Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF

THE MUTUAL FUND DEALER RULES[i]

and

Matthew Ewonus

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA (the "Corporation") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to section 24.4 of MFDA By-law No.1 (now Mutual Fund Dealer Rule 7.4.4), a hearing panel (the "Hearing Panel") should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the Corporation ("Staff") and Matthew James Ewonus (the "Respondent").

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

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

II. CONTRAVENTIONS

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

a) Between March 23, 2020 and March 24, 2020, the Respondent offered compensation to a client in response to a complaint without the prior written consent of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.2 (as it relates to Rule 2.5.1), 2.1.1, and 2.1.4,[1] and MFDA Policy No. 3 (now Mutual Fund Dealer Rules 1.1.2, 2.5.1, 2.1.1, 2.1.4 and 300);

b) Between March 23, 2020 and March 24, 2020, the Respondent provided a guarantee to a client of a specific result that she would receive from her investments, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.1.4, 2.7.2, and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.1, 2.1.4, 2.7.2, 1.1.2, and 2.5.1); and

c) Between March 30, 2020 and October 9, 2020, the Respondent made false or misleading statements to the Member and MFDA Staff during the course of an investigation into his conduct, contrary to the Member's policies and procedures and MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1).

III. TERMS OF SETTLEMENT

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

a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any Dealer Member of the Corporation that is registered as mutual fund dealer (formerly Members of the MFDA) for a period of six months, commencing on the Monday following acceptance of this Settlement Agreement, pursuant to section 24.1.1(e) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(c));

b) the Respondent shall pay a fine in the amount of $30,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

[1] On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all allegations set out in this Settlement Agreement that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

c) the Respondent shall pay costs in the amount of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

d) the Respondent shall in the future comply with the policies and procedures of the Member and Mutual Fund Dealer Rules 1.1.2 (as it relates to Rule 2.5.1), 2.1.4, and 300; and

e) the Respondent shall attend in person or by videoconference on the date set for the Settlement Hearing.

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

IV. AGREED FACTS

Registration History

7. Since November 8, 2001, the Respondent has been registered in British Columbia as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA (now a Dealer Member of the Corporation).

8. At all material times, the Respondent conducted business in the Kelowna, British Columbia, area.

The Member's Policies and Procedures

9. At all material times, the Member's policies and procedures:

a) required its Approved Persons to review, and if appropriate, update, clients' Know-Your-Client ("KYC") information at least every 24 months;

b) required its Approved Persons to report any client complaint to the Member no later than two days after being informed of the complaints.

c) stated that:

Non-monetary benefits such as gifts or charitable donations cannot be used to circumvent guidelines and rules. . . .. Any compensation to a client for a client

referral must flow through [the Member]. *Therefore, all monetary and non-monetary benefits provided directly or indirectly to or from clients must flow through the* ["Member"]; and

d) stated that:

...All financial result strategies, market-related information and forward-looking projections that advisors use for communication purposes, whether verbal or written, should come out of one of Sun Life Financial and its subsidiaries approved statements…

Misconduct

10. At all material times, client CM was a client of the Member and the Respondent was the Approved Person responsible for servicing her account.

11. On March 19, 2020, client CM sent an email to the Respondent in which she instructed him to "cash out" all of her accounts "immediately". Later on March 19, 2020, client CM contacted the Respondent by telephone and instructed him to switch her holdings to a high interest savings cash fund (the "Switch").

12. Client CM's order could not be processed by the Member immediately because the Respondent had not updated her KYC information within the past 24 months, as required by the Member's policies and procedures. Since the Respondent had not reviewed and updated client CM's KYC information since January 26, 2018, the Member's order entry system would not allow the processing of trades in the clients' accounts until the KYC information applicable to such accounts was reviewed and updated.

13. The Respondent states that on March 19, 2020, he obtained instructions over the telephone from client CM to update client CM's KYC information and client CM then signed a KYC Update Form.

14. On Friday, March 20, 2020, the Respondent updated client CM's KYC information and processed the trade that client CM had requested on the previous day. The Respondent submitted for processing the trade in client CM's account after the cut-off time for same-day transactions, and consequently, the transaction could not be processed until the next business day: Monday, March 23, 2020.

15. On March 20, 2020, after submitting the trade for processing as requested by client CM, the Respondent sent an email to client CM advising her that the transaction would only be settled on March 23, 2020.

16. On March 20, 2020, in response to the Respondent's email, client CM sent an email to the Respondent complaining that the Respondent:

a) had not processed the trade on the day that she had given him trade instructions;

b) had not previously advised her that the Member could not process her trade instructions until her KYC information was updated;

c) had not arranged for her to receive the KYC Update Form until the morning of March 20, 2020; and

d) had not called her for further instructions when he found out that he could not process the trade that she had requested until a later date.

