



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: James Michael Lewis

Heard: October 24, 2022 by electronic hearing in Toronto, Ontario

Decision: October 24, 2022

Reasons for Decision: December 19, 2022

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick H. Webber
Guenther W. K. Kleberg
Timothy J. Pryor

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Senior Enforcement Counsel for the Mutual
)	Fund Dealers Association of Canada
)	
Michael Krygier-Baum)	Counsel for the Respondent
)	
)	
James Michael Lewis)	Respondent
)	

I. SETTLEMENT AGREEMENT

1. This was a settlement hearing pursuant to a settlement agreement dated October 20, 2022 between the Mutual Fund Dealers Association of Canada (the “MFDA”) and James Michael Lewis (the “Respondent”), a copy of which is attached hereto as Appendix “A” (the “SA”). The Panel received written and oral submissions from MFDA counsel that the Panel should accept the SA, and an oral statement from the Respondent that he concurred in the MFDA submissions.

II. FACTS

2. The relevant facts are set out in section IV of the SA.

III. CONTRAVENTION

3. In the SA, the Respondent admitted to the following contravention:

Between November 2017 and July 2018, he signed or submitted account documents obtained by an unregistered individual to conduct securities related business and update Know-Your Client (“KYC”) information of clients of the Member without using due diligence to learn the essential facts relative to the clients, ensuring that transactions processed for 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.

IV. AGREED SANCTIONS

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

- 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 of 30 months from June 7, 2022;
- b) a fine in the amount of \$20,000; and
- c) costs in the amount of \$5,000.
- d) The fine and costs shall be payable in the following instalments:
 - i. \$5,000 (fine) and \$5,000 (costs) payable in certified funds upon acceptance of the SA;
 - ii. \$3,750 (fine) payable on or before January 24, 2023;
 - iii. \$3,750 (fine) payable on or before April 24, 2023;
 - iv. \$3,750 (fine) payable on or before July 24, 2023; and

- v. \$3,750 (fine) payable on or before October 24, 2023.
- e) The Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1.

V. ABRIDGEMENT OF TIME

5. The Hearing Panel agreed, pursuant to Rules 2.2 and 1.5 of the MFDA Rules of Procedure, to the request by MFDA counsel 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. The public notice of this Settlement Hearing was published October 21, 2022. The Hearing Panel agreed with the MFDA that the hearing should proceed expeditiously and that no prejudice to the public would occur since the MFDA issued a news release that the hearing had been adjourned from June 7-8, 2022 to October 24-28, 2022 and that Settlement Hearings are held in camera. This type of relief has been granted in previous cases e.g. *Gowan (Re)*, 2022 LNCMFDA 8, *Sun Life Financial Services (Canada) Inc. (Re)*, 2018 LNCMFDA 3, *Wilcott (Re)*, 2019 LNCMFDA 52 and *Investia Financial Services Inc. (Re)*, 2019 LNCMFDA 18.

VI. GENERAL PRINCIPLES REGARDING SETTLEMENT HEARINGS

6. Settlements play an important and necessary role in facilitating the MFDA's principal goal of protecting the investing public by providing an efficient and effective way for the MFDA to proscribe conduct that is harmful to the public, while providing a flexible remedy that can be tailored to address the interests of the MFDA and respondents.

British Columbia (Securities Commission) v. Seifert, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff'd, [2007] B.C.J. No. 2186 at para. 31 (C.A)

7. Accordingly, it is generally accepted that hearing panels will not lightly interfere in a settlement agreement reached between the MFDA and a respondent. Section 24.4.3 of MFDA By-Law No. 1 provides that hearing panels may only accept or reject a settlement in its entirety. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. A Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

Professional Investments (Kingston) Inc. (Re), 2009 LNCMFDA 9 at para. 13;

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

- a) whether acceptance of the settlement agreement would be in the public interest and whether the sanction imposed will protect investors;
- b) whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the respondent as set out in the settlement agreement;
- c) whether the settlement agreement addresses the issues of both specific and general deterrence;
- d) whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- e) whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets;
- f) whether the settlement agreement will foster confidence in the integrity of the MFDA; and
- g) whether the settlement agreement will foster confidence in the regulatory process itself.

VII. THE FACTS ADMITTED CONSTITUTE MISCONDUCT

(i) Stealth Advising

9. The Respondent admits facilitating stealth advising by Trevor Rosborough (“Rosborough”), an unregistered individual. As stated in MFDA Staff Notice 0067, “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.

