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: Paul David Gowan

Heard: December 21, 2021 by electronic hearing in Toronto, Ontario
Decision: December 21, 2021
Reasons for Decision: January 21, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.	Chair
Guenther W. K. Kleberg	Industry Representative
Timothy Pryor	Industry Representative

Appearances:

Alan Melamud	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Barry Papazian	)	Counsel for Respondent
Paul David Gowan	)	Respondent

I. SETTLEMENT AGREEMENT

1. We accepted the settlement agreement dated December 14, 2021 ("Settlement Agreement") between the staff of the MFDA ("Staff") and Paul David Gowan ("Respondent") at an electronic settlement hearing held in accordance with MFDA rules for an electronic hearing.

2. A copy of the Settlement Agreement is attached to these Reasons as Schedule "1". The agreed facts are set out in Parts IV and V of the Settlement Agreement.

II. CONTRAVENTIONS

3. The Respondent admits that between November 2017 and April 2018, he signed or submitted account documents obtained by an unregistered individual to conduct securities related business and updated Know-Your-Client information of clients of the Member without using the necessary due diligence to learn the essential facts relative to the clients, ensuring that transactions processing in their accounts were suitable, or ensuring that the transactions were authorized, thereby facilitating stealth advising, contrary to MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

III. SPROPOSED SANCTION

4. The Settlement Agreement provides that:

a) the Respondent shall be prohibited from conducting securities related business while in the employ of or in association with a Member of the MFDA for a period 1 year from the date the Settlement Agreement is accepted;
b) the Respondent shall pay a fine in the amount of $15,000 upon acceptance of the Settlement Agreement;
c) the Respondent shall pay costs in the amount of $5,000 upon acceptance of the Settlement Agreement; and
d) The Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

IV. APPLICABLE PROVISIONS

5. The relevant MFDA provisions in this matter are:

- MFDA Rule 1.1.1 (Members);
- MFDA Rule 2.1.1 (Standard of Conduct);

- MFDA Rule 2.2.1 ("Know-Your-Client");
- Section 24.1.1 of MFDA By-law No. 1 (Discipline);
- Section 24.2 of MFDA By-law No. 1 (Costs);
- Section 24.4 of MFDA By-law No. 1 (Settlements);
- Rule 1 of the MFDA Rules of Procedure (Interpretation and Application);
- Rule 2 of the MFDA Rules of Procedure (Time);
- Rule 14 of the MFDA Rules of Procedure (Settlement Agreements); and
- Rule 15 of the MFDA Rules of Procedure (Settlement Hearings).

V. ABRIDGEMENT OF TIME

6. Staff and the Respondent requested that we exercise our discretion pursuant to Rules 2.2 and 1.5 of the MFDA Rules of Procedure to abridge the ordinary requirement set out in Rule 15.2 of the MFDA Rules of Procedure that a Settlement Hearing be heard only upon 10 days' notice to the public.

7. We determined that it was in the public interest that the Settlement Hearing be conducted in an expeditious manner and that no prejudice would be caused to members of the public if this request was granted. First, this matter was commenced by issuance of a Notice of Hearing, which was published on December 3, 2021, and the first appearance was held on December 14, 2021. Accordingly, the public had had adequate notice of this proceeding generally and any interested member of the public could have attended the first appearance, during which the scheduling of this appearance and the potential for it to be a Settlement Hearing was discussed. Second, Settlement Hearings are often held *in camera* and therefore, even if the ordinary notice period was provided, members of the public would be excluded from the proceeding unless and until the Settlement Agreement was accepted by us.

8. At the hearing, we did not, in fact, go *in camera.* This was because we had reviewed all the materials and written submissions in this matter prior to the commencement of the hearing. We had no questions or need for further clarification of anything from the parties at the hearing. We had deliberated and determined before the hearing, and advised the parties at the commencement of the hearing, that we would be accepting the Settlement Agreement at the hearing.

