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: Robert Mark Loney

Heard: October 26, 2018 in Toronto, Ontario
Decision: October 26, 2018
Reasons for Decision: January 28, 2019

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Malliha Wilson	Chair
Brigitte J. Geisler	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

Paul Blasiak	)	Counsel for the Mutual Fund Dealers Association of Canada
Robert Mark Loney	)	Respondent, in person

I. SETTLEMENT AGREEMENT

1. The Hearing Panel accepted the Settlement Agreement dated July 4, 2018 (the "Settlement Agreement") between the staff of the MFDA and Robert Mark Loney (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 sections IV and V of the Settlement Agreement.

3. From December 1995 to February 12, 2016, the Respondent was registered in Ontario as a mutual fund salesperson/ dealing representative with Scotia Securities Inc. ("SSI"), a Member of the MFDA.

4. From October 25, 2001 when SSI became a Member of the MFDA until February 12, 2016 when the Respondent resigned from SSI, the Respondent was an Approved Person of SSI.

5. From April 6, 2016 to August 21, 2017, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc., a Member of the MFDA.

6. The events described below occurred while the Respondent was registered with SSI.

7. At all material times, the Respondent conducted business in Kitchener, Ontario.

II. CONTRAVENTIONS

8. The Respondent admits that:

a) Between December 2012 and February 12, 2016, the respondent failed to follow client SF's instructions to process the transfer of an existing Registered Education Savings Plan account to the Member, contrary to MFDA Rule 2.1.1;

b) between May 25, 2015 and January 11, 2016, the Respondent made three representations to client SF which falsely indicated that the client's Registered Education Savings Plan account had been transferred to the Member, contrary to MFDA Rule 2.1.1;

c) between June 8, 2015 and November 16, 2015, the Respondent processed five unauthorized redemptions from client SF's non-registered account without the client's knowledge when he knew that she intended to process the redemptions from a Registered Education Savings Plan account, contrary to MFDA Rules 2.3.1 and 2.1.1;

d) on January 11, 2016, the Respondent falsely represented to client SF that the decline in value of her non-registered account was caused by market volatility when in fact the decline in value of the account was attributable at least in part due to unauthorized redemptions that the Respondent had processed in the account without the client's knowledge, contrary to MFDA Rule 2.1.1;

e) between July 6, 2015 and October 28, 2015, the Respondent altered the dates of client SF's signature on two account forms and altered the date of the joint account holder's signature on one account form, contrary to MFDA Rule 2.1.1; and

f) between June 12, 2013 and May 7, 2015, the Respondent:

   i. failed to explain the risk of borrowing to invest to client SF prior to recommending that she borrow to invest on four occasions;

   ii. failed to provide a risk disclosure document to client SF prior to processing two mutual fund purchases in the client's non-registered account that were made with borrowed money; and

   iii. failed to classify client SF's non-registered account as "leveraged" on the Member's back office system after processing two mutual fund purchases in the account that were made with borrowed money;

   contrary to MFDA Rules 2.2.1, 2.6(b), 2.1.1, 2.5.1, 1.1.2 and the Member's Policies and Procedures.

9. The Respondent admits that his misconduct was contrary to MFDA Rules 2.1.1, 2.3.1, 2.2.1, 2.6(b), 2.5.1, 1.1.2 and also the Member's Policies and Procedures.

III. AGREED PENALTY

10. 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 Member of the MFDA, pursuant to s. 24.1.1 (e) of MFDA By-law No. 1; and

b) the Respondent shall pay costs in the amount of $ 1,000.00 pursuant to s. 24.2 of MFDA By-law No.1.

IV. CONSIDERATIONS

11. 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.

V. IMPORTANCE OF RESPECTING SETTLEMENTS

12. The case law makes it clear that Settlement Agreements should be encouraged and respected.

13. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Court of Appeal stated with respect to a settlement by the B.C. Securities Commission (*B.C. Securities Commission v. Seifert* [2007] B.C.J. No. 2186, para. 49 (B.C.C.A.)):

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

14. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the

settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. There were significant negotiations in the present case.

15. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

> "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

VI. NATURE OF THE MISCONDUCT

16. The Respondent's misconduct is serious. The Respondent engaged in six serious contraventions of the MFDA's Rules as set out in paragraph 8 above.

VII. OTHER CONSIDERATIONS REGARDING ACCEPTABILITY OF AGREED PENALTY

17. There are mitigating circumstances in favour of the Respondent. These include:

a) The Respondent provided documentary evidence to staff of the MFDA substantiating that he is impecunious;

b) The Respondent acknowledges that if it were not for his financial situation, the misconduct described herein would warrant a monetary penalty that is significantly greater than the $1,000.00 costs award set out in the Settlement Agreement;

c) There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in the Settlement Agreement;

d) In May 2016 SSI paid $4,500.00 to compensate client SF for the redemptions that the Respondent had processed in her Non-Registered Account without her authorization;

e) The Respondent has not previously been the subject of MFDA disciplinary proceedings; and

f) by entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources and expenses associated with conducting a full hearing of the allegations.

