



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: James Gerard Carney

Heard: April 18, 2017 in Toronto, Ontario

Decision: April 18, 2017

Reasons for Decision: May 9, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

W. A. Derry Millar

Chair

Lorraine Bate Boerop

Industry Representative

Patrick Galarneau

Industry Representative

Appearances:

Paul Blasiak

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Counsel for the Mutual Fund Dealers

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Association of Canada

)

)

Wendy Sun

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Counsel for the Respondent

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James Gerard Carney

)

Respondent, In Person

INTRODUCTION

1. By Notice of Hearing dated June 28, 2016, Staff of the Mutual Fund Dealers Association of Canada (“MFDA”) alleged that James Gerard Carney (“Respondent”) violated the By-laws, Rules or Policies of the MFDA set out below:

Allegation #1: Between May 2012 and January 2014, the Respondent processed approximately 188 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to ten (10) clients, contrary to MFDA Rules 2.3.1 and 2.1.1; and

Allegation #2: Between August 13, 2013 and March 31, 2014, the Respondent processed 11 trades in the accounts of two (2) clients based on the request from someone other than the clients, contrary to MFDA Rules 2.3.1 and 2.1.1.

2. The Respondent entered into a settlement agreement with Staff of the MFDA, dated March 27, 2017 (“Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1.

3. On September 13, 2016, the hearing of this matter on its merits was fixed for April 18 to 20, 2017, pursuant to the Order of the Chair. As a result of the Settlement Agreement reached between Staff and the Respondent, the Hearing Panel convened on April 18, 2017, to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept the Settlement Agreement.

4. At the commencement of the Hearing, the Panel granted a joint request by Staff Enforcement Counsel and counsel for the Respondent to move the proceedings “in camera”. In accordance with Rule 15.2(3), upon acceptance of the Settlement Agreement, the Panel “shall provide reasons for its decision which, along with the record of the settlement hearing, shall be made available to the public.”

5. Prior to the commencement of the Settlement Hearing, the Panel reviewed the Settlement Agreement, the Submissions of Staff of the MFDA and the Staff's Book of Authorities. After considering the submissions of counsel, the Panel announced that it accepted the Settlement Agreement and signed the Order agreed to by the parties. These are the Panel's reasons for accepting the Settlement Agreement. Accordingly, our reasons and the record of the settlement hearing shall be made available to the public. Attached to these reasons as Schedule "1" is a copy of the Settlement Agreement¹ and the Order.

AGREED STATEMENT OF FACTS - TERMS OF SETTLEMENT

6. The parties have agreed on the facts for the purposes of this proceeding. The agreed statement of facts is set out in the Settlement Agreement. Set out below are extracts from the Settlement Agreement:

II. JOINT SETTLEMENT RECOMMENDATION

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

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

- a) between May 2012 and January 2014, the Respondent processed approximately 188 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 10 clients, contrary to MFDA Rules 2.3.1 and 2.1.1; and
- b) between August 13, 2013 and March 31, 2014, the Respondent processed 11 trades in the accounts of 2 clients based on the requests of the clients' spouses, contrary to MFDA Rules 2.3.1 and 2.1.1.

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 \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

¹ Exhibit 3.

- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
- d) the Respondent will attend in person 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 Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III AGREED FACTS

Registration History

7. Since May 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

8. From December 2008 to November 2012, the Respondent was registered as a branch manager with Investors Group in Ontario.

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

Authorized Discretionary Trading

10. Between May 2012 and January 2014, the Respondent engaged in authorized discretionary trading when he processed approximately 188 trades in respect of 10 clients where he determined the amount and timing of the trades.

11. The Respondent states that he processed the authorized discretionary trades to implement a dollar-cost averaging strategy. Dollar-cost averaging is a strategy whereby a client will make investments at periodic intervals in order to diversify the purchase price for a unit of a given mutual fund.

12. Under the strategy, the Respondent met with individual clients and in consultation with the clients, it was determined which mutual funds the clients would purchase and what percentage of the clients' total investment would be allocated to each of the mutual funds (the "Target Portfolio").

