



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: Donald McIntyre

Heard: January 30, 2019 in Saskatoon, Saskatchewan

Decision: January 30, 2019

Reasons for Decision: March 11, 2019

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Shelley L. Miller, QC
Adam Dudley
Danielle Tétrault

Chair
Industry Representative
Industry Representative

Appearances:

Justin Dunphy)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Nicholas Stooshinoff)	Counsel for Respondent
)	
)	
Donald McIntyre)	Respondent, in person
)	
)	

Background

1. This matter concerns a Settlement Hearing under Section 24.4 of By-Law No. 1 of the Mutual Fund Dealers Association of Canada (the "MFDA"). The hearing was held on January 30, 2019. The full Settlement Agreement dated January 25, 2019 entered into between the Respondent Donald McIntyre (the "Respondent") and MFDA Staff on behalf of MFDA is attached as Appendix "A" to these reasons for decision and its relevant provisions will not be repeated in detail here.
2. The Respondent has been registered in Saskatchewan as a mutual fund salesperson (now known as a dealing representative) since March 2001.
3. Under the Settlement Agreement, the Respondent has admitted that:
 - a) between January 2010 and November 2015, he recommended to approximately 423 clients that the clients concentrate all or a substantial portion of their investment holdings in precious metals sector funds, without adequately assessing the suitability of his investment recommendations on a client-by-client basis having regard to the essential Know-Your-Client ("KYC") information relevant to each individual client, contrary to MFDA Rules 2.2.1¹ and 2.1.1.;
 - b) between January 2010 and November 2015, he failed to accurately record the essential KYC information relevant to each client and to each order and account that he accepted, but instead recorded KYC information for each client that would be consistent with his investment recommendations to those clients to concentrate all or a substantial portion of the clients' investment holdings in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1.;
 - c) between January 2010 and November 2015, he failed to fully and adequately explain, and/or omitted to accurately explain the risks of investing in precious metals sector funds that he recommended to clients, thereby failing to present the investment recommendations to the clients in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1.;

¹ MFDA Rule 2.2.1 was amended in December 2010 and in February 2013. In the Settlement Agreement, all references to MFDA Rule 2.2.1 concern the version of the Rule that was in force prior to December 2010.

- d) between April 2013 and November 2015, he obtained and possessed 3 pre-signed client account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
- e) between December 2009 and January 2015, he altered 19 account forms in respect of 14 clients by altering information on the account forms without obtaining client initials, contrary to MFDA Rule 2.1.1.

Terms of Settlement

- 4. Under the terms of the Settlement Agreement, the Respondent agreed to the following:
 - a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
 - b) the Respondent shall pay a fine in the amount of \$10,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
 - c) the Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
- 5. At the conclusion of the January 30, 2019 hearing, this Hearing Panel accepted the proposed Settlement Agreement with reasons to follow, which are now set out below.

Agreed Facts

Registration

- 6. From March 2001 to November 2015, the Respondent was registered in Saskatchewan as a mutual fund salesperson (now known as a dealing representative²) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA. The Respondent was also registered in Alberta from October 2001 to November 2015, and in Ontario until December 2014.

²In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

7. On or about November 23, 2015, Sun Life terminated the Respondent's mutual fund registration as a result of the conduct described below.
8. The Respondent is not currently registered in the securities industry in any capacity.
9. At all material times the Respondent conducted business in the Maklin, Saskatchewan area.

The Gold Strategy

10. Between January 2010 and November 2015, the Respondent recommended an investment strategy to his clients whereby the clients would purchase precious metals (predominantly, gold) sector mutual funds (the "Gold Strategy").

11. In the course of recommending the Gold Strategy to clients, the Respondent represented that, among other things, as a result of international government monetary and debt policies, investing in gold and precious metals was a low risk investment strategy which would preserve clients' capital.

