



**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: FundEX Investments Inc.**

Heard: September 12, 2019 in Toronto, Ontario

Decision: September 12, 2019

Reasons for Decision: November 6, 2019

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick H. Webber  
Robert Christianson  
Guenther W. K. Kleberg

Chair  
Industry Representative  
Industry Representative

Appearances:

David Halasz	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
David Di Paolo	)	Counsel for the Respondent
	)	
Christina Lockyer	)	Assistant Chief Compliance Officer,
	)	FundEX Investments Inc.
	)	
David Chapman	)	President & Ultimate Designated Person,
	)	FundEX Investments Inc.

## **I. SETTLEMENT AGREEMENT**

1. This was a settlement hearing pursuant to a settlement agreement dated August 15, 2019 between the Mutual Fund Dealers Association of Canada (“the MFDA”) and FundEX Investments Inc. (“the Respondent”), a copy of which is attached hereto as Appendix “1” (“the SA”).

## **II. FACTS**

2. The relevant facts are set out in Part IV, paragraphs 6 to 125, of the SA. This is a settlement hearing where the function of this panel is to accept or reject the SA, pursuant to MFDA Rule 24.4.3. In order to accept the SA, the panel must be satisfied that:

- a) the facts admitted by the Respondent constitute misconduct in contravention of the MFDA By-laws, Rules or Policies, or provincial securities legislation, and
- b) the sanctions agreed to in the SA fall within a reasonable range of appropriateness bearing in mind the nature and extent of the misconduct and all of the circumstances.

## **III. CONTRAVENTIONS ADMITTED BY RESPONDENT**

3. In the SA, the Respondent admits to 6 contraventions, as follows:

- a) Between June 2011 and April 2012, the Respondent failed to adequately supervise its Approved Person Christopher Singer's recommendation to a client for the purchase of an exempt market product, which recommendation was unsuitable for the client having regard to concentration and the client's Know-Your-Client information, including but not limited to the client's investment knowledge and experience, and time horizon, contrary to MFDA Rules 2.2.1 and 2.1.1;
- b) Between November 2007 and approximately February 2014, the Respondent did not have adequate procedures in place to monitor all of the holdings in its client accounts held at Canadian Western Trust, and did not identify the sale of unapproved products in the accounts of two clients, contrary to MFDA Rule 2.5.1;
- c) Commencing in 2011, the Respondent failed to ensure that complaints from two clients regarding its Approved Persons Stuart Henschel and William Cormylo, were handled fairly, contrary to MFDA Rule 2.11 and MFDA Policy No. 3;

- d) Between June 2013 and April 2017, the Respondent failed to conduct adequate supervisory investigations to review and resolve suitability and concentration of precious metal sector funds concerns it identified in client accounts serviced by 4 Approved Persons, contrary to MFDA Rules 2.2.1 and 2.5.1;
- e) Between March 28, 2016 and May 1, 2018, the Respondent failed to ensure that a complaint from a client regarding its Approved Person Ronald Schwartz was handled fairly, contrary to MFDA Rule 2.11 and MFDA Policy No. 3 and No. 5 (at the hearing , the reference to Policy No. 5 was deleted by consent of counsel for both parties); and
- f) Between August 2009 to November 2013, the Respondent maintained a branch review program that did not ensure that in all instances an on-site compliance review of all of its branches was conducted at least once every three years, in accordance with MFDA Policy No. 5 and MFDA Rule 2.5.1.

In effect, there were 3 allegations involving a failure to supervise, [(a), (b) and (d)], 2 allegations involving improper client complaint handling, [(c) and (e)] and 1 involving inadequate branch reviews [(f)].

#### **IV. PROPOSED SANCTIONS**

4. In the SA, the following sanctions were agreed to:

- a) a fine in the amount of \$250,000, and
- b) costs in the amount of \$50,000.

In the SA, the Respondent also agreed:

- c) to comply with MFDA Rules 1.2.1, 2.1.1, 2.2.1, 2.5, 2.5.1 and 2.11 and MFDA Policies No.3 and 5, and
- d) a senior officer of the Respondent would attend the settlement hearing in person.

#### **V. ACCEPTANCE OF SETTLEMENT AGREEMENTS**

5. Settlements play an important and necessary role in facilitating the MFDA's principal goal of protecting the investing public. Settlements provide an efficient and effective way for the

MFDA to proscribe conduct that is harmful to the public, while providing a flexible remedy that can be tailored to address the interests of the MFDA and respondents. This principle has been stated in a number of cases, e.g. *British Columbia (Securities Commission) v. Seifert*, [2007] B.C.J. No. 2186 at para. 31 (C.A) (“Seifert”).

6. The role of a hearing panel at a settlement hearing is fundamentally different than its role at a contested hearing. It is generally accepted that hearing panels will not lightly interfere in a settlement agreement reached between the MFDA and a respondent. See e.g. *Sterling Mutuals Inc. (Re)*, 2008 LNCMFDA 16, and *Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

7. As was stated by the MFDA hearing panel in *Professional Investments (Kingston) Inc. (Re)*, 2009 CanLII 88847:

“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.... **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 outside a reasonable range of appropriateness....**”

8. When determining whether it would be appropriate to accept a proposed settlement, MFDA hearing panels have taken into account the following considerations:

- 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.

*Sterling Mutual Funds (Re)*, supra.

## **VI. DETERMINATION OF CONTRAVENTIONS**

9. The Respondent has, with the advice of counsel, admitted to 6 contraventions of MFDA Rules or Policies (see paragraph 3, supra). MFDA counsel provided the panel with written submissions which concluded that such contraventions occurred and Respondent's counsel agreed. Nonetheless, it is incumbent on this panel to ensure that the facts admitted constitute such contraventions.

10. The first admission involved a failure to adequately supervise its then Approved Person, Christopher Singer, contrary to MFDA Rules 2.2.1 and 2.1.1. (paragraph 134(a) of the SA). The relevant facts are contained in paragraphs 6-31 of the SA.

11. In accordance with MFDA Rule 2.2.1, Members have obligations to conduct regular supervision of trades to ensure that each order accepted for clients is suitable for the client, in keeping with the client's investment objectives, and within the bounds of good business practice.

12. As an essential element of investor protection, MFDA By-laws, Rules, and Policies require Members to establish, implement and maintain policies, procedures and supervisory practices to ensure that the Member's handling of business is consistent with all applicable regulatory requirements.

13. Trade supervision, including supervision of purchases in exempt market securities and concentration of investment in client accounts, is critical to the process of ensuring that, among other things, all trade orders accepted and recommendations made for clients are suitable.

14. The obligation of both Approved Persons and Members to exercise due diligence to ensure that investment orders that are accepted, recommendations that are made, and investments that are held in client accounts of a Member are suitable for the clients, is a core responsibility of any Approved Person or Member that services client accounts in the securities industry.

15. The version of MFDA Rule 2.2.1 in effect during the onset of the period of the contravention states:

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; and
- c) to ensure that each order accepted or recommendation made for any account of a client is suitable for the client and in keeping with the client's investment objectives; and
- d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client and in keeping with the client's investment objectives, the Member has so advised the client before execution thereof.

Certain amendments to Rule 2.2.1 came into effect on December 3, 2011, during the material period of the contravention. These amendments do not materially change the KYC obligations of Members for the purposes of this Settlement Hearing.

16. MFDA Rule 2.2.1 codifies the "Know-Your-Client" and "suitability" obligations recognized by securities regulators. Securities regulators have held that these obligations are "an essential component of the consumer protection scheme of [securities legislation] and a basic obligation of a registrant, and a course of conduct by a registrant involving a failure to comply with them is an extremely serious matter."

*E.A. Manning Ltd. (Re)*, (1995) 18 OSCB 5317 ("E.A. Manning"), at p.34

*Daubney (Re)*, (2008) 31 OSCB 4817 ("Daubney"), at para. 15,

17. In April 2008, the MFDA issued Member Staff Notice - MSN-0069 - entitled Suitability Guidelines ("MSN-0069"), (updated in February 2013) to provide guidance to Members and Approved Persons about how to ensure the suitability of all investment advice provided to clients and trade orders accepted from clients. Among other things, MSN-0069 stresses the importance of implementing an appropriate and effective trade and account supervision process.

18. Further, an important element of trade supervision and assessment of account suitability is the evaluation of concentration risk. The importance of diversification of client portfolios has been commented on in past decisions of Canadian securities regulators. Establishing and maintaining

adequate systems of supervision to ensure appropriate concentration in client accounts promotes investor protection.