VIII. SHOULD THE PANEL ACCEPT THE SETTLEMENT AGREEMENT?

18. A Panel can accept or reject a Settlement Agreement. It cannot modify it.

19. The agreed penalties help the MFDA to send a message to the Respondent and others with respect to specific and general deterrence.

20. The agreed penalties are 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.

IX. CONCLUSION

21. 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 28th day of January, 2019.

"Malliha Wilson"
Malliha Wilson
Chair

"Brigitte J. Geisler"
Brigitte J. Geisler
Industry Representative

"Joseph Yassi"
Joseph Yassi
Industry Representative

DM 653922

Schedule "1"

Settlement Agreement

File No. 201874

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: Robert Mark Loney

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Robert Mark Loney (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 IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From December 1995 to February 12, 2016, the Respondent was registered in Ontario as a mutual fund salesperson/ dealing representative[1] with Scotia Securities Inc. ("SSI"), a Member of the MFDA.

7. From October 25, 2001 when SSI became a Member of the MFDA until February 12, 2016 when the Respondent resigned from SSI, the Respondent was an Approved Person of SSI.

8. From April 6, 2016 to August 21, 2017, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc., a Member of the MFDA.

9. The events described below occurred while the Respondent was registered with SSI.

10. At all material times, the Respondent conducted business in Kitchener, Ontario.

[1] In September 2009, the registration category mutual fund salesperson was changed to "dealing representative" when National Instrument 31-103 came into force.

Failure To Transfer Account And False Representations To Client SF

11. At all material times, client SF was a client of SSI and the Respondent was an Approved Person at SSI who frequently serviced client SF's investment accounts at SSI.

12. In November 2012, the Respondent opened a non-registered account for client SF at SSI (the "Non-Registered Account").

13. At all material times, client SF held, jointly with her former spouse, a Registered Education Savings Plan ("RESP") account at Manulife. Client SF's son, DF, was a beneficiary of the RESP account.

14. In December 2012, the Respondent recommended to client SF that she transfer her RESP account from Manulife to SSI (the "Transfer"). Client SF agreed to proceed with the Transfer and instructed the Respondent to process the Transfer.

15. The Respondent failed to process the Transfer. At the time of the Respondent's resignation from SSI on February 12, 2016, the RESP account remained at Manulife.

16. In December 2012, the Respondent arranged for client SF and her former spouse to sign a "Registered Education Savings Plan (RESP) Transfer" form (the "Transfer Form") in respect of the Transfer.

17. Between January 21, 2013 and April 18, 2013, the Respondent sent five e-mails to client SF in which he stated that the Transfer was not yet completed and falsely stated that:

- the documentation he submitted to complete the Transfer had been rejected; and
- he had resubmitted the documentation to process the RESP Transfer.

18. The Respondent advised client SF that he would contact her when the Transfer was completed.

19. Between July 15, 2013 and April 27, 2015, the Respondent and client SF exchanged numerous emails regarding the status of the Transfer. In his e-mails to client SF, the Respondent

continued to falsely represent to client SF that he had made efforts to process the Transfer by making statements such as the following:

> "I am very sorry that the kids [sic] Education Plan Transfer has been such a huge screw up and I will report back to you tomorrow when I have a chance to see where things stand some time later today with just getting back." (Excerpt from email dated July 15, 2013)
>
> "All the best and will be in touch about the RESP as soon as I have more details with just getting back today." (Excerpt from email dated July 15, 2013)
>
> "I have really turned up the heat on this RESP transfer as I am pi$$ed [sic] we have not seen it yet. Waiting for a response after escalating this so will let you know further as we hear." (Excerpt from email dated July 18, 2013)
>
> "We are honestly making some progress on the RESP transfer and we should have the funds shortly after sending for the 3'rd time." (Excerpt from email dated September 26, 2013)
>
> "Our Investment Support Centre has taken control of the RESP transfers and I have to re-send after the latest rejection based on the need for a signature verification. It is the stupidest thing ever and is one of three different ones I have not been able to transfer over." (Excerpt from email dated June 12, 2014)
>
> "I have seriously tried 3 times to get the RESP over at 2 months or more per time and every time they reject the forms or some other BS. I have actually lodged a complaint with the Securities Commission and will advise you of the outcome when you get back."[2] (Excerpt from email dated July 29, 2014)
>
> "The RSP part was a surprise to me as not with your other stuff when we first transferred but the RESP has been a real $hit [sic] Show and you have my word we will get this finalized for once and for all." (Excerpt from email dated April 27, 2015)

20. On February 6, 2015, the Respondent arranged for client SF to sign an additional form in respect of the Transfer (the "Additional Transfer Form").

21. The Respondent had not actually submitted the Transfer Form, the Additional Transfer Form or any other documentation to anyone who worked at SSI or at Manulife in order to process the Transfer.

[2] At no time did the Respondent complain to the Ontario Securities Commission regarding the Transfer.

22. On May 25, 2015, client SF sent an e-mail to the Respondent inquiring about the status of the Transfer and advising him that she needed funds to pay for DF's college tuition.

23. On May 25, 2015, the Respondent sent a reply e-mail to client SF in which he falsely advised her that the Transfer was complete.