9. This type of relief has been granted in previous disciplinary proceedings.

Sun Life Financial Services (Canada) Inc. (Re), 2018 LNCMFDA 3 at para. 2.

Order dated November 23, 2021, In the Matter of Quadrus Investment Services Ltd.

Wilcott (Re), 2019 LNCMFDA 52.

Investia Financial Services Inc. (Re), 2019 LNCMFDA 18 at para. 35.

VI. ISSUES

10. There were two key issues that we had to determine before accepting the Settlement Agreement:

a) Did the facts admitted by the Respondent constitute misconduct in contravention of the MFDA By-law, Rules, or Policies, or provincial securities legislation?

b) Were the sanctions agreed to in the Settlement Agreement acceptable by i) falling within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all of the circumstances and in comparison to similar cases, ii) being fair and reasonable to the parties, and iii) by constituting an adequate deterrent against similar misconduct in the future by the Respondent and by other members of the industry?

VII. THE FACTS ADMITTED CONSTITUTE MISCONDUCT

(i) Stealth Advising

11. The Respondent admitted facilitating stealth advising by Michael Forsey ("Forsey"), an unregistered individual. "Stealth advising" is a practice whereby an unregistered individual services the accounts of clients of the Member and provides advice and makes recommendations to the clients. To effect the resulting transactions, an Approved Person of the Member submits the required account forms for processing under the Approved Person's representative code.

12. Forsey had been a former Approved Person with the Member, whose registration had been terminated by the Member. Forsey subsequently sold his book of business to the Respondent, but nonetheless continued to provide investment advice and gather Know-Your-Client ("KYC") information from his former clients. The Respondent signed and submitted the resulting accounts forms under his representative code to the Member for processing with respect to at least 8 clients.

13. By facilitating stealth advising by Forsey, the Respondent contravened MFDA Rule 1.1.1(c), which prohibits an Approved Person from engaging in securities related business unless the relationship between the Member and any person conducting securities related on the account

of the Member is that of: (a) employer-employee; (b) principal-agent; or (c) introducing dealer-carrying dealer. Forsey had no such relationship with the Member.

14. As adopted by the Hearing Panel in *Roche (Re)*:

> Rule 1.1.1(c) supports one of the fundamental pillars of the investor protection regime in that it ensures that only individuals who have met the necessary proficiency, good character and financial solvency requirements to be registered as a mutual fund dealing representative, and who remain in good standing in that regard, are allowed to engage in securities related business with clients.
>
> *Roche (Re)*, 2014 LNCMFDA 85 at paras. 7(8), 10.
>
> *Hagerman (Re)*, 2020 LNCMFDA 185 at para. 14.

15. The Respondent undermined this fundamental pillar of investor protection. Forsey was no longer in good standing with the registration requirements and had been deliberately excluded by the Member from its business. The Respondent nonetheless signed and processed account forms under his representative code, knowing that Forsey had provided the investment advice and gathered the KYC information from the clients.

(ii) **Know-Your-Client Obligations**

16. The Respondent further admitted that when he facilitated stealth advising by Forsey, he failed to satisfy his KYC and suitability obligations with respect to at least 8 clients.

17. The KYC and suitability obligations are codified by MFDA Rule 2.2.1. In the leading case, *Lamoureux (Re)*, the Alberta Securities Commission ("ASC") referred to the KYC Rule as the "Cardinal Rule" and as a cornerstone obligation of an Approved Person's dealings with clients. The ASC further went on to find that the KYC and suitability obligations have the following three stages:

a) Due Diligence – Involves an Approved Person engaging in due diligence to know the clients and the products involved.
b) Applying Judgment – Involves an Approved Person using information obtained under the "Know Your Client" and "Know Your Product" obligations, and applying "sound professional judgment" to identify appropriate investment products or strategies for particular clients.
c) Disclosure of Material Risks and Benefits – Involves an Approved Person disclosing the material negative and positive factors involved in the transaction to

the client for the purpose of assisting them in making an informed decision about whether to proceed.

