



CIRO · OCRI

Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Settlement Agreement

File No. 202424

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES¹**

and

Kelly June Hetherington

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA (“CIRO”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Ontario District Hearing Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Kelly June Hetherington (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 Mutual Fund Dealer Rules:

(a) In January 2022, the Respondent failed to ensure that a leveraged investment strategy that she implemented in the joint account of two clients (spouses) was suitable for them, contrary to Mutual Fund Dealer Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1); and

(b) Between November 2021 and July 2022, the Respondent signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

III. TERMS OF SETTLEMENT

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

- (a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any CISO Dealer Member for a period of 18 months, commencing on the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);
- (b) The Respondent shall pay a fine in the amount of \$30,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (c) The Respondent shall pay costs in the amount of \$5,000, pursuant to Mutual Fund Dealer Rule 7.4.2, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (d) The Respondent shall in the future comply with Mutual Fund Dealer Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1); and
- (e) The Respondent shall attend on the date set for the Settlement Hearing.

6. The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

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, requests production of or access to exhibits in this proceeding that contain personal information as defined by CISO's Privacy Policy, then the CISO Hearing Office shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

7. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein.

IV. AGREED FACTS

Registration History

8. The Respondent was registered in the securities industry commencing in 2010.
9. Between July 2014 and July 26, 2022, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the “Dealer Member”), a Dealer Member of CIRO (formerly a Member of the MFDA).
10. On July 26, 2022, the Respondent resigned from the Dealer Member and is not currently registered in the securities industry in any capacity.
11. At all material times, the Respondent conducted business in the Wallaceburg, Ontario area.

Failure to Ensure Suitability of Leveraged Investment Strategy

The Return of Capital (“ROC”) Mutual Fund

12. At all material times, the Dealer Member offered for sale to its clients a ROC mutual fund (the “Fund”). ROC mutual funds are structured to pay a set periodic amount of distributions to an investor which may include a return of the capital originally invested by the investor.
13. Investors in the Fund could select annual distribution rates of five to seven percent, which were payable on a monthly basis.

The Dealer Member’s Policies and Procedures

14. At all material times, the Dealer Member’s policies and procedures required that, when implementing a leveraged investment strategy in a client’s non-registered investment account, Approved Persons:

- (a) perform a suitability assessment and provide the client with a balanced presentation of available options and the risks associated with the use of leverage;
- (b) provide the client with an article entitled “Leveraged Investing – not for the faint of heart” (the “Leveraged Investing Article”), which, among other things, set out risks and factors that the client should consider before borrowing to invest;

- (c) complete a Leveraged Investing Analysis form (the “LIA Form”), which, among other things, set out risks and factors that the client should consider before borrowing to invest (including risks and tax considerations specific to ROC mutual funds), and required a consideration of the criteria set out below at paragraph 15;
- (d) have the client acknowledge and sign the LIA Form;
- (e) have the Approved Person’s Branch Compliance Officer (“BCO”) approve and sign the LIA Form; and
- (f) indicate on the client’s Know-Your-Client (“KYC”) form that the account is “leveraged”.

15. The LIA Form described above set out criteria to assist Approved Persons to determine the suitability of leveraged investing, including that:

- (a) clients should have at least “Average” investment knowledge;
- (b) client should have “Average” or higher risk tolerance;
- (c) generally clients should be under 60 years of age;
- (d) clients should have an investment time frame of 5 years or more;
- (e) clients’ annual income should not be under \$50,000, and clients should have sufficient after-tax disposable income to meet loan payments;
- (f) the amount borrowed for the purpose of purchasing investments should not exceed 30% of a client’s net worth;
- (g) investment loans should not exceed 50% of the client’s estimated liquid assets;
- (h) clients should not have a total debt service ratio that is greater than 40%;
- (i) leveraged investing may not be appropriate for clients who are unemployed, retired or without a stable income;
- (j) leveraged investing may not be appropriate for investors with Secure or Very Conservative Investor Profiles if additional risks are being taken on.

16. If any of the criteria described above were not satisfied, then Approved Persons were required to provide an explanation or reason for the inconsistency on the LIA form.

17. In addition, at all material times, the Dealer Member’s policies and procedures stated the following regarding the suitability of ROC mutual funds for leveraged investing:

The investments held in the account must be carefully considered in the context of the leveraging strategy. For example, mutual funds that distribute “return of capital” are generally not suitable because return of capital payments will reduce the adjusted cost base of the investment portfolio and this will impact the potential tax deductibility of the interest payments.

[Emphasis added]

The Leveraged Investment Strategy

18. In or about late 2021, client RD informed the Respondent that clients RD and SD intended to use borrowed monies to invest in their accounts at the Dealer Member whereby they would:

- (a) obtain a mortgage loan secured against their home;
- (b) use the proceeds from the mortgage loan to purchase units of the Fund; and
- (c) use the distributions from the Fund to pay the monthly borrowing costs of the mortgage loan.