10. Rosborough had been a former Approved Person with the Member, whose registration had been terminated by the Member. Rosborough subsequently sold his book of business to the Respondent, but nonetheless continued to provide investment advice and gather KYC information from his former clients. The Respondent signed and submitted the resulting account forms under

his representative code to the Member for processing with respect to 31 clients when he knew or ought to have known that Rosborough had provided the investment advice and gathered the KYC information from the clients

11. By facilitating stealth advising by Rosborough, 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. Rosborough had no such relationship with the Member.

12. This Hearing Panel agrees with 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.

(ii) Know-Your-Client Obligations

13. The Respondent further admitted that when he facilitated stealth advising by Rosborough, he failed to satisfy his KYC and suitability obligations with respect to 31 clients.

14. 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

15. The Respondent processed transactions in client accounts when it had been Rosborough who had made the investment recommendations and obtained the instructions from the clients. The Respondent did not meet with the clients. Accordingly, the Respondent 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

16. 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.

17. By facilitating stealth advising by Rosborough, the Respondent contravened all of the parts of the standard of conduct set out in Rule 2.1.1. 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 Rosborough, 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 Rosborough was still providing investment advice and able to have transactions processed, clients may not have appreciated that they were dealing with an unsupervised individual who was no longer subject to the requirements of the mutual fund regulatory regime.

Gowan (Re), supra at para. 20;

Graham (Re), supra at paras. 29-30;

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

18. The Respondent's failure to use due diligence to fulfil his KYC and suitability obligations also contravenes 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,

Gowan (Re), supra at para. 21.

VIII. APPROPRIATENESS OF SANCTION

19. 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.

20. 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.

21. The Hearing Panel, and many previous hearing panels, also referred to the MFDA's Sanction Guidelines (the "Sanction Guidelines"). The Sanction Guidelines are not mandatory or binding on the Hearing Panel, but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of MFDA Hearing Panels, are also reflected and described in the Sanction Guidelines.

Application to the Present Case

22. The Hearing Panel considered the above factors in determining the appropriateness of the SA. Set out below are the factors that are particularly pertinent to this case:

Seriousness of the Misconduct

23. 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;

Gowan (Re), supra at para. 26;

MSN-0067, *supra*.

24. Furthermore, the Respondent's misconduct is aggravated by the fact that he facilitated stealth advising by an individual that the Member had chosen to deliberately exclude from its business. In addition, the scope of the stealth advising facilitated by the Respondent, impacting 31 clients, was substantial.

25. 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.

Respondent's Past Conduct

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

Respondent's Recognition of the Seriousness of the Misconduct

27. The Hearing Panel accepts that the MFDA Staff is satisfied that the Respondent recognizes the seriousness of his misconduct. By entering into the SA, the Respondent has accepted responsibility for his actions and avoided the time and expense of a full disciplinary hearing.

The Harm Suffered by Investors

28. There was a single client complaint about a deferred sales charge ("DSC") of approximately \$3,000 that the client incurred due to the redemption of an investment in a leveraged account that the client held at the Member. The client identified Rosborough, who was not registered with the Member at the time, as the individual who advised him about the redemption. At the time, the Respondent was the Approved Person responsible for servicing the client's account. The Member compensated the client for the DSCs.

29. The Member received no other complaints and there is no other evidence of client harm related to the conduct described above.

30. The Hearing Panel feels that the actual harm suffered by clients was minor; however, the Hearing Panel agrees with the MFDA submissions, that the interests of investors are inherently compromised if they are recipients of investment advice from an individual who has been deliberately excluded from the business of the Member, has not met the requirements necessary to be registered in good standing, and is not subject to the regulatory obligations of an Approved Person or the policies and procedures of the Member.

The Benefit Received by the Respondent from the Misconduct

31. The Respondent received approximately \$3,000 per month pursuant to his agreement to purchase Rosborough's book of business, which consisted of commissions earned from both mutual fund and insurance clients that the Respondent did not pay over to Rosborough. In addition, as a result of becoming the advisor responsible for servicing the accounts formerly serviced by Rosborough, the Respondent received an increase in his bonus from 25% to 68% of the trailer fees received by the Member that were attributable to client accounts that the Respondent was responsible for servicing.

32. While the MFDA did not provide the Hearing Panel with the precise amount earned by the Respondent, it submitted that the fine agreed to in the SA substantially if not entirely disgorges the benefit attributable to the misconduct. It is a fundamental principle in determining the appropriateness of a fine that disgorgement of all benefits received is a minimum. The Hearing Panel accepts the MFDA submission that the fine agreed to is appropriate.