Lamoureux (Re), [2001] ASCD No. 613 at pp. 11-12, 16-17.

Wray (Re), 2017 LNCMFDA 130 at paras. 28-29.

DeVuono (Re), 2012 LNCMFDA 103 paras. 52-56.

18. The Respondent processed transactions in client accounts when it had been Forsey who had made the investment recommendations and obtained the instructions from the clients. The Respondent accordingly failed to conduct the required due diligence, ensure the suitability of the transactions, or provide the clients the necessary disclosure about the features and risks of the mutual funds processed in their accounts. The Respondent therefore failed to fulfil his obligations with respect to all 3 stages of the KYC and suitability obligations and contravened MFDA Rule 2.2.1.

Badasha (Re), 2015 LNCMFDA 57 at paras. 45-48.

Hagerman (Re), *supra* at paras. 10-13.

(iii) **Standard of Conduct**

19. The standard of conduct codified by MFDA Rule 2.1.1 requires that Members and Approved Persons deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest. The Rule is central to the MFDA mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.

Breckenridge (Re), 2007 LNCMFDA 38 at para. 71.

20. By facilitating stealth advising by Forsey, the Respondent contravened all of the prongs of the standard of conduct. Clients' accounts were serviced by an individual who was unregistered, no longer being supervised by the Member, and no longer subject to the Member's policies and procedures. The Member, unaware that the Respondent was facilitating stealth advising by Forsey, was misled into thinking that clients had at all times been dealing with a properly qualified Approved Person who is, among other things, complying with all applicable MFDA requirements and the Member's policies and procedures pertaining to, among other things, investment suitability. Finally, as Forsey was still providing investment advice and able to have transactions

processed, clients may have not appreciated that they were dealing with an unsupervised individual no longer subject to the requirements of the mutual fund regulatory regime.

Roche (Re), *supra* at para. 7(9), 10.

Hagerman (Re), *supra*.

VandenBoomen (Re), 2013 LNCMFDA 78 at para. 23.

21. The Respondent's failure to satisfy his KYC and suitability obligations also contravenes the standard of conduct, namely the requirement that the Respondent observe high standards of ethics and conduct in the transaction of business and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

Hagerman (Re), *supra*.

VandenBoomen (Re), *supra* at para. 23.

Guglielmi (Re), 2016 LNCMFDA 2, SBA, Tab 20.

22. Accordingly, the Respondent contravened MFDA Rule 2.1.1.

VIII. THE SANCTIONS ARE APPROPRIATE

23. 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 v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at para. 59.

Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [2001] 2 S.C.R. 132 at para. 42.

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

a) the seriousness of the contraventions admitted to by the Respondent or proved against the Respondent;
b) the Respondent's past conduct, including prior sanctions;
c) the Respondent's experience and level of activity in the capital markets;
d) whether the Respondent recognizes the seriousness of the improper activity;
e) the harm suffered by investors as a result of the Respondent's activities;
f) the benefits received by the Respondent as a result of the improper activity;

g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;

h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;

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

j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

k) previous decisions made in similar circumstances.

Sterling Mutuals Inc. (Re), *supra* at para. 14.

25. We also had reference to the MFDA's Sanction Guidelines (the "Sanction Guidelines"). The Sanction Guidelines are not mandatory or binding on a 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 Sanction Guidelines.

(i) Seriousness of the Misconduct

26. The Respondent engaged in serious misconduct. MFDA Rule 1.1.1(c) and registration in general create a closed system, intended to ensure that only those who are properly qualified, supervised, and subject to the regulatory regime may engage in securities related business with clients. As noted above, facilitating stealth advising undermines this fundamental pillar of investor protection.

Roche (Re), *supra* at paras. 7(8), 10.

27. Furthermore, the Respondent's misconduct was aggravated by the fact that he facilitated stealth advising by an individual that the Member had chosen to deliberately exclude from its business.