*Biduk (Re)*, 2013 IIROC 19, Hearing Panel of the Quebec District, Decision dated April 23, 2013, at paras. 86 and 87,

19. In the present case, the Respondent failed to conduct adequate supervision of trades submitted by its then Approved Person, Christopher Singer. Singer submitted purchases on behalf of a client (client AO) in an exempt market security ("ROI" Funds, as defined in the SA) that were unsuitable for the client having regard to concentration and the client's Know-Your-Client information. In particular, the Respondent processed purchases of the entirety of client AO's approximately \$1.15 million portfolio in ROI exempt market securities. Client AO was a senior, unsophisticated, had a time horizon listed as 3-5 years, and a recorded 100% moderate risk tolerance. Subsequent to the purchase of the ROI funds by client AO, the Respondent indicated that it would be reviewing client portfolios that exceed a concentration of 25% in ROI funds, however it failed to identify client AO for further review. The Respondent's supervisory staff failed to query the purchase of ROI when the trades were reviewed for suitability. The Respondent admits that the purchases by the client of the ROI funds were not suitable for the client, and its supervisory Staff ought not to have approved the trades.

20. MFDA Hearing Panels have found that a Member's failure to adequately supervise concentration risk, the conduct is contrary to MFDA Rules, including Rule 2.2.1.

*IPC Investment Corporation (Re)*, 2017 CanLII12327 (CA MFDAC) ("IPC"),  
*Equity Associates Inc. (Re)*, 2018 CanLII 89313 (CA, MFDAC) ("Equity 2018"),

21. A Member falls afoul of their supervisory obligations where it does not conduct adequate assessments of suitability. In the absence of supervisory intervention by a Member who is alert to concerns relating to, among other things, concentration of investments in clients' accounts, clients run the risk of being exposed to unsuitable investments.

22. The second admission involves a failure to supervise Canadian Western Trust ("CWT") accounts. (paragraph 134(b) of the SA). The facts are set out in paragraphs 32-46 of the SA.

23. Based on an arrangement between the Respondent and CWT, some clients of the Respondent had CWT accounts where mutual fund assets of the member and external assets were

held on behalf of the clients. The Respondent was allowed access to the CWT electronic platform where it could review transactions and holdings in the client accounts; however, the Respondent did not request access to the accounts to review the holdings in the accounts to determine whether clients held non-mutual fund assets sold by its Approved Persons outside the Respondent. The Respondent did not have policies and procedures to review and reconcile the activity in the CWT accounts with its own accounts to determine whether or not clients were holding assets at CWT that were sold outside the Respondent. Two of its Approved Persons had sold to two clients unapproved investments (the "Medallion Investment", as described in the SA), that were held in the clients' CWT accounts. Had the Respondent requested access to the non-mutual fund activity taking place in the CWT accounts they would have been aware the clients were holding Medallion investments prior to when the matter was first identified by the Respondent.

24. Under MFDA Rule 2.5.1, Members have a regulatory obligation to establish, implement and maintain policies and procedures and internal controls to ensure the handling of its business is in accordance with the By-laws, Rules and Policies and with applicable securities legislation.

25. In this case, the Respondent lacked policies and procedures to review and reconcile the activity taking place in the CWT accounts with its own records of its clients' investments, the result of which was that the Respondent was not adequately supervising to ensure its Approved Persons were only selling permitted investments.

26. The third and fourth admissions involves the failure to ensure that client complaints are handled fairly (paragraphs 134(c) & (e) of the SA. The facts are set out in paragraphs 46-52 and 103-122 of the SA.

27. The primary goal of securities regulation is the protection of the investor.

*Pezím v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 per Iacobucci J. at paras. 59, 68.

28. The panel agrees with the MFDA submission that client complaints must be handled fairly and promptly in order to foster continued investor confidence in the mutual fund industry. Fair and prompt complaint handling demonstrates to clients that complaints are taken seriously and that Members are responsive to their clients. It is essential to both the success of the mutual fund

industry and the protection of the investing public that Members view complaint handling as an integral part of their regular operations, and prioritize this aspect of their business by handling all client complaints received in a competent and professional manner. As such, all MFDA Members are required to implement policies and procedures for handling client complaints (see MFDA Rule 2.11) that address the minimum complaint handling requirements set out in MFDA Policy No.3.

*Sterling Mutuals Inc. (Re)* 2016 CanLII 43530 (CA MFDAC) ("Sterling 20116")  
at paras 16-19,

29. A fair and efficient complaint handling process is essential to ensure that adequate and reasonable steps are taken when a complaint is received by a Member that alerts the Member to the fact that: (a) a client may have been mistreated by the Member and/or one or more of its Approved Persons; or (b) a client may have been dealt with inappropriately or unfairly by a Member and/or one or more of its Approved Persons; or (c) the best interests of a client may not have been served by the manner in which their account was serviced.

30. Whether concerns that are brought to light by a complaint are the result of intentional misconduct, negligence, or the failure of the Member or an Approved Person to appreciate and appropriately implement regulatory requirements or the policies and procedures of the Member, the Member's complaint handling process is an important source of information about potential problems that should be addressed. Accordingly, prompt, fair and reasonable complaint handling is a critical part of the compliance process. If it is undertaken properly and fairly, the process should:

- a) result in a transparent, objective, impartial and fair investigation and assessment of the merits of a complaint in accordance with MFDA Rule 2.11 and Parts I and III of MFDA Policy No. 3;
- b) provide the complainant and the subject of the complaint with a clear and balanced explanation of the conclusions reached and the implications of those conclusions for a resolution of the complaint in accordance with Part II of MFDA Policy No.3;
- c) expose and enable Members and regulators to appropriately address cases of wrongdoing as a result of a reasonable supervisory investigation and disciplinary action in appropriate cases in accordance with Parts III and IV of MFDA Policy No. 3 and MFDA Rule 2.5;

- d) provide an opportunity for Members to promptly and fairly address client harm in accordance with MFDA Rule 2.11 and Part I of MFDA Policy No. 3; and
- e) give rise to improvements in supervisory processes in appropriate cases to ensure that other clients (additional cases of similar client harm and preventing future such cases) are not similarly adversely affected in accordance with Part III of MFDA Policy No. 3.

31. MFDA Hearing Panels have found that where a Member does not handle a complaint from a client fairly, it engages in conduct contrary to MFDA Rules and Policies.

*Desjardins Financial Security Investments Inc. (Re)* 2017 CanLII 74507 (CA MFDAC) (“Desjardins 2017”).

*Sterling* 2016 Supra

*Equity Associates Inc. (Re)*, 2015 CanLII 39873 (CA MFDAC) (“Equity 2015”).

32. The Respondent has admitted that it failed to fairly handle the following client complaints:

- a) complaints on behalf of two clients who purchased the Medallion Investment in their CWT accounts through two Approved Persons at the Respondent (Henschel and Cormylo) (the "Medallion Complaints");
- b) complaints on behalf of three clients in whose accounts at the Respondent the Approved Person Ronald Schwartz ("Schwartz") processed a series of unauthorized redemptions and misappropriated the clients' monies.

33. In respect of the Medallion Complaints, the Respondent declined the clients' complaints on grounds including that the Medallion Investment was not offered for sale through the Respondent, that the Respondent prohibited such activity. Client PV has commenced a civil claim against CWT to recover for losses in relation to Medallion. CWT has commenced a third party claim against the Respondent. The Respondent has paid compensation to settle the complaint of client GJ in relation to client GJ's complaint about the purchase of the Medallion Investment through Approved Person Henschel.

34. In respect of its Approved Person Schwartz, the Respondent originally did not offer compensation to the 3 clients from whom Schwartz misappropriated monies. The Respondent admits that it failed to adequately take into account its responsibility for the actions of its Approved

Person who processed the unauthorized redemptions and misappropriated monies from the clients' accounts at the Respondent. The Respondent has paid compensation to the three clients.

35. The fifth admission involves the failure to conduct an adequate supervisory investigation. (paragraph 134(d) of the SA). The facts are set out in paragraphs 53-102 of the SA.

36. The Respondent admitted that it failed to conduct adequate supervisory investigations to review and resolve suitability and concentration in precious metal sector funds identified in client accounts serviced by 4 Approved Persons. In particular, when the Respondent became aware of the concentration concerns in the client accounts serviced by the 4 Approved Persons, it permitted the Approved Persons to deal directly with the clients to resolve the concentration issues in their accounts without adequate supervision to ensure that a balanced presentation about such funds were provided to the clients. The Respondent received complaints from clients regarding the precious metals holdings in their accounts at the Respondent. The Respondent has paid compensation to 11 clients. The Respondent has denied compensation to five clients, two of whom have brought their complaints before the Ombudsman for Banking Services and Investments. The MFDA has not alleged that the Respondent has unfairly handled the clients' complaints in this proceeding.