17. The Respondent did not report to the Member that he received the complaint from client CM on March 20, 2020.

18. On March 20, 2020, the Respondent responded to client CM's complaint by email, expressing his view that there had been a miscommunication and informing her that he would "look into" the matter and contact her on March 23, 2020.

19. On March 22, 2020, client CM sent a further email to the Respondent complaining that she had instructed the Respondent to sell her accounts to cash on March 19, 2020, and he had not done so. Client CM informed the Respondent that she expected the settlement of her account to result in a closing balance equal to the March 19, 2020 closing balance (approximately $128,000).

20. The Respondent did not report to the Member that he had received a second complaint and a request for compensation from client CM on March 22, 2022.

21. Between March 19, 2020 (when client CM communicated trade instructions to the Respondent) and March 23, 2020, the value of client CM's portfolio had declined in value by approximately $5,000. On March 23, 2020, the transaction which client CM had instructed the

Respondent to complete, as described in paragraph 11 above, was settled, and her investment holdings were switched to a high interest savings cash mutual fund.

22. On March 23, 2020, in response to client CM's complaint, the Respondent emailed client CM stating that he would "make sure" that she would receive "exactly what [she] need[ed]".

23. On March 23, 2020, the Respondent left a voicemail for client CM in which he stated the following:

> [The Respondent] calling, it's about 10:05 on Monday. I'm touching base about your transaction and wanted to let you know we'll be sure that we get back to the number that you wanted. The transactions are going to go through on a different date, the amount you get initially is going to be different, but I'll find a way to make that --- help to make it back to that 128 number for you. I guess I'm just working through the logistics, but rest assured, I will personally guarantee that to be the case. But do give me a holler, you can reach me on my cell probably until around 5:30, but yes, I guess I will make sure we get it exactly where you wanted, make sure you feel good about that. And then we'll work on building stuff for you. And we should chat about your insurance stuff as well. Hope you had a good weekend, talk to you soon. [emphasis added]

24. In his voicemail message of March 23, 2020, the Respondent personally guaranteed that client CM would be compensated even though he had not yet informed the Member that he had received two complaints from client CM and he had not obtained authorization from the Member to pay compensation to client CM in order to restore the balance of her account to its value on March 19, 2020 when he received instructions to process the Switch in her account as described above at paragraph 11.

25. On March 24, 2020, the Respondent left two additional voicemails for client CM in which he stated the following:

> **1st Voicemail Message**
> Hey, [client CM], [the Respondent] Matt Ewonus calling it's about 9:45-ish on Tuesday morning. Just getting back to you about your portfolio. As you saw, you saw the final transaction come through around 123 and personally I think we timed that perfectly on the bottom, but we'll find out, time will tell. We had a big bounce today, we're up about 8 percent. For those that are in the market, but like I had said, I'll make sure that your portfolio, the balance is at 128. I want to make sure that you're not down. How I do that is going to have to be a little sneaky because there's a rule about me basically comping you back. So what I'm going to do is personally put money into your portfolio, but --- so we'll make sure you're at 128. But what I will ask is that once you put your money back in, you give me one year to make you more --- that $5,000 and more, above what the market would normally do. So if the market normally gives you 5, I will get you an additional 5 on top of that. And after that --- [emphasis added]

2nd Voicemail Message
"Hey, [client CM], [the Respondent] Matt calling back. Sorry for the lengthy messages. So, the quick version, I'm guaranteeing you the 5 grand that you're down, roughly, I will put it in after you start investing again. If we haven't earned above the average, above what you would have got as a regular investor, [inaudible] earned an additional 5 grand after 12 months, I will cut you a cheque and put it right back in myself. Give me a call when you get a chance, you've got my cell phone,[#]. And, yes, again, I'm doing this over the phone because I'm trying to find creative ways to make this happen for you. So phone is better than email or text. At any rate, give me a call. Cheers." [emphasis added]

26. In the two voicemail messages that the Respondent left for client CM on March 24, 2020, the Respondent promised client CM that:

a) he would personally put $5,000 in her account to restore the value of her account to approximately $128,000 (which was the value of the account at the time when she instructed the Respondent to switch her into cash); and

b) he guaranteed client CM that if she continued to invest in accounts that he serviced for a full year, if the value of her account did not exceed an average market return by at least $5,000, he would top up her account to that value.

27. Contrary to the Member's policies and procedures and MFDA Rules and Policies, the content of the Respondent's voicemail message constituted:

a) an offer to pay compensation to client CM to resolve her complaint which was made without prior written authorization from the Member; and

b) a guarantee to a client of a specific result that she would receive from her investments.

28. On March 25, 2020, in response to the Respondent's voicemail messages, client CM emailed the Respondent to, among other things:

a) express her disappointment with his voicemail messages; and

b) demand compensation for her losses.