12. The Gold Strategy resulted in clients holding investments which were concentrated in precious metals sector funds. The Respondent serviced the accounts of approximately 462 clients. As of June 2015:

- a) 76% of the clients serviced by the Respondent held greater than 90% of their portfolios in precious metals sector funds;
- b) 10% of the clients serviced by the Respondent held between 50% to 90% of their portfolios in precious metals sector funds;
- c) 4.5% of the clients serviced by the Respondent held between 25% to 50% of their portfolios in precious metals sector funds; and
- d) only 8.5% of the clients serviced by the Respondent held less than 25% of their portfolios in precious metals sector funds.

13. Overall, as of June 2015, approximately 90% of the Respondent's \$17.9 million in assets under administration were invested in precious metals sector funds. Approximately 99% of the assets invested in precious metals were invested in two high risk funds.³

14. The Respondent did not recommend that clients diversify their investment holdings.

The Respondent Failed to Assess Suitability on a Client by Client Basis

15. The Respondent failed to consider-whether his recommendations to implement the Gold Strategy were suitable on a client-by-client basis, having regard to the essential KYC factors relevant to each individual client, prior to making the recommendations to the clients.

16. The Respondent engaged in a standard practice of recommending that clients concentrate their investment holdings in precious metals sector funds, based upon his views as to how these funds would perform.

17. Prior to discussing with clients, the Respondent failed to give adequate consideration to whether it was suitable for each client to hold non-diversified investments.

The Respondent Failed to Learn and Accurately Record KYC Information

18. In order to implement the Gold Strategy, the Respondent engaged in a practice of recording the following uniform KYC information for at least 788 client accounts, which comprised 95% of client accounts that the Respondent serviced:

- a) a time horizon of "20 years or more";
- b) an investment objective of "100% aggressive growth"; and
- c) a risk tolerance of "100% high".

19. The Respondent recorded the KYC information described in paragraph 18 above, regardless of whether or not the client genuinely had a time horizon of 20 years or more, a high-risk tolerance, or a 100% aggressive growth investment objective.

³As of April 26, 2018, one of these precious metals sector funds was listed in its simplified prospectus as being "medium to high risk" instead of "high risk".

20. The Respondent engaged in this practice in order to ensure that the KYC information that he had recorded for each client supported his investment recommendations to concentrate all, or a substantial portion, of the clients' investment holdings in precious metals sector funds so that the precious metals sector funds that were purchased in each client account would appear to be suitable for the client.

The Respondent Failed to Fully and Adequately Explain the Risks of the Gold Strategy

21. As described above, in the course of recommending the Gold Strategy to clients, the Respondent represented that, among other things, investing in precious metals sector funds was a medium risk investment strategy. At all material times, the precious metal sector funds recommended by the Respondent were rated high risk.

22. The Respondent failed to fully and adequately explain the risks of investing in precious metals sector funds, including the risks of holding non-diversified investments, the risks associated with holding high risk sector funds, and the risk that the Gold Strategy would not perform in the manner the Respondent expected.

23. To the extent that the Respondent explained some of the risks of investing in precious metals sector funds, he failed to provide a balanced presentation of the risks and minimized the risks when he described the funds as being a safe investment alternative.

Pre-Signed and Altered Account Forms

24. At all material times, Sun Life's policies and procedures prohibited its approved persons, including the Respondent, from obtaining, holding, or using pre-signed or altered account forms.

25. Between April 2013 and November 2015, the Respondent obtained and possessed 3 pre-signed account forms in respect of 2 clients.

26. The pre-signed account forms consisted of two limited trade authorization forms and one order ticket.

27. Between December 2009 and January 2015, the Respondent altered 19 account forms that were submitted in respect of accounts of 14 different clients by altering information on the account forms without having the clients initial the alterations.

28. The altered account forms consisted of:

- a) 8 order tickets;
- b) 3 application forms;
- c) 2 preauthorized contribution forms;
- d) 2 transfer instruction forms;
- e) 2 transfer authorization forms;
- f) 1 Know Your Client form; and
- g) 1 identity verification form.