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 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 Hearing Panel agrees that 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 more than 2 years, which is in addition to the nearly 4 years he has been out of the industry since his termination by the Member. The Respondent further faces the added economic penalty of a \$20,000 fine.

35. Concerning general deterrence, a 30-month prohibition with a \$20,000 fine 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 often results from being unable to serve one's clients during a lengthy prohibition period.

Previous Decisions Made in Similar Cases

36. The proposed penalties are within the reasonable range of appropriateness having regard to other decisions by MFDA hearing panels in similar circumstances that were reviewed by the Hearing Panel. These cases were:

Graham (Re), *supra*;

Gowan (Re), *supra*;

Nichols (Re), 2022 LNCMFDA 58;

O'Brien (Re), 2022 LNCMFDA 29;

Guglielmi (Re), *supra*;

Jain (Re), 2012 LNCMFDA 23;

Dickson (Re), 2011 LNCMFDA 72;

Vandenboomen (Re), *supra*;

Badasha (Re), *supra*.

IX. CONCLUSION

37. Having regard to all of the factors outlined above, it is the Hearing Panel's conclusion that the SA is reasonable and appropriate, is in the public interest and is therefore accepted by the Hearing Panel.

DATED this 19th day of December, 2022.

"Frederick H. Webber"

Frederick H. Webber
Chair

Guenther W. K. Kleberg"

Guenther W. K. Kleberg
Industry Representative

"Timothy J. Pryor"

Timothy J. Pryor
Industry Representative

Appendix “A”

Settlement Agreement

File No. 202169



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: James Michael Lewis

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, 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, James Michael Lewis (the “Respondent”).

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

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

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between November 2017 and July 2018, he signed or submitted account documents obtained by an unregistered individual to conduct securities related business and update Know-Your-Client (“KYC”) information of clients of the Member without using due diligence to learn the essential facts relative to the clients, ensuring that transactions processed 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. TERMS OF SETTLEMENT

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

- 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 of 30 months from June 7, 2022, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine of \$20,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1
- d) the Respondent shall pay the fine and costs in instalments as follows:
 - i. \$5,000 (fine) and \$5,000 (costs) payable in certified funds upon acceptance of the Settlement Agreement;
 - ii. \$3,750 (fine) payable on or before January 24, 2023;
 - iii. \$3,750 (fine) payable on or before April 24, 2023;
 - iv. \$3,750 (fine) payable on or before July 24, 2023; and
 - v. \$3,750 (fine) payable on or before October 24, 2023;
- e) the Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1; and
- f) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

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

IV. AGREED FACTS

Registration History

7. From March 28, 2012 to November 19, 2018 in Ontario, and from April 19, 2018 to November 19, 2018 in Alberta, the Respondent was registered as a dealing representative with Quadrus Investment Services Ltd. (the “Member”), a Member of the MFDA.

8. On November 19, 2018, 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.

9. At all material times, the Respondent conducted business in the Strathroy, Ontario area.

Stealth Advising

10. Former Approved Person Trevor Rosborough (“Rosborough”) was registered as a dealing representative with the Member until October 31, 2017 when the Member terminated Rosborough in connection with matters that are not the subject of this proceeding.

11. On or about November 1, 2017, the Respondent entered into an agreement with Rosborough to purchase Rosborough’s book of business, which comprised both Rosborough’s insurance and mutual fund book of business (the “Purchase Agreement”).

12. On or about November 20, 2017, the Member assigned to the Respondent responsibility for servicing the accounts of clients that had previously been serviced by Rosborough (the “Transferred Clients”). The Respondent did not schedule meetings with these clients or otherwise notify them that he had been assigned responsibility for servicing their accounts.

13. Rosborough continued to have contact with the Transferred Clients following the termination of his registration. Rosborough’s communications to clients included emails, in which he minimized the significance of the fact that the Respondent was now the Approved Person of the Member responsible for servicing their accounts, and informed them that he would continue to provide investment advice to them and accept trading instructions from them as he had prior to his

termination. The Respondent states that he was unaware of this correspondence from Rosborough to the Transferred Clients.

14. After entering into the Purchase Agreement, the Respondent began to regularly attend and conduct business from the office that Rosborough had conducted business from prior to his termination. The Respondent also retained one of Rosborough's long-standing unlicensed assistants,¹ DA, to assist him to service the Transferred Clients. He also obtained approval from the Member to permit DA to access the Member's back office system and the Member's account forms so that DA could provide the support that she was retained to provide to the Respondent. Rosborough continued to pay DA's salary.