29. On March 25, 2020, client CM sent an email to the Respondent and the Member in which she complained that that she had repeatedly instructed the Respondent to liquidate her holdings on March 19, 2020 but that he had only done so on March 23, 2020 and provided the Member with copies of her prior written complaints.

30. The Member then commenced an investigation into client CM's complaint.

False or Misleading Statements to the Member and the MFDA

31. On March 30, 2020, the Member requested that the Respondent provide information concerning the content of client CM's complaints and, in particular, requested a response to her allegation that he had offered to pay compensation to client CM in the amount of $5,000. The Respondent denied that he had offered to compensate the client.

32. On June 12, 2020, the Member interviewed the Respondent, and asked him again whether he had offered to pay $5,000 in compensation to client CM. The Respondent again denied that he had offered to pay compensation to client CM.

33. On October 7, 2020, the Member sent an email to the Respondent in which it informed him that Staff of the MFDA ("Staff") was seeking information concerning client CM's complaints and requested his response.

34. On October 9, 2020, the Respondent provided a written statement to the Member in response to queries from Staff. In his written statement, the Respondent denied for a third time that he had offered to compensate client CM in response to her complaint.

35. The Respondent provided false or misleading responses to the queries from the Member and from Staff. Specifically, in the Respondent's written statement to the Member dated March 30, 2020, in his oral statement to the Member on June 12, 2020, and in his written response to questions from Staff dated October 9, 2020, the Respondent falsely denied that he had offered to pay compensation to client CM. As set out in paragraphs 25 and 26 above, on March 24, 2020 the Respondent offered to pay $5,000 in compensation to client CM in response to her complaint.

Additional Factors

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

37. The Respondent has paid the Member a fine of $20,000 in respect of the misconduct described above.

38. By entering into this Settlement Agreement, the Respondent has saved the Corporation time, resources, and expenses associated with conducting a contested hearing on the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

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

40. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.3.5) and Rule 15.2(2) of the 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.

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

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

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

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

c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer

Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;

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

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

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

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

45. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement,

including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

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

DATED this 20th day of March, 2023.

"Matthew Ewonus"
Matthew Ewonus

"SL"
Witness – Signature

SL
Witness – Print name

"Shelly Feld"
Staff of the MFDA
Per: Shelly Feld
New Self-Regulatory Organization of Canada

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

Schedule "A"

Order

File No. 202241

Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

IN THE MATTER OF

THE MUTUAL FUND DEALER RULES[i]

and

Matthew James Ewonus

ORDER

WHEREAS on November 18, 2022, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of By-law No. 1 [now Mutual Fund Dealer Rules 7.3 and 7.4] in respect of a disciplinary proceeding commenced against Matthew James Ewonus (the "Respondent");

AND WHEREAS an appearance was held by videoconference before a Hearing Panel of the Pacific Regional Council of the MFDA in this matter on December 6, 2022;

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the Corporation, dated March 15, 2023 (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 MFDA By-law No. 1 [now Mutual Fund Dealer Rules 7.3 and 7.4.1];

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that the Respondent:

a) Between March 23, 2020 and March 24, 2020, offered compensation to a client in response to a complaint without the prior written consent of the Member, contrary to the Member's policies and procedures, and MFDA Rules 1.1.2 (as it relates to Rule 2.5.1), 2.1.1, and 2.1.4[1], and MFDA Policy No. 3 (now Mutual Fund Dealer Rules 1.1.2, 2.5.1, 2.1.1, 2.1.4 and 300);

b) Between March 23, 2020 and March 24, 2020, provided a guarantee to a client of a specific result that she would receive from her investments, contrary to the Member's policies and procedures, and MFDA Rules 2.1.1, 2.1.4, 2.7.2, and 1.1.2 (as it relates to Rule 2.5.1) (now Mutual Fund Dealer Rules 2.1.1, 2.1.4, 2.7.2, 1.1.2, and 2.5.1); and

c) Between March 30, 2020 and October 9, 2020, made false or misleading statements to the Member and MFDA Staff during the course of an investigation into his conduct, contrary to the Member's policies and procedures and MFDA Rule 2.1.1 (now Mutual Fund Dealer Rule 2.1.1);

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

1. The Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of six months, commencing on March 27, 2023, pursuant to section 24.1.1(c) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(c)).

2. The Respondent shall pay a fine in the amount of $30,000 in certified funds on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b)).

[1]On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to this Rule, all allegations set out in this Settlement Agreement that make reference to that Rule concern the version of the Rule that was in effect between February 27, 2006 and June 30, 2021.

3. The Respondent shall pay costs in the amount of $5,000 in certified funds on the date of this Order, pursuant to section 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2).

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3 (formerly section 23 of MFDA By-law No. 1), requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of the Corporation 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], 202[ ].

Name,
Chair

Name,
Industry Representative

Name,
Industry Representative

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