Member Response

29. Sun Life became aware of the conduct referred to above as a result of a 2015 MFDA sales compliance examination.

30. On or about November 1, 2015, Sun Life placed the Respondent on close supervision.

31. On or about November 23, 2015, Sun Life terminated the Respondent's mutual fund registration as a result of the subject matter of this Settlement Agreement.

32. On or about December 4, 2015, Sun Life issued audit letters to 447 clients whose accounts were serviced by the Respondent where Sun Life identified concerns with the concentration risk of client portfolios or where it appeared that uniform KYC information was entered for a client account.

33. On or about December 21, 2015, Sun Life issued audit letters to 16 clients for whom pre-signed forms were identified or suspected to determine if the transactions that occurred in client accounts were authorized. As of January 22, 2016, 5 clients had responded. None of the clients reported any concerns.

34. Since January 2016, Sun Life has received complaints from 11 clients alleging that the holdings in their investment accounts were unsuitably concentrated in precious metals sector funds.

Additional Factors

35. The Respondent has no prior disciplinary history with the MFDA.

36. In January 2016, Sun Life reviewed the client accounts that were serviced by the Respondent with respect to suitability, which resulted in 375 remediation offers to rebalance client accounts and offer client compensation.

37. The Respondent states that he believed he was acting in the clients' interests and did not intend any client harm.

38. The Respondent has an adult dependent son for whom he is financially responsible, which limits his ability to contribute additional amounts towards a fine or costs in this matter.

39. With respect to the pre-signed and altered account forms as described above, there is no evidence of client loss or lack of client authorization.

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

Analysis

41. This Hearing Panel is satisfied on the facts that the contraventions were proven to the required standard. It then turned to the question of the suitability of the proposed penalties.

42. This Hearing Panel has the responsibility to either accept the settlement agreement or reject it, as stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*, LNCMFDA 16 at para. 37 citing the I.D.A. Ontario District Council in *Milewski (Re)* [1999] IDACD No. 17 at p. 10, Ontario District Council Decision dated July 28, 1999.

43. This Hearing Panel is also mindful of the effectiveness of Settlement Agreements in fulfilling the objective of the regulator as noted in the reasons for decision in *British Columbia Securities Commission v Seifert*, 2007 BCCA 484 at para. 31.

44. However, this Hearing Panel must also satisfy itself that the proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Members and Approved Persons and will prevent future misconduct by the Respondent, deter others from engaging in similar misconduct, and improve overall compliance by mutual fund industry participants.

45. Having regard to all the foregoing, this Hearing Panel noted that firstly, the misconduct in this case, which affected almost the entirety of the Respondent's book of business of nearly 462 clients, was serious.

46. As held by the hearing panel in *Popovich (Re)*, MFDA File No. 201240, Hearing Panel of the Central Regional Council, Decision and Reasons dated January 14, 2015, the collection of accurate information is paramount, and Approved Persons cannot fail to accurately record KYC information in an effort to ensure a proposed investment strategy's suitability.

47. The Respondent's breaches of his suitability obligations were undertaken with the intention of placing clients in highly concentrated positions in precious metals sector funds. The Respondent's recommendation of highly concentrated client portfolio positions after failing to discharge his suitability responsibilities compounds the seriousness of the misconduct because highly concentrated positions in any sector have been found to be exceptionally volatile and unduly risky.

48. *Biduk (Re)*, 2013 IIROC 19 and *Lemay (Re)*, MFDA File No. 201634, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated February 28, 2017 are two authorities noting the inherent danger of an investor concentrating his/her holdings of securities in a given sector of the economy; let alone in the volatile securities of only one or two issuers in that given sector.

49. In addition to the foregoing serious misconduct, the Respondent in this instance obtained 3 account forms in respect of 2 clients, and altered 19 account forms in respect of 14 clients without having the clients initial the alterations.