37. MFDA Policy No. 3 (Complaint Handling, Supervisory Investigations and Internal Discipline) requires MFDA Members to conduct reasonable supervisory investigations in response to information it receives about potential breaches of MFDA Rules, By-laws, Rules and Policies, and other applicable legal and regulatory requirements on the part of the Member and its current and former Approved Persons that raise the possibility of risk to the Member's clients or other investors.

38. Members are required to take reasonable supervisory action in relation to such information, the extent of which will in part depend on the severity of the allegation and the complexity of the issues.

39. MFDA Hearing Panels have found that where a Member does not conduct an adequate supervisory investigation, it fails to meet the minimum regulatory standards for supervision and engages in conduct contrary to MFDA Rules and Policies.

*Equity* 2018, Supra

*Desjardins Financial Security Investments Inc. (Re)*, 2009 CanLII 89377 (CA MFDAC) (“Desjardins 2009”)

*Desjardins* 2017, Supra

*Sterling* 2016, Supra

*Professional Investments (Kingston) Inc. (Re)*, 2017 CanLII 12308 (CA MFDAC)

*IPC*, Supra

40. The sixth admission involves a failure to conduct adequate branch reviews (paragraph 134(f) of the SA. The facts are set out in paragraphs 123-124 of the SA.

41. On July 24, 2006, MFDA Policy No. 5 came into effect, which requires each MFDA Member to establish a branch review program to effectively assess and monitor compliance with regulatory requirements. In particular, the program must, among other things:

- a) include an assessment of the supervisory procedures and practices in place at the branch, as well as the quality of execution of those procedures;
- b) address all significant aspects of the Member's policies and procedures manual and MFDA By-laws, Rules and Policies; and
- c) include interviews with branch supervisors and a selection of other Approved Persons along with substantive testing to verify the accuracy of information that is provided in the interviews. Substantive testing should involve reviewing client files, trade blotters, trust account records, advertising and marketing material and other relevant records.

42. The individuals responsible for performing branch reviews at the Member must have the required training, skill and proficiency, and must be independent of the branch and the branch manager, so as to ensure that the reviewer can act objectively without preconceived opinions and is not subject to inappropriate influence when performing the review.

43. Policy No. 5 sets out the requirements for the frequency of the branch review cycle by Members as follows:

Members are generally expected to perform an on-site review of their branches no less than once every three years. However, Members must review certain branches more frequently than once

every three years if justified based on risk. Where, under unusual circumstances, a Member exceeds a three year branch review cycle, the Member must be able to justify the longer review cycle by demonstrating that the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances however, should a Member never perform an on-site review of a branch. (Emphasis added)

44. In this case, between August 2009 and November 2013, the Respondent did not conduct an on-site compliance review of all of its branches at least once every three years, in accordance with MFDA Policy No. 5 and MFDA Rule 2.5.1.

45. MFDA hearing panels have found that MFDA Members have acted contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1 in situations where they have not conducted on-site branch reviews once every 3 years.

*De Thomas Wealth Management Corp. (Re)* [2019] Hearing Panel of the Central Regional Council, MFDA File No. 2018133, Reasons for Decisions dated April 25, 2019 ("DeThomas")

*Olympian Financial Inc. (Re)*, 2018 CanLII 103277 (CA MFDAC) ("Olympian")

*Sentinel Financial Management Corp. (Re)*, 2018 CanLII 89315 (CA MFDAC) ("Sentinel")

*TeamMax Investment Corporation (Re)* [2017] Hearing Panel of the Central Regional Council, MFDA File No.201695, Decisions and Reasons dated July 7, 2017 ("TeamMax")

*Sun Life Financial Investment Services (Canada) Inc. (Re)*, 2015 CanLII 69096 (CA MFDAC) ("Sun Life")

46. Based on the foregoing, the panel is satisfied that the Respondent's admissions constitute misconduct within the applicable Rules and Policies and therefore that the allegations in the Notice of Hearing have been proven.

## **VII. APPROPRIATENESS OF THE AGREED SANCTIONS**

47. The last issue which the panel must decide is whether the agreed sanctions fall within a reasonable range of appropriateness, given the nature and extent of the misconduct and all of the circumstances.

48. The primary goal of securities regulation is the protection of the investing public. Disciplinary sanctions imposed in a securities regulatory context are protective and preventative, intended to be exercised to prevent likely future harm.

*Pezim Supra*

49. Hearing panels have taken into account the following factors when evaluating whether the penalties proposed should be accepted:

- a) the seriousness of the allegations proven 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;
- i) the need to alert others who are permitted to participate in the capital markets of the consequences of inappropriate activities and
- j) previous decisions made in similar circumstances.

*Breckenridge (Re)*, [2007] MFDA File No. 200718 and decisions cited therein.

50. The hearing panel may also refer to the MFDA's new Sanction Guidelines, which came into 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.

## VIII. APPLICATION TO THIS CASE

51. This panel took into account the factors and principles stated above in determining whether to consent to the SA. Set out below are the factors that are particularly pertinent to this case.

a) *Nature of the Misconduct*

52. The panel agrees with MFDA's submission, the Respondent's supervisory and complaint handling deficiencies are serious. The contraventions at issue reflect a range of deficiencies involving significant aspects of the Respondent's supervisory practices.

53. With respect to inadequate supervision of concentration of exempt products in the account of one client, the Respondent processed unsuitable trades without querying the trades. The Client suffered a loss and was compensated by the Respondent.

54. With respect to the failure to supervise CWT accounts, the Respondent failed to supervise to ensure the CWT accounts did not hold unapproved investments sold by its Approved Persons. In this case, two Approved Persons of the Respondent sold to two clients unapproved Medallion Investments that resulted in loss to the clients. Without adequate supervision of the CWT accounts, the Respondent was not aware that the clients were holding unapproved investments sold by its Approved Persons.

55. With respect to complaint handling, the Respondent did not handle fairly client complaints on behalf of two clients who purchased the Medallion Investment (Henschel and Cormylo). One client has commenced a civil suit to seek redress from CWT which has claimed against the Respondent. The Respondent has settled the second client's complaint with a payment of compensation.

56. The Respondent did not handle fairly client complaints it received on behalf of three clients from whom Schwartz misappropriated monies by processing unauthorized redemptions from their accounts at the Respondent. The Respondent has paid compensation to these clients.

57. With respect to inadequate branch reviews, the Respondent failed to ensure that in all instances an on-site compliance review of all of its branches was conducted at least once every three years.

58. With respect to the Respondent's supervisory investigations to resolve suitability and concentration of precious metal sector funds in client accounts, the Respondent failed to conduct timely and adequate investigations with respect to four of its Approved Persons.

59. Adequate supervision in the areas covered by the Settlement Agreement is required to promote investor protection. When these activities are left unsupervised, or are supervised inadequately, they have the potential, as in the present case, to result in client harm.

*b) Respondent's recognition of the Seriousness of Misconduct*

60. The Respondent has cooperated with the MFDA's investigation of the issues that form the subject matter of the SA. The Respondent has admitted to the misconduct described in the SA, thereby accepting responsibility for its misconduct and avoiding a lengthy trial and the time and expense that MFDA would have incurred.

*c) Client Harm*

61. As stated in the SA, the Respondent has compensated certain clients for the losses they suffered and other client issues have either been settled or are being addressed. Thus the Respondent has somewhat mitigated the harm that its clients would have otherwise suffered.

*d) Remedial Steps Taken by the Respondent*

62. Paragraphs 126-133 of the SA outline remedial steps taken by the Respondent, to address the deficiencies that are the subject of the allegations in this case. MFDA counsel indicated to the panel that MFDA was satisfied with these actions which therefore serve as significant mitigating factors in determining the appropriateness of the sanctions agreed to in the SA.

*e) The Respondent's Past Conduct and Experience*

63. The Respondent has been a Member of the MFDA since May 16, 2002. It therefore has considerable experience in the business and cannot claim that its misconduct was the result of inadvertence or unfamiliarity with its obligations. As a further aggravating factor, the Respondent was the subject of previous MFDA disciplinary proceedings which resulted in a settlement

agreement in January 2012 in which the Respondent agreed to a fine of \$100,000 and costs of \$15,000.

f) Deterrence

64. The Supreme Court of Canada in *Cartaway Resources Corp. (Re)*, [2004] S.C.R. 672 (“*Cartaway*”) and numerous other cases have held that deterrence should be taken into account when determining penalty. This involves both specific deterrence of future misconduct by the Respondent and general deterrence of others in the industry from engaging in similar misconduct.

