre-dated the amendment to this Rule, all contraventions addressed in this proceeding that make reference to that Rule concern the version of the Rule that was in effect between December 2019 and December 31, 2021.

Name,

Chair

Name,

Industry Representative

Name,

Industry Representative

DM 960860v1

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[i] On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada (the "MFDA") were consolidated into a single self-regulatory organization that is temporarily called the New Self-Regulatory Organization of Canada (referred to herein as the "Corporation") and is recognized under applicable securities legislation. The Corporation adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of the Corporation, contraventions of former MFDA regulatory requirements may be enforced by the Corporation. Pursuant to Mutual Fund Dealer Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.