50. The MFDA Hearing Panel in *Price (Re)*, MFDA File No. 200814, Hearing Panel of the Central Regional Council, Decision and Reasons dated April 18, 2011, identified the dangers posed by pre-signed forms which are summarized as follows:

- a) pre-signed forms present a legitimate risk that they may be used by an Approved Person to engage in discretionary trading;
- b) at worst, pre-signed forms create a mechanism for an Approved Person to engage in acts of fraud, theft or other harmful conduct towards a client;
- c) pre-signed forms subvert the ability of a Member to properly supervise trading activity. *Price (Re)*, *supra*, at paras. 122 – 124.

51. The reasoning in *Price (Re)* is equally applicable to the use of altered account forms, with the additional concern that there also exists the possibility that the changes are made to the forms without the clients' knowledge or consent.

52. Moreover, as noted in *Will (Re)*, MFDA File No. 201763, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated February 1, 2018, the prohibition on the use of pre-signed account forms applies regardless of whether the client was aware of or authorized the use of the pre-signed forms, or whether the forms were actually used by the Approved Person for discretionary trading or other improper purposes.

Wellman (Re), MFDA File No. 201529, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 21, 2015

53. Enforcement Counsel cited the following cases in support of the proposed penalties set forth in the settlement agreement:

(a) *Lemay (Re)* MFDA File No. 201634, Hearing Panel of the Pacific Regional Council, Decision and Reasons dated February 28, 2017 [SEP]

(b) *Re Will (supra)*

(c) *Yahn (Re)*, MFDA File No. 201746, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated December 6, 2017.

54. All of these cases concerned fact patterns with some similarities to the case at hand. All of these cases imposed a permanent prohibition against conducting securities related business in any capacity while in the employ of or associated with any MFDA Member in order to bring home to the respondent and any potentially like-minded Approved Persons that misconduct of this nature will not be countenanced.

55. This Hearing Panel is satisfied that the conduct of this Respondent is similarly serious and accordingly a permanent prohibition against conducting securities related business in any capacity while in the employ of or associated with any MFDA Member is similarly warranted.

56. While the cited cases contained some factual similarities as noted above, there were some differences, which likely lead to differences in monetary penalty. In *Lemay (Re) supra*, the misconduct involved 142 clients, but did not include any conduct relating to use or alteration of pre-signed forms. A fine of \$5000.00 and costs of \$2,500.00 were imposed. It was noted that the Respondent there had limited financial means.

57. In *Will (Re), (supra)*, the misconduct involved 264 clients, as well as possession and some use of pre-signed forms, specifically 16 pre-signed client account forms in respect of 9 clients. In addition to costs of \$5,000.00, there was also a fine of \$5,000.00.

58. In *Yahn (Re) (supra)* the misconduct involved 679 clients, but did not include any conduct relating to use or alteration of pre-signed forms. In addition to the imposition of a permanent prohibition and costs of \$10,000.00, there was also a fine of \$75,000.00.

59. In the case at hand, the conduct involved 423 clients but also included use or alteration of pre-signed forms. It was submitted that in the case at hand, the Respondent had limited financial means and accordingly the proposed fine sought was \$10,000 plus costs of \$5,000.00.

60. In the result, this Hearing Panel found that the misconduct of the Respondent was very serious, however the mitigating factors in this case included the following:

- he promptly acknowledged his failure to properly document the client information on the KYC forms
- no clients were harmed as a result of the Respondent's misconduct,
- he had not previously been the subject of MFDA disciplinary proceedings,
- by entering into the Settlement Agreement, he accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary proceeding.

61. Having regard to all the foregoing, this Hearing Panel is satisfied on the particular facts of this case, that a monetary fine of \$10,000 and costs of \$5,000.00 is in line with the previous case authorities, the new Sanction Guidelines and the principles of general and specific deterrence.