13. Once the Target Portfolio was determined, the Respondent invested the client's monies in a money market mutual fund or deposited the monies in the client's account as cash. The Respondent informed the client that he would, at his discretion, periodically process trades on behalf of the client by transferring the

client's investment from the money market mutual fund or cash to the mutual funds that comprised the client's Target Portfolio (the "Transfers").

14. The Respondent periodically processed the Transfers until the client's entire investment was allocated in accordance with the client's agreed upon Target Portfolio. Generally, the Respondent would fully allocate the client's investment within several weeks to several months after the determination of the Target Portfolio.

15. The Respondent decided the date of each Transfer and the number of mutual fund units purchased by the client. The Respondent did not obtain the client's specific authorization prior to processing each individual Transfer, and the client did not determine the specific of elements of the Transfer. In some instances, after Transfers were processed, the client received trade confirmations indicating the details of each Transfer and/or the Respondent contacted the client in order to inform the client of the details of the Transfers.

Trades Processed Based on Requests from Someone Other than the Client

Client TM

16. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client TM and her spouse, client RM.

17. On August 13, 2013, client RM contacted the Respondent's assistant and requested that the Respondent process a \$10,000 redemption from client TM's Tax Free Savings Account (the "TFSA") to pay personal expenses of clients TM and RM.

18. On August 13, 2013, the Respondent, acting on client RM's request, processed two redemptions in client TM's TFSA in the amounts of \$5,178.96 and \$4,852.25. The Respondent states that he was under the assumption that client TM was aware of the request.

19. The Respondent:

- a) did not receive instructions from client TM to process the redemptions in her account; and
- b) used his discretion to select which mutual funds would be redeemed.

20. There was no power of attorney or similar authorization from client TM on file that authorized the Respondent to act on the request of client RM on behalf of client TM.

Client RD

21. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client RD, and her spouse, client DD.

22. On March 25, 2014, client DD contacted the Respondent by email and requested that approximately \$37,000 be redeemed from client RD's accounts to pay personal expenses of client RD on an urgent basis.

23. Between March 25, 2014 and March 31, 2014, the Respondent, acting on client DD's request, processed 9 redemptions in 3 of client RD's accounts in the total amount of \$35,690.11. Without instructions from client RD, the Respondent used his discretion to select which mutual funds would be redeemed and the dates that the redemptions would occur. Clients DD and RD had previously indicated to the Respondent that they would require \$37,000 by the end of March 2014 to pay personal expenses of client RD.

24. There was no power of attorney or similar authorization from client RD on file that authorized the Respondent to act on the request of client DD on behalf of client RD.

Action Taken by the Member

25. Investors Group became aware of the misconduct that is the subject of this Settlement Agreement during an investigation of client RD's and client DD's complaint regarding the Respondent, which was unrelated to the misconduct described above.

26. On June 27, 2014, Investors Group compliance staff met with the Respondent and discussed with him the requirement to always obtain the client's authorization prior to processing trades in the client's account and to maintain written documentation evidencing the client's authorization of each trade.

27. On July 25, 2014, Investors Group issued a cautionary letter to the Respondent regarding the misconduct described in this Settlement Agreement, and commencing in October 2014, Investors Group placed the Respondent in its File Improvement Program for a period of three months. During this period, Investors Group reviewed 27 trades that were processed by the Respondent for evidence that each trade was authorized by the client. No concerns were identified.

Additional Factors

28. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond

the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

29. There is no evidence of client harm with respect to the misconduct described in this Settlement Agreement.

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

31. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

REASONS FOR DECISION

7. Staff of the MFDA submit that the acceptance of the Settlement Agreement would advance the public interest as the Respondent has admitted to his misconduct and the proposed penalties are reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct and all of the circumstances.

8. Prior to accepting a Settlement Agreement, we must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or Policies or provincial securities the legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct and all of the circumstances.

9. We agree with the submissions of Staff as set out in their submissions as follows:

General Principles Regarding the Acceptance of Settlement Agreements

15. Pursuant to s. 24.4.3 of MFDA By-law No. 1, a Hearing Panel has two options with respect to a settlement agreement. It may either accept the settlement agreement or reject it.