65. The effect of general deterrence should advance the goal of protecting investors. As a result, the penalty levied should be sufficient so as to affirm public confidence in the regulatory system and ensure that the misconduct is not repeated by others in the industry. As the Supreme Court of Canada stated in *Cartaway*:

A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction . . . The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged...

66. The proposed penalty is significant and will accomplish the goals of specific and general deterrence by sending a clear message to the Respondent and to other Members of the MFDA that the contraventions that arose in this case are serious and the disciplinary consequences and other resulting implications are substantial.

g) Previous Decisions Made in Similar Cases

67. MFDA counsel reviewed with the panel several cases with issues similar to this case. The proposed fine of \$250,000 is greater than in the other cases cited, but this case involved a number of instances of serious misconduct, and therefore a greater fine is warranted. The panel agrees that the proposed resolution is within the reasonable range of appropriateness with regard to these other decisions made by MFDA hearing panels in similar circumstances.

**IX. CONCLUSION**

68. For the reasons set out above, the panel has concluded that acceptance of the SA would advance the public interest. The Respondent has admitted to his misconduct, and the penalties proposed are reasonable and proportionate having regard to the nature and extent of the Respondent's misconduct and all of the circumstances and is in keeping with the MFDA's mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct. The panel is supported in its conclusion by the fact that the Respondent was represented throughout the case by experienced counsel who expressed his agreement with the SA and with the MFDA submissions that it should be accepted by the panel. Accordingly, the panel accepted the SA and at the conclusion of the hearing signed an order setting out the sanctions agreed to

**DATED** this 6<sup>th</sup> day of November, 2019.

“Frederick H. Webber”  
\_\_\_\_\_  
Frederick H. Webber  
Chair

“Robert Christianson”  
\_\_\_\_\_  
Robert Christianson  
Industry Representative

“Guenther W. K. Kleberg”  
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**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  
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**Re: FundEX Investments Inc.**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, FundEX Investments Inc. (the “Respondent”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in 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.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees

to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this 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.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent is registered as a mutual fund dealer and exempt market dealer in all jurisdictions in Canada. The Respondent has been a Member of the MFDA since May 16, 2002.

7. The Respondent’s head office is located in Vaughan, Ontario.

#### **Failure to adequately supervise Approved Person Christopher Singer**

8. Between July 2004 and October 20, 2017, Christopher Singer (“Singer”) was registered in British Columbia and Alberta as a mutual fund salesperson (now known as a dealing representative) with the Respondent.

9. On February 22, 2017, an MFDA Hearing Panel accepted a Settlement Agreement between MFDA Staff and Singer, wherein Singer admitted that he failed to use due diligence to learn and record the essential facts relative to client AO; failed to ensure investment recommendations made to client AO were suitable; failed to adequately explain the risks and benefits of investment in ROI Funds (described below at paragraph 15) that he recommended to client AO; and failed to review

or reconsider his recommendation to client AO in light of criteria for assessing suitability of ROI Funds provided to him by the Respondent.

10. Since March 2011, Singer serviced the mutual fund account of client AO at the Respondent. In March 2011, client AO was a single 62 year old realtor with a novice level of investment knowledge who intended to retire within 3-5 years. Client AO was planning on selling her home and buying a smaller retirement home or a property in order to build a duplex. In June 2011, client AO sold her home. The sale proceeds and other cash savings that client AO had accumulated totaled approximately \$1.15 million. She met with Singer to obtain advice about the possibility of investing this money.

11. Client AO informed Singer that she intended to apply approximately \$800,000 – \$900,000 towards the purchase of a new home as soon as she could find an appropriate property. Client AO told Singer that she wanted this portion of her savings to be placed in a low risk short term investment to ensure the preservation of capital required for the anticipated home purchase.

12. Client AO informed Singer that she wanted to invest the remaining \$300,000 – \$400,000 in a manner that would provide her with a source of savings and income to support her during her retirement. Client AO intended on retiring between the ages of 65-68.

13. In July 2011, client AO completed a New Account Application Form (“NAAF”) for her Open account that included the following information:

- a) “novice (very low)” investment knowledge;
- b) investment time horizon of 3-5 years; and
- c) “100% moderate” risk tolerance.

14. On the same day, Client AO’s NAAF for her TFSA account which contains the same information, except her time horizon is listed as “1-3 years.”

15. Based on Singer’s recommendation, in July 2011, client AO invested 100% of her portfolio as follows:

- a) \$485,000 into ROI Private Placement Fund (“ROPF”) into her Open account;

- b) \$650,000 into ROI High Yield Private Placement Fund (together with ROPF, the “ROI Funds”) into her Open account; and
- c) \$15,000 into the ROI High Yield Private Placement into her Tax Fee Savings Account.

16. At the time the Respondent recommended the ROI Funds to client AO, the ROI Funds were exempt market securities. According to materials produced and distributed by the fund company, ROI Capital Ltd. (“ROI”), the ROI Funds were open-end investment funds consisting primarily of higher yielding private placements of capital in debt obligations and/or equity securities issued by businesses seeking nonbank financing.

17. The ROI Funds’ Offering Memorandum dated March 25, 2010 stated that the fund’s investment objective is to provide long-term capital appreciation.

18. On November 17, 2011, the Respondent sent a Compliance Memorandum to its Approved Persons, including Singer, which indicated, amongst other things, that it would be reviewing clients’ portfolios that exceeded a concentration of 25% in ROI Funds and that it may require advisors to review portfolio holdings with certain clients. It also stated that, “...[it] is the expectation of the regulators that a client holding a greater allocation in one fund would have a higher risk tolerance and a longer time horizon.”

19. On December 1, 2011, the Respondent sent another Compliance Memorandum to follow-up on the November 17, 2011 Compliance Memorandum. The December 1, 2011 Compliance Memorandum advised, amongst other things, that the Respondent’s Regional Branch Managers would send to each applicable Approved Person a list of any clients that needed to be reviewed by the Approved Person in respect of the suitability of their ROI investments. Although client AO held 100% of her portfolio in ROI Funds, the Respondent failed to identify Client AO for further review.

20. The December 1, 2011 Compliance Memorandum stated that a review for suitability should consider the following factors:

- a) Approved Persons should discuss the concentration level of their clients’ portfolio and explain the increased risk that can result from a less diverse portfolio. The

clients should have an increased appetite for risk if the client wishes to continue to hold the ROI Private Placement Pool with limited diversification;

- b) clients should have a minimum time horizon of 5 years;
- c) clients should sign an acknowledgment; and
- d) Approved Persons should record detailed notes of the client meetings.

21. On March 9, 2012, ROI halted redemptions in the ROI Funds.

22. On April 30, 2012 client AO requested that Singer process a redemption from her open account to pay personal expenses. Singer was unable to process the requested redemption because trading in the ROI Funds were halted.

23. FundEX issued a compliance memo in May 2012 advising that:

“Due to proposed changes in the redemption period, current liquidity concerns, and based on direct consultation with ROI, the PRC, who has been actively monitoring the Funds and surrounding events, has elected to re-rank the Funds to “High” effective May 9, 2012.

24. On August 24, 2012, unitholders of the ROI High Income Private Placement Fund, ROI Private Placement Fund and ROI Strategic Private Placement Fund approved resolutions authorizing the restructuring of the funds to a closed-end investment publicly traded on the TSX.

25. On October 3, 2012, client AO submitted an offer to purchase a property. However, client AO was unable to complete the purchase of the property because trading of the ROI Funds remained halted and therefore she could not process redemptions of units of her ROI Funds and apply the proceeds towards the purchase of the property as she had intended.

26. The trades processed by Singer on behalf of client AO for the purchase of the ROI Funds were not suitable taking into account client AO’s personal and financial factors and investment objectives, as follows:

- a) age (62 years);
- b) client AO was an unsophisticated investor, as shown by the “novice” (very low) listing of her investment knowledge in her NAAF;
- c) client AO’s time horizon was listed as 3-5 years; and

d) client AO's investment portfolio was 100% concentrated in private placement Funds.

27. Accordingly, the Respondent's supervisory staff ought not to have approved the trades submitted by Singer on behalf of client AO for the purchase of the ROI Funds.

28. The Respondent acknowledges that its supervisory staff failed to query the trades when they reviewed the trades for suitability.

29. On December 4, 2012, the ROI Funds were listed on the TSX and the ability of unitholders to redeem their investments in the funds was restored.

30. Between April 3 and May 9, 2014, client AO redeemed her investments in the ROI Funds, and suffered a loss of approximately \$92,657.