62. Moreover, this Hearing Panel is satisfied that the Settlement Agreement is in the public interest, is reasonable and proportionate, and will foster public confidence in the integrity of the Canadian capital markets and the industry and, accordingly, approves its terms.

63. Accordingly, this Hearing Panel approves the following penalties:

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement.

DATED this 11th day of March, 2019.

“Shelley L. Miller”

Shelley L. Miller, QC
Chair

“Adam Dudley”

Adam Dudley
Industry Representative

“Danielle Tétrault”

Danielle Tétrault
Industry Representative

DM 663308



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: Donald John McIntyre

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 Prairie 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 Donald John McIntyre (the "Respondent").

II. JOINT SETTLEMENT RECOMMENDATION

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

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

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

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

III. ACKNOWLEDGEMENT

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

IV. AGREED FACTS

Registration

6. From March 2001 to November 2015, the Respondent was registered in Saskatchewan as a mutual fund salesperson (now known as a dealing representative⁴) with Sun Life Financial Investment Services (Canada) Inc. (“Sun Life”), a Member of the MFDA. The Respondent was also registered in Alberta from October 2001 to November 2015, and in Ontario until December 2014.

7. On or about November 23, 2015, Sun Life terminated the Respondent’s mutual fund registration as a result of the conduct described below.

8. The Respondent is not currently registered in the securities industry in any capacity.

⁴In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

9. At all material times the Respondent conducted business in the Maklin, Saskatchewan area.

The Gold Strategy

10. Between January 2010 and November 2015, the Respondent recommended an investment strategy to his clients whereby the clients would purchase precious metals (predominantly, gold) sector mutual funds (the “Gold Strategy”).

11. In the course of recommending the Gold Strategy to clients, the Respondent represented that, among other things, as a result of international government monetary and debt policies, investing in gold and precious metals was a low risk investment strategy which would preserve clients’ capital.

12. The Gold Strategy resulted in clients holding investments which were concentrated in precious metals sector funds. The Respondent serviced the accounts of approximately 462 clients. As of June 2015:

- a) 76% of the clients serviced by the Respondent held greater than 90% of their portfolios in precious metals sector funds;
- b) 10% of the clients serviced by the Respondent held between 50% to 90% of their portfolios in precious metals sector funds;
- c) 4.5% of the clients serviced by the Respondent held between 25% to 50% of their portfolios in precious metals sector funds; and
- d) only 8.5% of the clients serviced by the Respondent held less than 25% of their portfolios in precious metals sector funds.

13. Overall, as of June 2015, approximately 90% of the Respondent’s \$17.9 million in assets under administration were invested in precious metals sector funds. Approximately 99% of the assets invested in precious metals were invested in two high risk funds.⁵

14. The Respondent did not recommend that clients diversify their investment holdings.

⁵As of April 26, 2018, one of these precious metals sector funds was listed in its simplified prospectus as being “medium to high risk” instead of “high risk”.

The Respondent Failed to Assess Suitability on a Client by Client Basis

15. The Respondent failed to consider-whether his recommendations to implement the Gold Strategy were suitable on a client-by-client basis, having regard to the essential KYC factors relevant to each individual client, prior to making the recommendations to the clients.

16. The Respondent engaged in a standard practice of recommending that clients concentrate their investment holdings in precious metals sector funds, based upon his views as to how these funds would perform.

17. Prior to discussing with clients, the Respondent failed to give adequate consideration to whether it was suitable for each client to hold non-diversified investments.

The Respondent Failed to Learn and Accurately Record KYC Information

18. In order to implement the Gold Strategy, the Respondent engaged in a practice of recording the following uniform KYC information for at least 788 client accounts, which comprised 95% of client accounts that the Respondent serviced:

- a) a time horizon of “20 years or more”;
- b) an investment objective of “100% aggressive growth”; and
- c) a risk tolerance of “100% high”.