Excerpts of the relevant rules and provisions, Staff's Book of Authorities, **Tab 1**.

16. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As was stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, quoting the reasoning in the I.D.A matter of *Milewski (Re)*:

We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel “will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. [Emphasis added.]

Sterling Mutuals Inc. (Re), 2008 LNCMFDA 16, at para. 37. Staff’s Book of Authorities, **Tab 5.**

Milewski (Re), [1999] I.D.A.C.D. No. 17, Ontario District Council Decision dated July 28, 1999, at P. 10, Staff’s Book of Authorities, **Tab 6.**

17. The principle that a Hearing Panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness assists the MFDA to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

British Columbia (Securities Commission) v. Seifert, 2007 BCCA 484, at para. 31, Staff’s Book of Authorities, **Tab 7**

General Considerations Concerning the Acceptance of Settlement Agreements

18. MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- a) whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;

- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

Jacobson (Re), 2007 LNCMFDA 27, at para. 68, Staff's Book of Authorities, **Tab 8**.

19. A Hearing Panel should not interfere lightly in a negotiated settlement as long as the penalties agreed upon are within a reasonable range of appropriateness having regard to the conduct of the Respondent.

Jacobson (Re), *supra*, at para. 70, Staff's Book of Authorities, **Tab 8**.

Specific Factors Concerning the Appropriateness of the Penalty

20. Factors that Hearing Panels frequently consider when determining whether a penalty is appropriate include the following:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) 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;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Headley (Re), 2006 LNCMFDA 3, at para. 85, Staff's Book of Authorities, **Tab 9**.

21. The MFDA Penalty Guidelines are an additional source of factors to be taken into account with regards to penalty. The MFDA Penalty Guidelines are

not mandatory but are intended to assist Hearing Panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings.

Excerpts of the MFDA Penalty Guidelines, Staff's Book of Authorities, **Tab 10**.

22. As stated in the introduction to the MFDA Penalty Guidelines under the heading "Purpose Of The MFDA Penalty Guidelines":

Range is Guideline Only

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

Excerpts of the MFDA Penalty Guidelines, Staff's Book of Authorities, **Tab 10**.

23. Where an Approved Person engages in discretionary trading, the MFDA Penalty Guidelines recommend one or all of the following: a minimum fine of \$5,000; period of increased supervision; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.

Excerpts of the MFDA Penalty Guidelines, Staff's Book of Authorities, **Tab 10**.

24. Where an Approved Person fails to adhere to the standard of conduct, the MFDA Penalty Guidelines recommend one or all of the following: a minimum fine of \$5,000; writing or re-writing an appropriate industry course; suspension; a permanent prohibition in egregious cases.

Excerpts of the MFDA Penalty Guidelines, Staff's Book of Authorities, **Tab 10**.

10. In considering the applicable criteria, Staff submit that:

- a) Discretionary trading is serious misconduct because it undermines the ability of a client to make decisions for and control his or her account;²
- b) However, in the present case, the severity of the Respondent's misconduct is mitigated by the following factors:

With regard to allegation #1, the Respondent engaged in "authorized" discretionary trading. That is, the Respondent implemented the dollar-cost

² *Griffith (Re)*, *supra*, at para. 7, Staff's Book of Authorities, **Tab 4**.

averaging strategy only after having consulted with the clients and the clients determined the ultimate allocation of their investment.³ The Respondent's misconduct was less severe than if he had (unbeknownst to the clients) engaged in unauthorized discretionary trading;

With regard to allegation #2, prior to the Respondent receiving client DD's redemption request on behalf of client RD, RD had indicated to the Respondent that she would require \$37,000 by the end of March 2014 to pay her personal expenses.⁴ Accordingly, it would not have been unreasonable for the Respondent to assume that RD was aware of DD's request;

- c) There is no evidence of client harm with respect to the misconduct described in the Settlement Agreement;
- d) There is no evidence that the Respondent received any financial benefit from engaging in the misconduct at issue in this proceeding, beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner;
- e) The Respondent has been registered in the mutual fund industry since May 2007;
- f) The proposed penalty will act as a general deterrent and reinforce the message that discretionary trading (including authorized discretionary trading) is prohibited by the MFDA;
- g) The proposed penalty will also prevent the Respondent from engaging in misconduct in the future;
- h) The Respondent has not previously been the subject of MFDA disciplinary proceedings;
- i) By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding;
- j) The proposed penalties are consistent with the MFDA Penalty Guidelines.