31. The Respondent paid compensation of \$100,000 to client AO for her loss.

#### **Failure to supervise Canadian Western Trust accounts**

32. At all material times, the Respondent had an agreement with Canadian Western Trust ("CWT") whereby CWT opened accounts for some of its clients, held investments in these accounts, and provided clearing or settlement services. In effect, these accounts at CWT acted as self-directed accounts for clients in which mutual fund assets purchased through FundEX, as well as external assets such as exempt market investments or GICs could be held on behalf of clients.

33. The Respondent had an obligation to supervise all client accounts in order to ensure only investments it permitted its Approved Persons to sell would be held in CWT accounts.

34. The Respondent had an agreement with CWT that allowed the Respondent access to CWT's electronic platform, which in turn provided the Respondent with access to information regarding cash balances, transactions and holdings in client accounts at CWT.

35. The Respondent did not request access to CWT's electronic platform to review the CWT accounts to determine whether clients held non-mutual fund assets which had been sold by its Approved Persons outside the Respondent.

36. The Respondent relied instead upon disclosure language contained in the CWT statements given to clients which indicated that the Member and its representatives provide investment advice as it relates to mutual funds only, unless their registration permits advice on other securities and that the financial products not offered by the Member will not be reviewed for accuracy and remain the responsibility of the clients.

37. The CWT statements made available to clients contained all transactions and holdings in the account, including non-mutual fund assets. The CWT statements included the name of the Respondent as the dealer of record for the account.

38. At all material times, the Respondent did not have policies and procedures to review and reconcile the activity taking place in the CWT accounts with its own records of its clients' investments to determine whether or not clients of FundEX were holding assets at CWT, outside of FundEX, that its advisors were not permitted to sell. The Respondent did reconcile the mutual fund positions but only to confirm that the on-book holdings matched.

39. Between September 2006 and April 2012, Stuart Henschel ("Henschel") and William Cormylo ("Cormylo") were mutual fund salespersons (now known as dealing representatives) registered with the Respondent. Henschel and Cormylo were subjects of MFDA disciplinary proceedings, where it was found that they sold, recommended, facilitated the sale, or made referrals in respect of investment products outside the Respondent.

40. At all material times, clients PV and GJ were clients of the Respondent. In or around July 2009, client PV invested \$50,000 in an investment described as the Medallion-Cochrane Lakes project based on the recommendation of Cormylo. In or around December 2007, client GJ invested \$50,000 in an investment in Medallion Business Centre (together with Medallion-Cochrane Lakes project, the "Medallion Investment") based on the recommendation of Henschel.

41. Henschel and Cormylo failed to seek approval from the Respondent for the sale of Medallion Investment outside of the Respondent as they were required to do.

42. Clients PV and GJ held the Medallion Investments in their CWT accounts with the Respondent. After the purchase of the Medallion Investments, Cormylo and Henschel took steps

to have the clients' positions in the investment included on CWT statements without disclosing to the Respondent that they had sold the Medallion Investments.

43. As noted above, at no material time did the Respondent request access to the non-mutual fund activity taking place in the CWT accounts and in particular did not request access to the non-mutual fund activity taking place in the CWT accounts in relation to PV and GJ. Had they done so, the Respondent would have been aware that the clients were holding securities in Medallion Investments, prior to when the matters were first identified by Respondent in or about March 2011.

44. The Respondent did not have policies and procedures requiring it to review and reconcile the activity taking place in the CWT accounts with its own records of its clients' investments, relying instead on disclosure on the CWT statements as described above.

45. No later than February 2014, the Respondent began reviewing reports to review the non-mutual fund investments held in its clients' CWT accounts.

### **Failure to ensure complaints against Approved Persons Henschel and Cormylo were handled fairly**

#### Complaint of client GJ

46. On December 9, 2011, client GJ complained to the Respondent stating that Henschel recommended, or facilitated the sale of \$50,000 in the Medallion Investment on or around December 17, 2007, and that the Respondent had not supervised Henschel.

47. On May 4, 2012, the Respondent declined client GJ request's for compensation for the following reasons:

- a) the investment was not a security offered for purchase and/or sale through the Respondent;
- b) the Respondent required that all securities related business be conducted through the Respondent; and,
- c) the Respondent prohibits their salespersons from personally engaging in the sale or referral of any investments that would be considered securities or selling, or advising on such investments through any entity other than the Respondent.

48. On December 13, 2018, the Respondent offered compensation to client GJ in relation to the Medallion investment. GJ accepted that offer on March 14, 2019 and the complaint is now settled.

#### Complaint of client PV

49. On September 12, 2013, client PV complained to the Respondent with respect to her Medallion Investment. Client PV provided the Respondent with copies of her CWT statements, which listed the client's mutual fund holdings at the Respondent along with details of the Medallion Investment and listed the Respondent as Client PV's advisor. Client PV's official dealer statement from FundEX did not list Medallion Investment as a holding at FundEX.

50. On December 27, 2013, the Respondent declined client PV's request for compensation for the following reasons:

- a) the investment did not appear on the periodic statements she received from the Respondent and therefore client PV ought to have known the investment was not purchased through the books of the Respondent; and
- b) Cormylo was acting in his personal capacity in soliciting client PV her to invest in the unapproved investment.

51. Client PV has commenced a civil claim in Alberta against CWT to recover losses suffered in relation to Medallion. Client PV did not sue FundEX, however, CWT has commenced a third party claim against FundEX for contribution and indemnity. That claim remains outstanding.

#### Failed to ensure complaints handled fairly

52. The Respondent failed to ensure that the complaints of clients PV and GJ were handled fairly for the following reasons:

- a) the Respondent did not have a policy to review, and did not conduct a review of, non-mutual fund holdings in CWT accounts, relying instead on the disclosure to clients regarding FundEX's role on the CWT statements;
- b) had the Respondent obtained access to, and reviewed, the clients' holdings in the CWT accounts, it would have increased the likelihood that the Respondent would

have identified the Medallion Investments and taken appropriate supervisory and disciplinary actions; and

- c) the Respondent did not adequately consider that the CWT statements obtained by client PV listed the Medallion Investments and indicated that the Respondent was the advisor on the account.

### **Failure to adequately supervise concentration risk in accounts serviced by Approved Persons**

#### Approved Person JW

53. Between April 2007 to March 2017, JW was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with the Respondent.

54. Client VB was a client of the Respondent whose account was serviced by JW. In April 2013, client VB complained to the Respondent about the suitability of precious metal sector funds in her account serviced by JW.

55. In May 2013, as a result of client VB's complaint, the Respondent commenced a review of all the client accounts serviced by JW to assess the suitability and concentration of precious metal sector funds in the clients' accounts.

56. During its review, the Respondent identified that approximately 80 clients (34 of whom were seniors) held accounts that contained 25 percent or greater of their holdings in precious metal sector funds.

57. In June 2013, the Respondent required JW, as part of an action plan, to contact clients to review the account holdings and Know-Your-Client ("KYC") information in order to assess suitability for the 34 senior clients it identified that held 25 percent or greater of their investments in precious metal sector funds. The Respondent also required that JW's Regional Branch Manager monitor the action plan.

58. In August 2013, JW completed the review with the clients, updated the KYC records, and made any necessary rebalancing in client accounts. At this time, the Respondent also required JW to review suitability of the approximately 46 non-senior clients' accounts.

59. In March 2015, in response to an inquiry from MFDA Staff about the status of the concentration review of client accounts, the Respondent advised MFDA Staff that JW had been meeting with the non-senior clients, the Regional Branch Manager was monitoring his progress, and no issues with the JW's activities had been identified.

60. On May 22, 2015, the Respondent advised MFDA Staff that it intended to continue to have JW deal directly with clients to resolve the concentration issues in their accounts and have supervisory personnel follow up with JW to ensure appropriate corrective action was being taken.

61. MFDA Staff advised the Respondent that it had concerns with the Respondent's approach, and that it would be appropriate to have additional supervisory steps taken to ensure that the Approved Person provide the clients with a balanced presentation about precious metal sector funds concentration, including having supervisory staff participate in client interactions and/or the Respondent sending out letters in advance to clients to inform them of the risks associated with concentration in precious metal sector funds in the clients' accounts.

62. The Respondent advised MFDA Staff that it did not intend to have supervisory personnel at the Respondent participate directly in client interactions as the Respondent states it had no reason to believe that JW was not complying with the action plan. The Respondent also indicated that it was aware of additional Approved Persons with concentration concerns (BG, DG, and VS who are described in more detail below), with whom it was following the same process to resolve the concentration concerns in the accounts.

63. In June 2015, in response to an inquiry from MFDA Staff, the Respondent advised MFDA Staff that it was continuing to monitor the progress of JW's review of client accounts and would advise MFDA Staff if any issues arose. In August 2015, the Respondent further advised Staff that there were no issues with JW's review of client accounts, and that it would continue to monitor JW's activities.