28. Finally, the contravention of MFDA Rule 2.2.1 has been repeatedly recognized as serious misconduct. As stated by the Ontario Securities Commission,

> The Commission has recognized that the know-your-client and suitability requirements "are an essential component of the consumer protection scheme of the

Act 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".

Daubney (Re), 2008 LNONOSC 338 at para. 15.

Hagerman (Re), *supra* at para. 21.

Badasha (Re), *supra* at para. 47.

(ii) Respondent's Past Conduct

29. The Respondent had not previously been the subject of MFDA disciplinary proceedings.

(iii) Respondent's Recognition of the Seriousness of the Misconduct

30. The Respondent recognized the seriousness of his misconduct. By entering into the Settlement Agreement, the Respondent accepted responsibility for his actions and avoided the time and expense of a full disciplinary hearing.

(iv) Harm Suffered by Investors

31. There was no evidence of client complaints or client loss as a result of the Respondent's misconduct.

(v) Benefit Received by the Respondent from the Misconduct

32. The Respondent paid approximately all the trailer commissions that he earned from the accounts of the clients that were the subject of this proceeding to Forsey and therefore did not financially benefit from the misconduct.

(vi) Deterrence

33. Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets in order to protect investors. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*,

> The *Oxford English Dictionary* (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". 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 under s. 162. The respective importance of general deterrence as [page698] a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.

Cartaway Resources Corp. (Re), 2004 SCC 26 at para. 61. For a more general discussion, see paragraphs 52-62.

34. The proposed sanction serves the purpose of specific and general deterrence. The sanction is preventative because it sends a message to the Respondent concerning the seriousness of his misconduct. The Respondent is required to be out of the industry for 1 year, which is in addition to the 2 years he has been out of the industry since his termination by the Member. The Respondent further faces the added economic penalty of a $15,000 fine.

35. Concerning general deterrence, a 1-year prohibition with a $15,000 fine undoubtedly sends a strong message to others in the capital markets that Approved Persons who act in ways that are incompatible with MFDA By-laws, Rules, and Policies will be held accountable. A prohibition in particular is a significant sanction, as it greatly affects an Approved Person's income, both immediately because of the financial loss caused during the term of the prohibition, and in the long term because of the loss of clients that typically results from being unable to serve one's clients during the period of prohibition.

(vii) Previous Decisions Made in Similar Cases

36. The proposed penalties are within the reasonable range of appropriateness with regard to other decisions by MFDA hearing panels in similar circumstances:

Case	Facts	Penalties
O'Brien (Re)[1]	Respondent facilitated stealth advising by 1 unregistered individuals, involving making recommendations to clients, contrary to MFDA Rules 1.1.1(c), 2.1.1, 2.5.1, and 1.1.2. Respondent signed trade forms without learning KYC information and ensuring investments were suitable, contrary to MFDA Rules 2.2.1, 2.1.1, 2.5.1, and 1.1.2. Respondent, in his capacity as branch manager, failed to adequately supervise activities at a branch, contrary to MFDA Rules 2.5.5 and 2.1.1. Respondent demonstrated an inability to pay a grater fine.	**Settlement** • 2-Year Prohibition • $5,000 Fine (Installments) • $5,000 Costs
Nichols (Re)[2]	Respondent facilitated stealth advising by one unregistered individual, contrary to MFDA Rules 2.2.1 and 2.1.1. Respondent processed trades based on instructions from someone other than the client, thereby engaging in discretionary trading, contrary to MFDA Rules	**Settlement** • 4-Month Suspension • $30,000 Fine (Installments) • $5,000 Costs

[1] Order dated December 9, 2021, In the Matter of Joshua O'Brien, MFDA File No. 202078. (Reasons Not Yet Available)

[2] Order dated September 30, 2021, In the Matter of Scott Charles Nichols, SBA, Tab 27. (Reasons Not Yet Available)