15. Between November 2017 and July 2018, Rosborough was not registered as a dealing representative and was not an Approved Person of the Member. However, throughout that period Rosborough continued to conduct securities related business by providing advice to Transferred Clients and accepting instructions from Transferred Clients about specific mutual fund transactions. Rosborough also obtained KYC information to update the Member's records concerning the investment accounts of Transferred Clients.

16. Rosborough, or one of Rosborough's assistants, provided the 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.

17. After account documents were signed by the Transferred Clients, Rosborough or his unlicensed assistants collected the account forms and left them at Rosborough's office where the Respondent would regularly attend, sign the account forms as the Approved Person of record, and submit the forms for processing or arrange for an unlicensed assistant to do so.

18. The Respondent did not meet with or communicate with Transferred Clients about the content or purpose of the account forms before signing and submitting the account forms to facilitate the processing of transactions and KYC updates in their accounts.

¹ Rosborough had 3 assistants.

19. The Respondent facilitated the processing of at least 55 trades and 4 KYC updates for 31 clients that he had not met or obtained instructions from. The trades had an approximate value of \$995,000.

20. 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; and
- e) provide the advice necessary for the Transferred Clients to make an informed decision about KYC updates and trades in their accounts or meet or communicate with the Transferred Clients to receive instructions from Transferred Clients that were necessary to authorize transactions and KYC updates in their accounts.

21. As noted above, Rosborough was terminated by the Member effective October 31, 2017 and accordingly, he 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). Rosborough was therefore not permitted to engage in securities related business with clients of the Member following his termination.

22. 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.

23. 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.

24. By processing transactions and KYC information updates on the basis of instructions and information obtained from clients by an unregistered individual, the Respondent facilitated stealth

advising by an unregistered individual 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

25. The Respondent received approximately \$3,000 per month pursuant to the Purchase Agreement, which consisted of commissions earned from both mutual fund and insurance clients that the Respondent did not pay over to Rosborough. In addition, as a result of becoming the advisor responsible for servicing the accounts of the Transferred Clients, the Respondent received an increase in his bonus from 25% to 68% of the trailer fees received by the Member that were attributable to client accounts that the Respondent was responsible for servicing.

26. On July 17, 2018, one client complained to the Member about deferred sales charges (“DSC”) of approximately \$3,000 that the client incurred due to the redemption of an investment in a leveraged account that the client held at the Member. The client identified Rosborough, who was not registered with the Member at the time, as the individual who advised him about the redemption. At the time, the Respondent was the Approved Person responsible for servicing the client’s account. The Member compensated the client for the DSCs.

27. The Member received no other complaints and there is no other evidence of client harm related to the conduct described above.

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

29. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct and saved the MFDA the time, resources, and expenses that would have been necessary to conduct a contested hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

30. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

31. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 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.

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

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

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal before the Board of Directors of the 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;
- c) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of MFDA By-law No. 1; and
- e) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the

Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

34. 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 this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

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

36. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

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

DATED this 20th day of October, 2022.

“James Lewis”

James Lewis

“SW”

Witness – Signature

SW

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: James Michael Lewis

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of James Michael Lewis (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 based upon the admissions of the Respondent, the Hearing Panel is of the opinion that the Respondent between November 2017 and July 2018, signed or submitted account documents obtained by an unregistered individual to conduct securities related business and update 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 processed 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 ten day notice period required according to Rule 15.2 of the MFDA Rules of Procedure is abridged pursuant to the discretion of the Hearing Panel exercised in accordance with Rules 1.3, 1.5, and 2.2(1)(a) of the MFDA *Rules of Procedure* and the Settlement Agreement is accepted, as a consequence of which:

1. 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 of 30 months from June 7, 2022, pursuant to section 24.1.1(e) of MFDA By-law No. 1.
2. The Respondent shall pay a fine of \$20,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
3. The Respondent shall pay costs of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1.
4. The Respondent shall pay the fine and costs in instalments as follows:
 - a) \$5,000 (fine) and \$5,000 (costs) payable in certified funds on the date of this Order;
 - b) \$3,750 (fine) payable on or before January 24, 2023;
 - c) \$3,750 (fine) payable on or before April 24, 2023;
 - d) \$3,750 (fine) payable on or before July 24, 2023; and
 - e) \$3,750 (fine) payable on or before October 24, 2023.
5. The Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, and 2.1.1;
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]

DM 899252