64. Between August 2015 and November 2016, the Respondent did not report any concerns or issues with JW's concentration review of client accounts. In November 2016, MFDA Compliance Staff conducted a routine compliance examination of the Respondent and identified ongoing concentration concerns in accounts serviced by JW. During this period, the overall precious metal

sector funds holdings across the client accounts serviced by the Respondent did not decrease, and the level of concentration of precious metal sector funds in some of the client accounts serviced by JW increased.

65. In March 2017, the Respondent terminated JW's registration with the Respondent effective June 23, 2017, due to concerns regarding his business practices relating to precious metal sector fund concentration.

66. In April 2017, the Respondent issued letters to all clients who had concentration concerns in their accounts, which requested that the clients contact the Respondent's head office to make changes to their portfolios and update their KYC information. No clients responded to the Respondent's letters.

67. In June 2017, the client accounts formerly serviced by JW were reassigned to another Approved Person, who began writing letters to the clients and conducted calls to discuss concentration issues in their accounts and provided rebalancing options. The Respondent monitored the new Approved Person's contact with clients. Some of the clients rebalanced their holdings and others transferred their accounts from the Respondent. No additional client complaints were received.

68. The Respondent failed to conduct a timely and adequate supervisory investigation of the suitability and concentration concerns relating to JW, as it:

- a) permitted JW to deal directly with the clients to attempt to resolve the concentration issues in their accounts without adequate supervision to ensure that a balanced presentation about such funds was provided to clients;
- b) during the period that JW dealt directly with clients to attempt to resolve the concentration issues in client accounts, the Respondent did not adequately supervise JW's activities which resulted in concentration concerns in client accounts failing to be appropriately resolved; and
- c) did not, until April 2017, implement an adequate supervisory plan to resolve the concentration concerns in the client accounts that it first became aware of in or about May 2013.

69. On December 9, 2013, the Respondent paid compensation of \$34,103.43 to client VB in response to her complaint.

Approved Person Bradley Gascho

70. From February 5, 2002 to March 18, 2016, Bradley Gascho (“BG”) was registered as a dealing representative with the Respondent.

71. BG was the subject of an MFDA settlement hearing heard on July 31, 2018, at which time an MFDA Hearing Panel accepted a settlement agreement in which BG admitted that he: recommended to at least 73 clients that the clients concentrate at least 25% of their investment holdings in gold and/or precious metals sector funds, without conducting adequate due diligence to assess the suitability of his investment recommendations; he misrepresented, failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in gold or precious metals sector funds to a senior client; he increased the risk tolerance of a senior client on her account forms in order to ensure that the KYC information for the client matched his investment recommendations to concentrate a substantial portion of the client’s investment holdings in gold or precious metals sector funds; he failed to use due diligence to learn and accurately record the essential KYC factors relative to a senior client prior to making investment recommendations; and he failed to use due diligence to ensure that each recommendation made to a senior client was suitable when he recommended that the client concentrate her investment holdings in gold and precious metals sector funds. The hearing panel imposed sanctions on BG consisting of a 3 month prohibition from conducting securities related business with an MFDA Member, a \$25,000 fine, and costs of \$5,000.

72. As a result of reviewing the concentration concerns identified in respect of JW described above at paragraphs 55-56, the Respondent also identified concerns about the concentration of precious metal sector funds in the client accounts serviced by BG.

73. In April 2015, the Respondent provided BG with a list of clients whose portfolios contained precious metal sector funds that were greater than 25% of the client’s account holdings. The Respondent requested that BG follow an action plan to review each client account, discuss the suitability concerns, and obtain KYC updates or rebalance client portfolios where applicable. The

Respondent expected that BG address the majority of the concerns within 90 days, and that BG's Regional Branch Manager monitor the action plan.

74. As described above at paragraphs 60-61, on May 22, 2015, MFDA Staff advised the Respondent that it had concerns with having Approved Persons contact clients without the presence of supervisory staff at the Respondent in these client interactions.

75. On June 24, 2015, the Respondent advised MFDA Staff that BG had not been rebalancing clients' portfolios as the Respondent requested of him, and would wait until the end of the 90 day review period to determine whether it would take any additional supervisory steps.

76. The Respondent advised Staff that by the end of the 90 day review period (July 2015), it had identified that BG had not made significant progress in obtaining client KYC updates or rebalancing the holdings in the clients' accounts. The Respondent extended the 90 day review period to the end of summer 2015.

77. The Respondent identified that BG did not make significant progress in obtaining KYC updates or rebalancing client portfolios, and accordingly, on August 17, 2015, the Respondent sent letters to all clients who had potential concentration issues in their accounts to advise them their portfolios were comprised of a majority of precious metal sector funds and asked them to contact the Respondent if there were any changes to the client's personal or financial circumstances, or if the clients wished to make any changes to their mutual fund portfolios, including rebalancing any specific fund holdings.

78. By November 2015, no clients responded to the Respondent's letters. The Respondent contacted a sample of clients and identified instances where BG recorded that clients wished to maintain their holdings rather than rebalance their accounts, but this was inconsistent with information clients provided to the Respondent.

79. In January and February 2016, the Respondent followed up with clients where it found inconsistencies between the information recorded by BG and information provided by the clients described above, but did not receive a response from these clients. In July 2016, one of these clients, client WA, filed a complaint with the Respondent raising suitability concerns in her portfolio. In November 2016, the Respondent paid compensation of \$20,486.90 to the client. In

addition, clients TC and CC filed a complaint regarding their precious metal sector funds in March 2017. The Respondent issued a denial of compensation on the basis that the client did not suffer any losses, but rather realized gains. No additional client complaints were received.

80. In February 2016, the Respondent also contacted a further sample of clients and did not identify inconsistencies between information recorded by BG and the information clients provided to the Respondent.

81. On February 4, 2016, the Respondent notified BG that his registration would be terminated in March 2016 based on the outcome of the April 2015 action plan.

82. In March 2016, the Respondent informed MFDA Staff that the accounts formerly serviced by BG were reassigned to another Approved Person, who began to contact clients and review their investment holdings at the Respondent.

83. The Respondent failed to conduct a timely and adequate supervisory investigation of the suitability and concentration concerns relating to BG, as it:

- a) permitted BG to deal directly with the clients to attempt to resolve the concentration issues in their accounts without adequate supervision to ensure that a balanced presentation about such funds were provided to clients; and
- b) did not, until August 2015, implement an adequate supervisory plan to resolve the concentration concerns in the client accounts that it first became aware of in or about April 2015.

#### Approved Persons David Gordon and VS

84. From November 9, 2006 to May 13, 2016, David Gordon (“DG”) and VS were Approved Persons registered as mutual fund sales persons at the Respondent. DG and VS were business partners who operated from the same branch location in Campbell River and shared a representative code.

85. DG is the subject of an ongoing MFDA proceeding commenced by Notice of Hearing dated April 23, 2018 as amended on May 24, 2019. The MFDA has announced that a settlement hearing will take place on September 23, 2019 in respect of a settlement agreement entered into between

Staff of the MFDA and DG concerning allegations that DG failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in precious metals sector funds to at least six clients, thereby failing to ensure that his recommendations were suitable for the clients and in keeping with their investment objectives; and failed to ensure that an investment recommendation he made to at least six clients to invest in precious metals sector funds was suitable having regard to the clients' relevant Know-Your-Client factors, and the risks associated with concentrating their investment portfolio in precious metals sector funds.

86. The Respondent identified concerns about the concentration of precious metal sector funds in the client accounts serviced by DG and VS as a result of a review conducted by the Respondent in respect of JW described above at paragraph 55.

87. On April 2, 2015, as part of an action plan, the Respondent required DG and VS to contact certain clients that the Respondent identified had potential concentration concerns with gold or precious metal sector funds in order to review each client account, discuss the suitability concerns with clients, and obtain KYC updates or rebalance client portfolios where applicable. The Respondent expected DG and VS to address the majority of the concerns within 90 days.

88. The Respondent instructed the Regional Branch Manager of DG and VS to monitor the action plan.

89. After receiving the action plan, VS and DG expressed concerns with the Respondent's review of client account holdings in the action plan. This expression of concern ought to have suggested to personnel at the Respondent that DG and VS may not have had a sufficiently balanced discussion with the clients or make appropriate recommendations to the clients as part of the action plan. The Respondent states that, at the time, its representatives believed that VS and DG would comply with the terms of the action plan.