Case	Facts	Penalties
	2.3.1(a) [now MFDA Rule 2.3.1(b)), 2.1.1, 2.5.1, and 1.1.2. Misleading the Member in response to query, contrary to MFDA Rule 2.1.1.	
Guglielmi (Re)[3]	Respondent facilitated stealth advising by 3 unregistered individuals, involving the opening of new accounts and processing trades for 12 clients, contrary to MFDA Rules 1.1.1(c) and 2.1.1. Respondent opened new accounts and processed trades without learning KYC information and ensuring investments were suitable, contrary to MFDA Rules 2.2.1 and 2.1.1.	**Agreed Statement of Fact** • 1-yr Prohibition • $15,000 Fine • $5,000 Costs
Jain (Re)[4]	Respondent facilitated stealth advising by an unregistered individual in respect of 18 clients, contrary to MFDA Rules 1.1.1(c) and 2.1.1. Respondent failed to learn KYC information and ensure investments were suitable in connection with stealth advising, contrary to MFDA Rules 2.2.1 and 2.1.1. Respondent failed in her capacity as a branch manager to ensure business at the branch was compliant, contrary to MFDA Rules 2.5.3(b)(i) and 2.1.1. Respondent made false and misleading statements to Staff during the course of an investigation, contrary to MFDA Rule 2.1.1 and section 22.1 of MFDA By-law No. 1.	**Settlement** • 1-yr Suspension • Permanent Prohibition form acting as supervisor • $20,000 Fine • $5,000 Costs • CPH Course
Dickson (Re)[5]	Respondent facilitated stealth advising by an unregistered individual in respect of 30 clients, contrary to MFDA Rules 1.1.1(c) and 2.1.1. Respondent had a referral arrangement with unregistered individual, whereby he received substantially all of the commissions earned in the accounts of clients referred to the unregistered individual, contrary to MFDA Rules 2.4.2, 2.1.4, and 2.1.1. Respondent failed to comply with PPM with respect to clients using borrowed monies to invest, contrary to MFDA Rules 1.1.2, 2.5.1, and 2.1.1.	**Agreed Statement of Fact** • 2-yr Prohibition • $15,000 Fine • $2,500 Costs • Industry Course
VandenBoomen (Re)[6]	Respondent facilitated stealth advising by an unregistered individual, contrary to MFDA Rules 1.1.1(c) and 2.1.1. Respondent failed to learn KYC information and ensure investments were suitable in connection with stealth advising, contrary to MFDA Rules 2.2.1 and 2.1.1.	**Contested** • Permanent Prohibition • $5,000 Fine • $5,000 Costs

[3] *Guglielmi (Re)*, *supra*.
[4] *Jain (Re)*, 2012 LNCMFDA 23.
[5] *Dickson (Re)*, 2011 LNCMFDA 72.
[6] *VandenBoomen (Re)*, *supra*.

Case	Facts	Penalties
	Respondent conducted securities related business outside the Member, contrary to MFDA Rules 1.1.1, 2.4.2, and 2.1.1.	
Badasha (Re)[7]	Respondent facilitated stealth advising by an unregistered individual in respect of 16 clients, contrary to MFDA Rules 1.1.1(c) and 2.1.1. Respondent failed to learn KYC information and ensure investments were suitable in connection with stealth advising, contrary to MFDA Rules 2.2.1 and 2.1.1. Respondent failed in her capacity as a branch manager to ensure business at the branch was compliant, contrary to MFDA Rules 2.5.3(b)(i) and 2.1.1. 13 Pre-signed Forms, contrary to MFDA Rule 2.1.1. 2 Altered Forms, contrary to MFDA Rule 2.1.1.	**Settlement** • 2-yr Prohibition • $5,000 Fine • $3,500 Costs

IX. COSTS

37. We determined that a costs award payable by the Respondent was reasonable and appropriate.

X. CONCLUSION

38. Having regard to the all of the foregoing considerations and the facts of this case, including the Respondent's admission of his contravention of the MFDA Rules, we determined that the proposed sanctions were acceptable, and that it was in the public interest for us to accept the Settlement Agreement, and we did so.