(the “Leveraged Investment Strategy”).

19. The Respondent informed client RD that she approved that they implement the Leveraged Investment Strategy.

20. The Respondent failed to disclose the risks of borrowing to invest, including the risks of borrowing to invest in ROC mutual funds, to clients RD and SD. For example, the Respondent failed to disclose that:

- (a) borrowing to invest can amplify losses if the value of the mutual fund purchased falls below the value of the loan;
- (b) interest costs or mortgage payments may exceed the returns received from the mutual fund purchased, which could require the clients to redeem the principal investment to make such payments; and
- (c) if distributions from a ROC mutual fund were being relied on to make interest or mortgage payments, that a portion of the distributions may consist of a return of the investors' own capital.

21. In January 2022, clients RD and SD obtained a mortgage loan (the “Mortgage Loan”) secured against their home in the amount of \$487,500.

22. On January 13, 2022, the Respondent implemented the Leveraged Investment Strategy for clients RD and SD. In particular, the Respondent:

- (a) opened a joint non-registered investment account (the "Account") at the Dealer Member for clients RD and SD; and
- (b) processed the purchase of \$487,500 of the Fund (at a distribution rate of 6%) in the Account, which was funded by the proceeds of the Mortgage Loan.

23. Based on the criteria set out in the LIA Form, the Leveraged Investment Strategy may have been unsuitable for clients RD and SD because, according to the information on their application for the Mortgage Loan:

- (a) client RD was unemployed;
- (b) client SD's annual income was under \$50,000; and
- (c) clients RD and SD had a combined total debt service ratio of 115%.

24. The Respondent failed to complete any of the steps described above in paragraph 14 that were required by the Dealer Member's policies and procedures when implementing a leveraged investment strategy, including:

- (a) failing to complete an LIA Form and have it acknowledged by the clients and approved by the BCO; and
- (b) failing to indicate on the KYC form in respect of the Account that the Account was "leveraged" or otherwise inform the Dealer Member that clients RD and SD had used borrowed monies to purchase investments in the Account.

25. By failing to inform the Dealer Member that clients RD and SD had used borrowed monies to invest, the Respondent prevented the Dealer Member from assessing whether the Leveraged Investment Strategy was suitable for clients RD and SD.

26. By virtue of the foregoing, the Respondent contravened the Dealer Member's policies and procedures and failed to ensure that the Leveraged Investment Strategy was suitable for clients RD and SD.

Subsequent Events

27. In September 2022, client RD complained to the Dealer Member that he understood that the monthly distributions that were paid by the Fund represented a guaranteed investment return, which would cover the borrowing costs of the Mortgage Loan.

28. On October 28, 2022, clients RD and SD redeemed \$430,546.48 from the Account, leaving a balance in the Account of zero.

29. During the period that clients RD and SD held the Fund in the Account, the value of the Fund in the Account declined by approximately \$43,700 (net of redemptions, fees and taxes).

30. In August 2023, clients RD and SD fully repaid the Mortgage Loan in the amount of \$488,578.88. The source of the repayment was:

(a) proceeds of the redemptions described above in the Account on October 28, 2022 totaling \$430,546.48; and

(b) a shortfall of \$58,032.40, which was absorbed by a bank affiliated with the Dealer Member.

Falsified Client Signatures

31. At all material times, the Dealer Member's policies and procedures prohibited its Approved Persons from engaging in any form of falsification, including signing a client's name on a document.

32. Between November 2021 and July 2022, the Respondent signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing. The account forms consisted of redemption forms.

33. As part of its investigation into the Respondent's conduct, the Dealer Member contacted the affected clients and determined that the underlying transactions were authorized by the clients.

Additional Factors

34. The Respondent received compensation in the amount of \$8,043.75 from the purchase of the Fund by clients RD and SD on January 13, 2022 as described above.

35. As described above, the Dealer Member's bank affiliate absorbed the \$58,032.40 shortfall when clients RD and SD repaid their Mortgage Loan in August 2023.

36. The Respondent has not previously been the subject of CIRO or MFDA disciplinary proceedings.

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

V. ADDITIONAL TERMS OF SETTLEMENT

38. This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

39. 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 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.ciro.ca.

40. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, 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.

41. 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, including before the Board of Directors of CISO 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 Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with 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.

42. 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.

43. 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 Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

44. 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 will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

45. 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 5th day of November, 2024.

“Kelly June Hetherington”

Kelly June Hetherington

“Witness”
Witness - Signature

“Witness”
Witness - Print name

“Paul Blasiak”

Staff of the Canadian Investment Regulatory Organization
Paul Blasiak, Senior Enforcement Counsel

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 recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”). CIRO 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. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s.14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.