90. As described above at paragraphs 60-61, on May 22, 2015, MFDA Staff advised the Respondent that it had concerns with having VS and DG contact clients without having supervisory staff at the Respondent participate in client interactions and/or send out letters in advance to clients to inform them of the risks associated with concentration in precious metal sector funds in the clients' accounts.

91. In or about June 29, 2015, the Respondent determined that DG and VS did not take adequate steps to review the concentration in client accounts as required by the Respondent.
92. On September 9, 2015, the Respondent provided an additional 90 days for DG and VS to review the clients' accounts, and provide information to the Respondent to analyze and determine whether it would issue letters to clients advising them of the potential concentration concerns in their accounts at the Respondent.
93. At the conclusion of the 90 day period (on or about December 9, 2015), DG and VS provided information to the Respondent as requested, and in or about January 2016, the Respondent determined that it was unable to validate the accuracy of the information provided by DG and VS.
94. Commencing in January 2016 the Respondent had communications with MFDA Staff about the Respondent contacting clients regarding the concentration of precious metal sector funds in their portfolios, including finalizing the content of the Respondent's letters to clients, and the Respondent conducting subsequent follow-up telephone calls with clients.
95. Between January and June 2016, the Respondent communicated with MFDA Staff about the content of the letters to clients and exchanged drafts of such communications. MFDA Staff also had continuing communications with the Respondent about their action plan and how to effectively communicate with clients about the concentration issues in their accounts between February to April 2016.
96. In or about March 2016, VS indicated to the Respondent that she would be resigning from the Respondent.
97. On May 15, 2016, DG and VS resigned from the Respondent.
98. Client accounts formerly serviced by DG and VS were temporarily assigned to another Approved Person at the Member.
99. On or about June 24, 2016, the Respondent sent the client letters which advised the clients about the concentration issues in their accounts, discussed the risks of precious metal sector funds,

provided a copy of their portfolio summary and KYC profile, and instructed the clients to contact the new Approved Person to make changes to their portfolio and to update their KYC information.

100. DG retired from the industry and is no longer registered in the securities industry in any capacity. By June 24, 2016, VS became registered with another MFDA Member and transferred all or substantially all of the book of business of DG and VS to the other MFDA Member.

101. Since retiring from the industry, there has been a total of 12 clients that have filed complaints with the Respondent against DG regarding the suitability of the precious metals sector funds in their accounts held at the Respondent. To date, the Respondent has paid compensation to 9 clients. The Respondent declined to pay compensation to 1 client and complaint handling by the Respondent continues through the Ombudsman For Banking Services and Investments with respect to the 2 remaining clients. The MFDA is not making allegations of unfair complaint handling against FundEX for their handling of complaints against DG.

102. The Respondent failed to conduct a timely and adequate supervisory investigation of the suitability and concentration concerns relating to DG and VS, as it:

- a) permitted DG and VS to deal directly with the clients to attempt to resolve the concentration issues in client accounts without independent supervision adequate to ensure that a balanced presentation about such funds were provided to clients; and
- b) did not, until June 2016, implement an adequate supervisory plan to resolve the concentration concerns in the client accounts that it first became aware of in or about in or about April 2015.

**Failure to ensure client complaints against Approved Person Ronald Schwartz were handled fairly**

Approved Person Ronald Schwartz

103. From September 1, 2006 to January 30, 2009, Ronald Schwartz (“Schwartz”) was registered in Ontario as a mutual fund salesperson with the Respondent.

104. From February 2, 2009 to October 24, 2014, Schwartz was registered in Ontario as a mutual fund salesperson with Hub Capital Inc. (“HUB”), a Member of the MFDA.

105. At all material times, Schwartz conducted business from a sub-branch in the Kitchener-Waterloo area. Schwartz operated his mutual fund business using the approved trade name Assure Financial.

106. Schwartz was the subject of an MFDA proceeding commenced by Notice of Hearing dated June 6, 2017. On May 29, 2018, a Hearing Panel of the MFDA found that while Schwartz was registered with the Respondent and subsequently with HUB he processed a series of unauthorized redemptions and misappropriated at least \$69,035 from six clients. On June 22, 2018, the Hearing Panel imposed the following sanctions on Schwartz:

- a permanent prohibition from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member;
- a fine in the amount of \$225,000, apportioned as follows:
  - i. \$125,000 – Unauthorized redemptions and misappropriation
  - ii. \$25,000 – Creating and distributing fictitious statements and misleading clients and Member
  - iii. \$75,000 – Failure to cooperate; and
- costs in the amount of \$10,000.

Schwartz’s unauthorized redemptions and misappropriation from client accounts at the Respondent

i. Client PS and CS

107. At all material times, clients PS and CS were spouses whose accounts at the Respondent were serviced by Schwartz.

108. The Respondent, using limited trade authorizations signed by clients PS and CS, processed redemptions in the clients’ respective Registered Retirement Savings Plan (“RRSP”) accounts at the Respondent, without their knowledge and approval, as follows:

<b>Client</b>	<b>Date of Redemption</b>	<b>Amount</b>
PS	January 13, 2009	\$2,440
CS	January 15, 2009	\$2,677
		<b>Total \$5,117</b>

109. Schwartz processed the Redemptions by completing the Order Instruction Forms of the Respondent (the “Order Forms”), on which Schwartz indicated that the Redemptions were authorized pursuant to the LTA’s for the clients on file with the Respondent.

110. Schwartz submitted the Order Forms he completed directly to the fund companies without advising the Respondent, and requested that the fund companies deliver cheques made payable to the clients to Schwartz’s sub-branch office.

111. Schwartz deposited the redemption cheques into a business account held in the name of Assure Financial and misappropriated the monies of clients PS and CS.

112. In 2010, clients PS and CS received T4 RRSP receipts from the Canada Revenue Agency pertaining to withdrawals from their respective RRSP accounts that occurred in 2009. The clients questioned Schwartz about the withdrawals, who advised clients PS and CS that the withdrawals were made in error and would be redeposited.

113. In June 2015, clients CS and PS became aware that Schwartz had misappropriated certain segregated funds they held at another financial institution that sponsored Schwartz’s insurance license. In August 2015, client CS and PS expressed concerns to the Respondent about Schwartz, advised the Respondent that Schwartz had told them that the redemptions were made in error and that the monies would be reinvested, and sought information and documents from the Respondent about the redemptions from their accounts.

ii. Client RL

114. At all material times, client RL held accounts at the Respondent that were serviced by Schwartz.

115. The Respondent, using a limited trade authorization signed by client RL processed redemptions in the client's RRSP account at the Respondent, without the client's knowledge and approval, as follows:

<b>Client</b>	<b>Date of Redemption</b>	<b>Amount</b>
RL <sup>1</sup>	January 19, 2009	\$2,500
RL	January 19, 2009	\$2,500
RL	January 20, 2009	\$2,500
RL	January 20, 2009	\$2,500
RL	January 22, 2009	\$2,000
RL	January 22, 2009	\$3,000
RL	January 23, 2009	\$2,500
RL	January 23, 2009	\$2,500
		<b>Total \$20,000</b>

116. Schwartz processed the Redemptions by completing Order Instruction Forms of the Respondent, on which Schwartz indicated that the Redemptions were authorized pursuant to the LTA's for the client on file with the Respondent.

117. Schwartz submitted the Order Forms he completed directly to the fund companies without advising the Respondent, and requested that the fund companies deliver cheques made payable to client RL to Schwartz's sub-branch office.

118. Schwartz deposited the redemption cheques into a business account held in the name of Assure Financial and misappropriated the monies of client RL.

119. In March 2015, client RL passed away. In June 2015, Representatives of HUB contacted client RL's spouse, client BB, to advise that assets had been misappropriated from her account at HUB. HUB conveyed the information to the Respondent on RL's behalf.

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<sup>1</sup> On February 2, 2009, Schwartz transferred his registration to Hub and Client RL subsequently transferred his accounts to Hub. Between November 2, 2010 and March 23, 2012, Schwartz processed ten additional unauthorized redemptions in client RL's RRSP account while Hub totaling approximately \$6,984.

iii. Failing to ensure Client complaints were handled fairly

120. The Respondent did not offer compensation to clients PS and CS, and RL for their losses caused by Schwartz.

121. In handling the complaints of the clients, the Respondent failed to adequately take into account its responsibility for Schwartz's acts, namely that Schwartz was an Approved Person at the time who was responsible for servicing the accounts of its clients when he processed the unauthorized redemptions and misappropriated monies from the clients' accounts at the Respondent.