DATED this 21st day of January, 2022.

"Paul M. Moore"
Paul M. Moore, Q.C.
Chair

"Guenther Kleberg"
Guenther W. K. Kleberg
Industry Representative

"Timothy Pryor"
Timothy Pryor
Industry Representative

[7] *Badasha (Re)*, *supra*.

Mutual Fund Dealers Association of Canada
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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: Paul David Gowan

SETTLEMENT AGREEMENT

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, Paul David Gowan (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. ACKNOWLEDGMENT

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 IX) 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. From May 19, 2006 to September 30, 2019, the Respondent was registered in Ontario as a dealing representative with Quadrus Investment Services Ltd. (the "Member"), a Member of the MFDA.

7. On September 30, 2019, the Member terminated the Respondent in connection with the matters that are the subject of this proceeding and he is not currently registered in the securities industry in any capacity.

8. At all material times, the Respondent conducted business in the London, Ontario area.

Stealth Advising

9. Former Approved Person Michael Forsey ("Forsey") was a dealing representative with the Member until October 31, 2017, when the Member terminated Forsey in connection with matters that are not the subject of this proceeding.

10. In November 2017, the Respondent entered into an agreement with Forsey to purchase Forsey's book of business, which comprised both Forsey's insurance and mutual fund book of business (the "Purchase Agreement"). On or about November 30, 2017, the Member assigned to the Respondent responsibility for servicing the accounts of clients that had previously been serviced by Forsey (the "Transferred Clients").

11. The Respondent did not schedule meetings with a number of the Transferred Clients or otherwise notify them that he had been assigned responsibility for servicing their accounts.

12. Forsey continued to have contact with the Transferred Clients following the termination of his registration. Forsey's communications with clients included emails in which he explained that while he was unregistered, he would be managing the Transferred Clients' portfolios through the Respondent.

13. The Respondent also retained Forsey's long-standing unlicensed assistant, NK, who had a prior relationship with Forsey's clients. Pursuant to the Purchase Agreement, Forsey continued to pay NK's salary.

14. Between November 2017 and April 2018, Forsey was not registered as a dealing representative and was not an Approved Person of the Member. However, throughout this period, Forsey continued to engage in securities related business by providing advice to Transferred Clients about specific transactions that were subsequently processed in their investment accounts with the Member. Forsey also obtained Know-Your-Client ("KYC") information to update the Member's records concerning the investment accounts of Transferred Clients. The Respondent did not participate in these meetings or conversations with clients held by Forsey.

15. Forsey, or NK based on Forsey's instructions, provided Transferred Clients with Member account forms that the clients were required to execute in order to process transactions in their accounts or update KYC information on file for their accounts. These account forms identified the Respondent as the Approved Person responsible for servicing the clients' accounts and attributed all of the resulting transactions and KYC updates to the Respondent's representative code.

16. After account documents were signed by the Transferred Clients, NK would collect the accounts forms and provided them to the Respondent for him to sign. NK, or another assistant at the Member, would then submit the account forms to facilitate the processing of transactions and KYC updates in the Transferred Clients' accounts.

17. The Respondent knew that an unregistered individual was conducting securities related business by providing investment advice to Transferred Clients, accepting instructions from Transferred Clients about specific mutual fund transactions, and updating KYC information for the investment accounts of Transferred Clients.

18. The Respondent facilitated the processing of at least 10 trades and 2 KYC updates for 8 Transferred Clients. The trades had a value of at least $73,000.

19. With respect to at least 8 Transferred Clients, the Respondent failed to fulfil his obligations to:

a) learn the essential facts relative to each client and each order or account accepted;
b) ensure that the acceptance of each order was within the bounds of good business practice;
c) ensure that each order accepted or recommendation made for each account was suitable for the client and in keeping with the client's investment objectives;
d) explain to the individuals the features and risks of the mutual fund trades being processed in their accounts; or
e) provide the advice necessary for the clients to make an informed decision about trades and receive the trading instructions from clients necessary to authorize transactions in their accounts.