³ *Settlement Agreement*, paras. 12 and 13.

⁴ *Settlement Agreement*, para. 23.

k) The proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances.⁵

11. The Respondent agreed with the submissions of Staff and pointed out that there was no client loss. The Respondent submitted that the settlement should be approved.

12. We agree and find that the facts admitted to by the Respondent constitute misconduct in contravention of MDFA Rules 2.3.1 and 2.1.1. We also agree with the submissions of Staff and the Respondent as set out in paragraphs 9, 10 and 11 above that the Settlement Agreement meets the objectives of the MFDA By-laws, Rules and Policies, and is in the public interest.

13. The Respondent attended the Settlement Hearing in compliance with the Settlement Agreement which provided “the Respondent will attend in person on the date set for the Settlement Hearing.”

⁵ See: *Moakler (Re)*, [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201571, Panel Decision dated May 24, 2016 and *Garries (Re)*, [2016] Hearing Panel of the Prairie Regional Council, MFDA File No. 201605, Panel Decision dated November 14, 2016.

14. Accordingly, we accepted the Settlement Agreement and signed the Order presented to us at the hearing which provided for the following penalty:⁶

- a) the Respondent shall pay a fine in the amount of \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and
- c) the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1.

DATED this 9th day of April, 2017.

“W. A. Derry Millar”

W. A. Derry Millar
Chair

“Lorraine Bate Boerop”

Lorraine Bate Boerop
Industry Representative

“Patrick Galarneau”

Patrick Galarneau
Industry Representative

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⁶ If at any time a non-party to this proceeding, with the exception of the bodies set out in 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 the MFDA Privacy Policy, then the MFDA Corporate Secretary 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 MFDA *Rules of Procedure*.

Schedule "1"

Settlement Agreement

File No. 201646



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: James Gerard Carney

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and James Gerard Carney (the "Respondent") consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

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

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

- a) between May 2012 and January 2014, the Respondent processed approximately 188 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 10 clients, contrary to MFDA Rules 2.3.1 and 2.1.1; and
- b) between August 13, 2013 and March 31, 2014, the Respondent processed 11 trades in the accounts of 2 clients based on the requests of the clients' spouses, contrary to MFDA Rules 2.3.1 and 2.1.1.

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 \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
- d) the Respondent will attend in person 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 Part III herein and consent to the making of an Order in the form attached as Schedule "A".

III. AGREED FACTS

Registration History

7. Since May 2007, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

8. From December 2008 to November 2012, the Respondent was registered as a branch manager with Investors Group in Ontario.

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

Authorized Discretionary Trading

10. Between May 2012 and January 2014, the Respondent engaged in authorized discretionary trading when he processed approximately 188 trades in respect of 10 clients where he determined the amount and timing of the trades.

11. The Respondent states that he processed the authorized discretionary trades to implement a dollar-cost averaging strategy. Dollar-cost averaging is a strategy whereby a client will make investments at periodic intervals in order to diversify the purchase price for a unit of a given mutual fund.

12. Under the strategy, the Respondent met with individual clients and in consultation with the clients, it was determined which mutual funds the clients would purchase and what percentage of the clients' total investment would be allocated to each of the mutual funds (the "Target Portfolio").

13. Once the Target Portfolio was determined, the Respondent invested the client's monies in a money market mutual fund or deposited the monies in the client's account as cash. The Respondent informed the client that he would, at his discretion, periodically process trades on behalf of the client by transferring the client's investment from the money market mutual fund or cash to the mutual funds that comprised the client's Target Portfolio (the "Transfers").

14. The Respondent periodically processed the Transfers until the client's entire investment was allocated in accordance with the client's agreed upon Target Portfolio. Generally, the Respondent would fully allocate the client's investment within several weeks to several months after the determination of the Target Portfolio.