122. On May 30, 2018, the Respondent paid compensation to clients CS and PS, and to client BB on behalf of client RL.

#### **Failure to conduct adequate Branch Reviews**

123. On July 24, 2006, MFDA Policy No. 5 came into effect, which requires each MFDA Member to establish a branch review program to effectively assess and monitor compliance with regulatory requirements. Branch reviews are required to be conducted by qualified individuals who are independent from the branch and the branch manager. An MFDA Member is generally expected to perform an on-site review of its branches and sub-branches no less than once every three years, unless the Member can demonstrate the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances, should a Member never perform an on-site review of a branch.

124. MFDA Compliance Staff conducted a compliance examination of the Respondent in order to assess its compliance with MFDA By-laws, Rules and Policies during the period August 2009 to February 2012. During the course of the compliance examination and thereafter, MFDA Staff identified instances where, between August 2009 to November 2013, the Respondent did not conduct an on-site compliance review of all of its branches at least once every three years, in accordance with MFDA Policy No. 5 and MFDA Rule 2.5.1.

## **Disciplinary History**

125. The Respondent was the subject of a prior settlement hearing held before a Hearing Panel of the MFDA on January 27, 2012 in MFDA File No. 200932.

## **V. RESPONDENT'S POSITION**

126. Since the events referred to herein, the Respondent has taken numerous steps to address the underlying issues in terms of both its policies and procedures. The remedial steps include the revision of overall compliance policies and procedures, hiring of additional resources in the areas of Audit, Complaints & Investigations and Trade Supervision, restructuring of the existing divisions with the Compliance department, the development of an electronic monitoring tool to support the Respondent's Risk Matrix as well as creating a new Compliance Risk Steering Committee.

127. Additional information regarding the enhancements made to the Respondent's compliance governance infrastructure are outlined below.

### **Branch Review Program**

128. The Respondent has implemented new Branch Review tracking systems to reconcile all Approved Persons' with the 3-year audit schedule ensuring adherence to Policy 5 requirements.

### **Complaint Handling Procedures**

129. The Respondent has restructured the Complaints & Investigations department and created new roles within the team to ensure reasonable supervisory investigations and fair complaint handling procedures are delivered in accordance with MFDA Policy 3 and MFDA Rule 2.1.1. The enhanced structure allows for multiple layers of oversight with respect to all complaint handling and investigatory matters.

### **Exempt Securities Concentration Policy**

130. As noted in the Contraventions, the Respondent failed to adequately supervise the Approved Person's recommendation to a client for the purchase of an exempt market product. As remedial action, the Respondent has imposed a concentration limit in exempt market securities

products, meaning that the Respondent will not permit clients to invest in exempt market securities products beyond a certain percentage of their overall investments.

### **Supervision of External Assets held in CWT accounts**

131. The Respondent has implemented a quarterly reconciliation process to review account holdings for any non-Fundserv products held in CWT accounts to ensure that there have been no unapproved products added to a client's self-directed account holdings.

### **Sector Concentration Policy**

132. In addition to the exempt market securities concentration policy, the Respondent has amended its policies and procedures in January 2017 by imposing a sector concentration limit.

### **Compliance Steering Committee**

133. Key members of the Compliance team, along with the Ultimate Designated Persons of the Respondent meet on a quarterly basis to resolve any complex compliance situations and issues as well as discuss and monitor upcoming regulatory changes to ensure that the Respondent is prepared for any policy or procedural changes.

## **X. CONTRAVENTIONS**

134. The Respondent admits that:

- a) Between June 2011 and April 2012, the Respondent failed to adequately supervise its Approved Person Christopher Singer's recommendation to a client for the purchase of an exempt market product, which recommendation was unsuitable for the client having regard to concentration and the client's Know-Your-Client information, including but not limited to the client's investment knowledge and experience, and time horizon, contrary to MFDA Rules 2.2.1 and 2.1.1;
- b) Between November 2007 and approximately February 2014, the Respondent did not have procedures in place to monitor all of the holdings in accounts held at Canadian Western Trust by its clients, and did not identify the sale of unapproved products in the accounts of two clients, contrary to MFDA Rule 2.5.1;

- c) Commencing in 2011, the Respondent failed to ensure that complaints from two clients regarding its Approved Persons Stuart Henschel and William Cormylo, were handled fairly, contrary to MFDA Rule 2.11 and MFDA Policy No. 3;
- d) Between June 2013 and April 2017, the Respondent failed to conduct adequate supervisory investigations to review and resolve suitability and concentration of precious metal sector funds concerns it identified in client accounts serviced by 4 Approved Persons, contrary to MFDA Rules 2.2.1 and 2.5.1;
- e) Between March 28, 2016 and May 1, 2018, the Respondent failed to ensure that a complaint from a client regarding its approved person Ronald Schwartz was handled fairly, contrary to MFDA rule 2.11 and MFDA Policy No. 3; and
- f) Between August 2009 to November 2013, the Respondent maintained a branch review program that did not ensure that in all instances an on-site compliance review of all of its branches was conducted at least once every three years, in accordance with MFDA Policy No. 5 and MFDA Rule 2.5.1.

## **XI. TERMS OF SETTLEMENT**

135. The Respondent agrees to the following terms of settlement:

- a) The Respondent will pay a fine of \$250,000 pursuant to section 24.1.2(b) of MFDA By-law No. 1.
- b) The Respondent will pay costs of \$50,000 pursuant to section 24.2 of MFDA By-law No. 1
- c) The Respondent shall in the future comply with MFDA Rules 1.2.1, 2.1.1, 2.2.1, 2.5, 2.5.1, and 2.11, and MFDA Policy No. 3 and No. 5; and
- d) A senior officer of the Respondent will attend in person on the date set for the Settlement Hearing.

## **XII. STAFF COMMITMENT**

136. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent or any of its officers or directors in respect of the facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part X below. 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 Parts IV and VI of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and VI, 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.

### **XIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

137. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA 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](http://www.mfda.ca).

138. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive its 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.

139. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

140. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 it.

#### **XIV. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

141. 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 section 24.3 of the By-laws of the MFDA against the Respondent or any of its officers or directors based on, but not limited to, the facts set out in Part IV of the 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.

#### **XV. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

142. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 this Settlement Agreement or the settlement negotiations.

143. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

#### **XVI. DISCLOSURE OF AGREEMENT**

144. 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.

145. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

**XVII. EXECUTION OF SETTLEMENT AGREEMENT**

146. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

147. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 15<sup>th</sup> day of August, 2019.

“David Chapman”  
\_\_\_\_\_  
FundEX Investments Inc.  
Name: David Chapman  
Title: President

“CL”  
\_\_\_\_\_  
Witness – Signature

CL  
\_\_\_\_\_  
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. 2016110**



**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: FundEX Investments Inc.**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of FundEX Investments Inc. (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 the Respondent:

- a) Between June 2011 and April 2012, the Respondent failed to adequately supervise its Approved Person Christopher Singer’s recommendation to a client for the purchase of an exempt market product, which recommendation was unsuitable for the client having regard to concentration and the client’s Know-Your-Client information, including but not limited to the client’s investment knowledge and experience, and time horizon, contrary to MFDA Rules 2.2.1 and 2.1.1;

- b) Between November 2007 and approximately February 2014, the Respondent did not have adequate procedures in place to monitor all of the holdings in its client accounts held at Canadian Western Trust, and did not identify the sale of unapproved products in the accounts of two clients, contrary to MFDA Rule 2.5.1;
- c) Commencing in 2011, the Respondent failed to ensure that complaints from two clients regarding its Approved Persons Stuart Henschel and William Cormylo, were handled fairly, contrary to MFDA Rule 2.11 and MFDA Policy No. 3;
- d) Between June 2013 and April 2017, the Respondent failed to conduct adequate supervisory investigations to review and resolve suitability and concentration of precious metal sector funds concerns it identified in client accounts serviced by 4 Approved Persons, contrary to MFDA Rules 2.2.1 and 2.5.1;
- e) Between March 28, 2016 and May 1, 2018, the Respondent failed to ensure that a complaint from a client regarding its Approved Person Ronald Schwartz was handled fairly, contrary to MFDA Rule 2.11 and MFDA Policy No. 3; and
- f) Between August 2009 to November 2013, the Respondent maintained a branch review program that did not ensure that in all instances an on-site compliance review of all of its branches was conducted at least once every three years, in accordance with MFDA Policy No. 5 and MFDA Rule 2.5.1.

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

1. The Respondent will pay a fine of \$250,000 pursuant to section 24.1.2(b) of MFDA By-law No. 1;
2. The Respondent will pay costs of \$50,000 pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with MFDA Rules 1.2.1, 2.1.1, 2.2.1, 2.5, 2.5.1, and 2.11, and MFDA Policy No. 3 and No. 5; 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]

DM 705693