19. The Respondent recorded the KYC information described in paragraph 18 above, regardless of whether or not the client genuinely had a time horizon of 20 years or more, a high risk tolerance, or a 100% aggressive growth investment objective.

20. The Respondent engaged in this practice in order to ensure that the KYC information that he had recorded for each client supported his investment recommendations to concentrate all, or a substantial portion, of the clients’ investment holdings in precious metals sector funds so that the precious metals sector funds that were purchased in each client account would appear to be suitable for the client.

The Respondent Failed to Fully and Adequately Explain the Risks of the Gold Strategy

21. As described above, in the course of recommending the Gold Strategy to clients, the Respondent represented that, among other things, investing in precious metals sector funds was a medium risk investment strategy. At all material times, the precious metal sector funds recommended by the Respondent were rated high risk.

22. The Respondent failed to fully and adequately explain the risks of investing in precious metals sector funds, including the risks of holding non-diversified investments, the risks associated with holding high risk sector funds, and the risk that the Gold Strategy would not perform in the manner the Respondent expected it to.

23. To the extent that the Respondent explained some of the risks of investing in precious metals sector funds, he failed to provide a balanced presentation of the risks and minimized the risks when he described the funds as being a safe investment alternative.

Pre-Signed and Altered Account Forms

24. At all material times, Sun Life's policies and procedures prohibited its approved persons, including the Respondent, from obtaining, holding, or using pre-signed or altered account forms.

25. Between April 2013 and November 2015, the Respondent obtained and possessed 3 pre-signed account forms in respect of 2 clients.

26. The pre-signed account forms consisted of two limited trade authorization forms and one order ticket.

27. Between December 2009 and January 2015, the Respondent altered 19 account forms that were submitted in respect of accounts of 14 different clients by altering information on the account forms without having the clients initial the alterations.

28. The altered account forms consisted of:

- a) 8 order tickets;
- b) 3 application forms;

- c) 2 preauthorized contribution forms;
- d) 2 transfer instruction forms;
- e) 2 transfer authorization forms;
- f) 1 Know Your Client form; and
- g) 1 identity verification form.

Member Response

29. Sun Life became aware of the conduct referred to above as a result of a 2015 MFDA sales compliance examination.

30. On or about November 1, 2015, Sun Life placed the Respondent on close supervision.

31. On or about November 23, 2015, Sun Life terminated the Respondent's mutual fund registration as a result of the subject matter of this Settlement Agreement.

32. On or about December 4, 2015, Sun Life issued audit letters to 447 clients whose accounts were serviced by the Respondent where Sun Life identified concerns with the concentration risk of client portfolios or where it appeared that uniform KYC information was entered for a client account.

33. On or about December 21, 2015, Sun Life issued audit letters to 16 clients for whom pre-signed forms were identified or suspected to determine if the transactions that occurred in client accounts were authorized. As of January 22, 2016, 5 clients had responded. None of the clients reported any concerns.

34. Since January 2016, Sun Life has received complaints from 11 clients alleging that the holdings in their investment accounts were unsuitably concentrated in precious metals sector funds.

Additional Factors

35. The Respondent has no prior disciplinary history with the MFDA.

36. In January 2016, Sun Life reviewed the client accounts that were serviced by the Respondent with respect to suitability, which resulted in 375 remediation offers to rebalance client accounts and offer client compensation.

37. The Respondent states that he believed he was acting in the clients' interests and did not intend any client harm.

38. The Respondent has an adult dependent son for whom he is financially responsible, which limits his ability to contribute additional amounts towards a fine or costs in this matter.

39. With respect to the pre-signed and altered account forms as described above, there is no evidence of client loss or lack of client authorization.