15. The Respondent decided the date of each Transfer and the number of mutual fund units purchased by the client. The Respondent did not obtain the client's specific authorization prior to processing each individual Transfer, and the client did not determine the specific of elements of the Transfer. In some instances, after Transfers were processed, the client received trade confirmations indicating the details of each Transfer and/or the Respondent contacted the client in order to inform the client of the details of the Transfers.

Trades Processed Based on Requests from Someone Other than the Client

Client TM

16. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client TM and her spouse, client RM.

17. On August 13, 2013, client RM contacted the Respondent's assistant and requested that the Respondent process a \$10,000 redemption from client TM's Tax Free Savings Account (the "TFSA") to pay personal expenses of clients TM and RM.

18. On August 13, 2013, the Respondent, acting on client RM's request, processed two redemptions in client TM's TFSA in the amounts of \$5,178.96 and \$4,852.25. The Respondent states that he was under the assumption that client TM was aware of the request.

19. The Respondent:

- a) did not receive instructions from client TM to process the redemptions in her account; and
- b) used his discretion to select which mutual funds would be redeemed.

20. There was no power of attorney or similar authorization from client TM on file that authorized the Respondent to act on the request of client RM on behalf of client TM.

Client RD

21. At all material times, the Respondent was the mutual fund salesperson at Investors Group responsible for servicing the accounts of client RD, and her spouse, client DD.

22. On March 25, 2014, client DD contacted the Respondent by email and requested that approximately \$37,000 be redeemed from client RD's accounts to pay personal expenses of client RD on an urgent basis.

23. Between March 25, 2014 and March 31, 2014, the Respondent, acting on client DD's request, processed 9 redemptions in 3 of client RD's accounts in the total amount of \$35,690.11. Without instructions from client RD, the Respondent used his discretion to select which mutual funds would be redeemed and the dates that the redemptions would occur. Clients DD and RD had previously indicated to the Respondent that they would require \$37,000 by the end of March 2014 to pay personal expenses of client RD.

24. There was no power of attorney or similar authorization from client RD on file that authorized the Respondent to act on the request of client DD on behalf of client RD.

Action Taken by the Member

25. Investors Group became aware of the misconduct that is the subject of this Settlement Agreement during an investigation of client RD's and client DD's complaint regarding the Respondent, which was unrelated to the misconduct described above.

26. On June 27, 2014, Investors Group compliance staff met with the Respondent and discussed with him the requirement to always obtain the client's authorization prior to processing trades in the client's account and to maintain written documentation evidencing the client's authorization of each trade.

27. On July 25, 2014, Investors Group issued a cautionary letter to the Respondent regarding the misconduct described in this Settlement Agreement, and commencing in October 2014, Investors Group placed the Respondent in its File Improvement Program for a period of three months. During this period, Investors Group reviewed 27 trades that were processed by the Respondent for evidence that each trade was authorized by the client. No concerns were identified.

Additional Factors

28. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

29. There is no evidence of client harm with respect to the misconduct described in this Settlement Agreement.

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

31. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

32. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

33. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

34. 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 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.

35. 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 respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA 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) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and the 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. 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 s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; 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.

36. 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 By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

37. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

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

DATED this 27th day of March, 2017.

“James Gerard Carney”

James Gerard Carney

“ACP”

Witness – Signature

ACP

Witness – Print Name

“Shaun Devlin”

Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule “A”

Order

File No. 201646



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: James Gerard Carney

ORDER

WHEREAS on June 28, 2016, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to ss. 20 and 24 of By-law No. 1 in respect of James Gerard Carney (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- a) between May 2012 and January 2014, the Respondent processed approximately 188 authorized discretionary trades as part of a dollar-cost averaging strategy in relation to 10 clients, contrary to MFDA Rules 2.3.1 and 2.1.1; and

b) between August 13, 2013 and March 31, 2014, the Respondent processed 11 trades in the accounts of 2 clients based on the requests of the clients' spouses, contrary to MFDA Rules 2.3.1 and 2.1.1.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. The Respondent shall pay a fine in the amount of \$20,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in 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 the MFDA Privacy Policy, then the MFDA Corporate Secretary 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 MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]