



**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: Novelette Angela Graham-Hart**

Heard: October 4, 2018 in Toronto, Ontario

Decision: October 4, 2018

Reasons for Decision: December 10, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Malliha Wilson  
Kenneth P. Mann  
Selwyn Kossuth

Chair  
Industry Representative  
Industry Representative

Appearances:

David Babin	)	Enforcement Counsel for the Mutual Fund
	)	Dealers Association of Canada
	)	
	)	
Rohit Kumar	)	Counsel for the Respondent
	)	
	)	
Novelette Angela Graham-Hart	)	Respondent, in person
	)	
	)	

## **Settlement Agreement**

1. The Hearing Panel accepted the Settlement Agreement dated August 10, 2018 (the “Settlement Agreement”) between the staff of the MFDA and Novelette Angela Graham-Hart (the “Respondent”). A copy of the Settlement Agreement is attached hereto as Schedule “1” and a copy of the Order is attached as Schedule “2”.
2. The agreed facts are set out in paragraphs 6 - 19 of the Settlement Agreement.
3. From July 27, 2006 to December 1, 2015, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with National Bank Investments Inc. (“National Bank”), a member of the MFDA (the “Member”).
4. The Respondent was employed by National Bank as a Retirement Investment Advisor (“RIA”). In her role as an RIA, the Respondent was primarily responsible for transferring client assets from other dealers to either National Bank or National Bank Direct Brokerage (“NBDB”), a dealer member of Investment Industry Regulatory Organization of Canada (“IIROC”).

## **Contraventions**

5. The Respondent admits that between February 18, 2014 and July 27, 2015, she engaged in securities related business that was not carried on for the account and through the facilities of the Member by trading mutual funds and equity securities in an on-line discount brokerage account of one individual, contrary to MFDA Rules 1.1.1 and 2.1.1.
6. MFDA Rule 1.1.1(a) requires that all securities business must be carried on for the account of the Member and through the facilities of the Member. Here, the Respondent admitted that by accessing a client’s on-line discount brokerage account on 5 occasions and processing 5 trades in the client’s account, including the purchase and/or sale of equity securities, she engaged in registrable activity and securities related business contrary to MFDA Rule 1.1.1.
7. By acting outside of MFDA Rule 1.1.1 the Respondent prevented the trading activity from being subjected to appropriate review and supervision.

8. Where an Approved Person engages in securities related business that is not carried on for the account of the Member and through the facilities of the Member, such conduct is also contrary to MFDA Rule 2.1.1.

### **Agreed Penalty**

9. The agreed penalties were:

- a) One-month prohibition to the Respondent from conducting securities related business while in the employ of or associated with any MFDA member;
- b) a fine of \$5,000; and
- c) a costs award of \$2,500.

### **Considerations**

10. The following considerations guided the Hearing Panel's acceptance of the Settlement Agreement. Firstly, the agreed penalty needed to be within an acceptable range considering similar cases. Secondly, the agreed penalty had to be fair and reasonable, i.e. proportional to the seriousness of the contravention and relevant circumstances. Thirdly, the agreed penalty should serve as a deterrent to the respondent and the industry.

### **Nature of the Misconduct**

11. The Respondent's misconduct is serious. The actions of the Respondent denied the Member the ability to supervise the Respondent's activities. Furthermore, the Respondent breached her fundamental obligations as a dealing representative. MFDA Rule 1.1.1 is fundamental to the regulatory mandate of the MFDA to enhance investor protection and strengthen public confidence in the mutual fund industry.

12. Here, in particular, the Respondent's misconduct was serious as some of the trades were equity securities which the Respondent was not registered to trade. The Respondent was licensed as a mutual fund sales person but provided advice and was trading in equity securities.

### **Other Considerations re Acceptability of Agreed Penalty**

13. There was no evidence of client losses or benefits accruing to the Respondent from her conduct.
14. The Respondent has accepted responsibility for her misconduct.
15. The Respondent has cooperated extensively with the MFDA's investigation.
16. The Respondent has no prior disciplinary record with the MFDA.
17. The Respondent was registered for nine years, from July 2006 to December 1, 2015. She was terminated as a result of the events at issue.
18. The agreed penalty helps the MFDA to send a message to the Respondent and others with respect to specific and general deterrence.
19. The agreed penalty is within the reasonable range of appropriateness with respect to other decisions, as submitted to us by staff, made by MFDA hearing panels in similar circumstances.

## Conclusion

20. Having regard to all the aforementioned factors, the Panel concludes that the penalties proposed in the Settlement Agreement are reasonable, proportionate and will deter the Respondent and others from engaging in the impugned conduct. The Panel is of the view that the acceptance of this Settlement Agreement is in the public interest and will advance the objective of investor protection. The Settlement Agreement is therefore accepted.

**DATED** this 10<sup>th</sup> day of December, 2018.

“Malliha Wilson”

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Malliha Wilson  
Chair

“Kenneth P. Mann”

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Kenneth P. Mann  
Industry Representative

“Selwyn Kossuth”

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Selwyn Kossuth  
Industry Representative

DM 645762

**Schedule “1”**

**Settlement Agreement**

**File No. 201861**



**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: Novelette Angela Graham-Hart**

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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, Novelette Graham-Hart.