40. 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

41. The Respondent admits that:

- a) between January 2010 and November 2015, he recommended to approximately 423 clients that the clients concentrate all or a substantial portion of their investment holdings in precious metals sector funds, without adequately assessing the suitability of his investment recommendations on a client-by-client basis having regard to the essential Know-Your-Client ("KYC") information relevant to each individual client, contrary to MFDA Rules 2.2.16 and 2.1.1.;
- b) between January 2010 and November 2015, he failed to accurately record the essential KYC information relevant to each client and to each order and account that he accepted, but instead recorded KYC information for each client that would be consistent with his investment recommendations to those clients to concentrate

⁶ MFDA Rule 2.2.1 was amended in December 2010 and in February 2013. In this Settlement Agreement, all references to MFDA Rule 2.2.1 concern the version of the Rule that was in force prior to December 2010.

- all or a substantial portion of the clients' investment holdings in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1;
- c) between January 2010 and November 2015, he failed to fully and adequately explain, and/or omitted to accurately explain the risks of investing in precious metals sector funds that he recommended to clients, thereby failing to present the investment recommendations to the clients in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1;
 - d) between April 2013 and November 2015, he obtained and possessed 3 pre-signed client account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
 - e) between December 2009 and January 2015, he altered 19 account forms in respect of 14 clients by altering information on the account forms without obtaining client initials, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$10,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
- d) the payment of the fine and costs shall be as follows:
 - i. \$5,000 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$5,000 (fine) on or before the last business day of the 3rd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel; and
 - iii. \$5,000 (fine) on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;
- e) the Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and

- f) the Respondent will attend in person or via teleconference, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

43. 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

44. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

45. 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 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.

46. 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.

47. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

48. 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

49. 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.

50. 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.

XI. DISCLOSURE OF AGREEMENT

51. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 25th day of January, 2019.

“Donald John McIntyre”

Donald John McIntyre

“DLM”

Witness – Signature

DLM

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. 2017113**



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: Donald John McIntyre

ORDER

WHEREAS on November 17, 2017 the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to section 24.4 of By-law No. 1 in respect of Donald John McIntyre (the “Respondent”);

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

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) between January 2010 and November 2015, recommended to approximately 423 clients that the clients concentrate all or a substantial portion of their investment holdings in precious metals sector funds, without adequately assessing the suitability of his investment recommendations on a client-by-client basis having regard to the essential Know-Your-Client (“KYC”) information relevant to each individual client, contrary to MFDA Rules 2.2.1 and 2.1.1;

- b) between January 2010 and November 2015, failed to accurately record the essential KYC information relevant to each client—and to each order and account that he accepted, but instead recorded KYC information for each client that would be consistent with his investment recommendations to those clients to concentrate all or a substantial portion of the clients’ investment holdings in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1;
- c) between January 2010 and November 2015, failed to fully and adequately explain, and/or omitted to accurately explain the risks of investing in precious metals sector funds that he recommended to clients, thereby failing to present the investment recommendations to the clients in a fair and balanced manner, contrary to MFDA Rules 2.2.1 and 2.1.1;
- d) between April 2013 and November 2015, obtained and possessed 3 pre-signed client account forms in respect of 2 clients, contrary to MFDA Rule 2.1.1; and
- e) between December 2009 and January 2015, altered 19 account forms in respect of 14 clients by altering information on the account forms without obtaining client initials, contrary to MFDA Rule 2.1.1.

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

1. The Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$10,000 in certified funds pursuant to section 24.1.1(b) of By-law No. 1;
3. The Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
4. The payment of the fine and costs shall be as follows:
 - a) \$5,000 (costs) upon acceptance of the Settlement Agreement by the Hearing Panel;

- b) \$5,000 (fine) on or before the last business day of the 3rd month following the date of the acceptance of the Settlement Agreement by the Hearing Panel; and
- c) \$5,000 (fine) on or before the last business day of the 6th month following the date of the acceptance of the Settlement Agreement by the Hearing Panel;

5. The Respondent shall in the future comply with MFDA Rules 2.2.1 and 2.1.1; and

6. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]