20. As noted above, Forsey was terminated by the Member on October 31, 2017 and accordingly, Forsey was not in an employer-employee relationship, a principal-agent relationship, or an introducing dealer-carrying dealer relationship with the Member, as required by MFDA Rule 1.1.1(c). Forsey was not permitted to engage in securities related business with clients of the Member following his termination.

21. The Respondent did not advise the Member that Forsey was conducting securities related business with clients of the Member.

22. The Member was not aware that the Respondent was facilitating the processing of transactions and KYC information updates on behalf of clients on the basis of instructions and information obtained from the clients by an unregistered individual.

23. By processing transactions and KYC information updates on the basis of instructions and information obtained from clients by Forsey, the Respondent facilitated stealth advising by Forsey, circumvented the Member’s exclusion of Forsey from its business, and failed to use due diligence to learn the essential facts relative to the clients and to ensure that the transactions were suitable.

Additional Factors

24. There is no evidence of client complaints or client loss as a result of the Respondent's misconduct.

25. On April 22, 2020, a Director of the Ontario Securities Commission ("OSC") approved a settlement agreement between Forsey and the OSC, pursuant to which Forsey admitted that between November 1, 2017 and April 2, 2018, during which time he was not registered, he provided investment advice to and received instructions from Transferred Clients.

26. Pursuant to the Purchase Agreement, the Respondent paid approximately all the trailer commissions that he earned from the accounts of the Transferred Clients to Forsey and therefore did not financially benefit from the misconduct

27. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

28. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct and saved the MFDA the time, resources, and expenses associated with conducting a contested hearing on the allegations.

V. CONTRAVENTIONS

29. The Respondent admits that between November 2017 and April 2018, he signed or submitted account documents obtained by an unregistered individual to conduct securities related business and updated Know-Your-Client information of clients of the Member without using the necessary due diligence to learn the essential facts relative to the clients, ensuring that transactions processing in their accounts were suitable, or ensuring that the transactions were authorized, thereby facilitating stealth advising, contrary to MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

VI. TERMS OF SETTLEMENT

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

a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 1 year from the date the Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay a fine of $15,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs of $5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-law No. 1;

d) the Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.1.1, and 2.2.1; and

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

VII. STAFF COMMITMENT

31. 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 in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

32. 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.

33. 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 his rights to a full hearing, a review hearing or appeal 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.

34. 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. 24.1.1 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.

35. 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 him.

36. 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 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.

IX. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

37. 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.

38. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he 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.

X. DISCLOSURE OF AGREEMENT

39. 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.

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

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

42. An electronic copy of any signature shall be effective as an original signature.

DATED this 14th day of December, 2021.

"Paul David Gowan"
Paul David Gowan

"SG"
Witness – Signature

SG
Witness – Print Name

"Charles Toth"
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

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: Paul David Gowan

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Paul David Gowan (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 MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that between November 2017 and April 2018, he signed or submitted account documents obtained by an unregistered individual to conduct securities related business and updated Know-Your-Client information of clients of the Member without using the necessary due diligence to learn the essential facts relative to the clients, ensuring that transactions processing in their accounts were suitable, or ensuring that the transactions were authorized, thereby facilitating stealth advising, contrary to MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

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

1. The Respondent is prohibited from conducting securities related business in any capacity while in the employ of or in association with a Member of the MFDA for a period of 1 year from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1.

2. The Respondent shall pay a fine of $15,000 in certified funds on the date of this Order, pursuant to section 24.1.1(b) of MFDA By-law No. 1.

3. The Respondent shall pay costs of $5,000 in certified funds on the date of this Order, pursuant to section 24.2 of MFDA By-law No. 1.

4. The Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

5. 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 866108