**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. From July 27, 2006 to December 1, 2015, the Respondent was registered as a mutual fund salesperson (now known as a dealing representative) with National Bank Investments Inc. (“National Bank”), a member of the MFDA (the “Member”).

7. The Respondent was employed by National Bank as a Retirement Investment Advisor (“RIA”). In her role as a RIA, the Respondent was primarily responsible for transferring client assets from other dealers to either National Bank or National Bank Direct Brokerage (“NBDB”), a dealer member of Investment Industry Regulatory Organization of Canada (“IIROC”).

8. The Respondent was terminated as a result of the events described below, and is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Greater Toronto Area.

## **Securities Related Business Outside the Member**

10. In or about August 2009, the Respondent facilitated the transfer of AF's assets from an IROC dealer-member into a series of six NBDB online discount brokerage accounts. At that time, AF became a client of NBDB. AF was not a client of National Bank.

11. At the time AF's assets were transferred to NBDB, AF's holdings included mutual funds, as well as equity securities and bonds.

12. When AF transferred his assets to NBDB, AF provided the Respondent with the login information and password for his online NBDB accounts so that the Respondent could access the NBDB accounts.

13. At all material times, National Bank's policies and procedures manual stated that RIAs were not permitted to give advice or make any recommendations to clients on any type of security offered through NBDB, either directly to the client or indirectly during a telephone call to a NBDB licensed representative.

14. Between February 18, 2014 and July 27, 2015, the Respondent accessed AF's NBDB account 5 times and processed 5 trades, including the purchase and/or sale of equity securities. The Respondent thereby engaged in registerable activity and securities related business on behalf of an IROC dealer-member that she was not registered with, and which exceeded the limits of her registration as a mutual funds salesperson.

15. The Respondent states that, on each occasion that she accessed AF's NBDB accounts, she was acting on instructions from AF that were provided to her by telephone.

16. With respect to three of the five trades, the Respondent exercised discretion in selecting the precise quantum and the security to be redeemed in response to AF's general requests for monies. This conduct occurred with AF's knowledge and authorization.

## **Additional Factors**

17. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

18. There is no evidence of client loss in this matter or that the Respondent received any financial benefit from engaging in the misconduct.

19. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

## **V. CONTRAVENTIONS**

20. The Respondent admits that, between February 18, 2014 and July 27, 2015, she engaged in securities related business that was not carried on for the account and through the facilities of the Member by trading mutual funds and equity securities in an on-line discount brokerage accounts of one individual, contrary to MFDA Rules 1.1.1 and 2.1.1.

## **VI. TERMS OF SETTLEMENT**

21. 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 one month, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$5,000 pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

22. 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 facts set out in Part IV and the contraventions described in Part V 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 V 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 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**

23. 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).

24. 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 her 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.

25. 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.

26. 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 her.

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

27. 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.

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

28. 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.

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

## **XI. DISCLOSURE OF AGREEMENT**

30. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 10<sup>th</sup> day of August, 2018.

“Novelette Graham-Hart”  
\_\_\_\_\_  
Novelette Graham-Hart

“MH”  
\_\_\_\_\_  
Witness – Signature

MH  
\_\_\_\_\_  
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.**



**Mutual Fund Dealers Association of Canada**  
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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Novelette Angela Graham-Hart**

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**ORDER**

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**WHEREAS** on May 30, 2018, 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 Novelette Graham-Hart (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated August 10, 2018 (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, between February 18, 2014 and July 27, 2015, engaged in securities related business that was not carried on for the account and through the facilities of the Member by trading mutual funds and equity securities in the on-line discount brokerage accounts of one individual, contrary to MFDA Rules 1.1.1 and 2.1.1;

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

1. 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*;
2. 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 one month, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
3. The Respondent shall pay a fine in the amount of \$5,000 pursuant to section 24.1.1(b) of By-law No. 1; and
4. The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

**Schedule “2”**

**Order**

**File No. 201861**



**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: Novelette Angela Graham-Hart**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON OCTOBER 4, 2018)

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**WHEREAS** on May 30, 2018, 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 Novelette Graham-Hart (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated August 10, 2018 (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, between February 18, 2014 and July 27, 2015, engaged in securities related business that was not carried on for the account and through the facilities of the Member by trading mutual funds and equity securities in the on-line discount brokerage accounts of one individual, contrary to MFDA Rules 1.1.1 and 2.1.1;

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

1. 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*;
2. 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 one month, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
3. The Respondent shall pay a fine in the amount of \$5,000 pursuant to section 24.1.1(b) of By-law No. 1; and
4. The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement.

**DATED** this 12<sup>th</sup> day of September, 2018.

“Malliha Wilson”

Malliha Wilson  
Chair

“Michael Coulter”

Michael Coulter  
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg  
Industry Representative