24. As described in more detail below, between June 2015 and November 2015, whenever client SF instructed the Respondent to process redemptions from the RESP account to pay for post-secondary school expenses of her son DF, the Respondent redeemed investments held in client SF's Non-Registered Account and led her to believe that the money had been redeemed from the RESP account as she had intended.

25. On October 26, 2015, in response to an inquiry from client SF, the Respondent falsely advised client SF that the balance of her (non-existent) RESP account at SSI was approximately $8,000 and that he had processed three redemptions from that account.

26. When client SF expressed concern about the decline in value of her Non-Registered Account (which was attributable at least in part due to the redemptions that he processed from that account), the Respondent replied by writing on January 11, 2016 that "Markets have sucked for sure lately", thereby implying that market volatility had accounted for the decline in her Non-Registered Account balance rather than the redemptions that he had processed in the account.

27. On January 11, 2016, in response to an inquiry from client SF, the Respondent did not acknowledge to client SF that her RESP account had not been transferred from Manulife to SSI. Instead, he stated in an e-mail to client SF that she was unable to view her RESP account on her account statements at SSI because the RESP account "might not be linked".

28. In February 2016, following the Respondent's resignation from SSI, client SF became aware that the Transfer had not been processed when she spoke with another mutual fund salesperson at SSI who advised her that she did not have an RESP account at SSI.

29. By failing to follow client SF's instructions to process the account Transfer, the Respondent engaged in conduct that contravened the standard of conduct, contrary to MFDA Rule 2.1.1.

30. By making false representations to client SF to mislead her about the status of the account Transfer and the reasons for the decline in the value of her Non-Registered Account, the Respondent failed to deal fairly, honestly or in good faith with client SF, contrary to MFDA Rule 2.1.1.

Unauthorized Trading In Client SF's Account

31. Between June 1 and November 16, 2015, client SF sent five requests by e-mail (the "E-mail Requests") to the Respondent instructing him to "withdraw" or "cash in" investments from the RESP account so that she could pay for DF's college-related expenses.

32. The E-mail Requests are summarized in the table below:

Email Request No.	Date of Email Request	Requested Redemption Amount
1	June 1, 2015	$500
2	September 15, 2015	$500
3	September 18, 2015	$300
4	November 12, 2015	$1,900
5	November 16, 2015	$1,250

33. After receiving the Email Requests, the Respondent processed five redemptions (the "Redemptions") from client SF's Non-Registered Account. The Redemptions are summarized in the table below:

Redemption No.	Date of Redemption	Redemption Amount
1	June 8, 2015	$500
2	September 15, 2015	$500
3	September 24, 2015	$300
4	November 12, 2015	$1,900
5	November 16, 2015	$1,250

34. At no time did the Respondent receive instructions from client SF to process redemptions from her Non-Registered Account.

35. In his responses to the E-mail Requests from client SF, the Respondent did not inform her that her RESP account had not been transferred from Manulife to SSI nor did he clarify to her that she did not have an RESP account at SSI or that he had processed the Redemptions from her Non-Registered Account.

36. By processing the Redemptions from client SF's Non-Registered Account contrary to client SF's instructions to process the Redemptions from her RESP account, the Respondent engaged in unauthorized trading, contrary to MFDA Rules 2.3.1 and 2.1.1.

Altered Forms

37. On July 6, 2015, the Respondent altered the date of client SF's signature on the Additional Transfer Form to July 6, 2015. The alteration was not initialed by client SF. Thereafter, the Respondent kept the Additional Transfer Form in his files.

38. On October 28, 2015, the Respondent altered the dates of client SF's and her former spouse's signatures on the Transfer Form to October 28, 2015. The alterations were not initialed by client SF or her former spouse. Thereafter, the Respondent kept the Transfer Form in his files.

39. By altering the dates of client SF's and her former spouse's signatures on the Transfer Form and Additional Transfer Form, the Respondent engaged in conduct that contravened the standard of conduct, contrary to MFDA Rule 2.1.1.

Failure To Explain Risks Of Borrowing To Invest, Provide Risk Disclosure Document and Classify Account as Leveraged

40. Pursuant to MFDA Rule 2.6(b), at all material times, SSI's policies and procedures required its Approved Persons to do the following when processing mutual fund purchases made with borrowed money in non-registered accounts of clients:

- complete and sign a "Borrowing to Purchase Investments (Leveraging) Risk Disclosure" form ("Risk Disclosure Form");
- ensure that the client signs the Risk Disclosure Form;
- ensure that the Risk Disclosure Form is authorized by the Approved Person's Branch Compliance Officer; and
- maintain the Risk Disclosure Form in the client's file.

41. At all material times, SSI's policies and procedures also required its Approved Persons to classify any non-registered accounts of clients in which mutual fund purchases were made with borrowed money as "leveraged" on SSI's back office system.

42. On June 12, 2013, February 26, 2014 and February 4, 2015, client SF sent e-mails to the Respondent inquiring whether she should borrow money from her credit card at low interest rates for the purpose of investing in her Non-Registered Account.

43. On June 12, 2013, February 26, 2014 and February 4, 2015, the Respondent replied to client SF's e-mails described above. In each of his replies, the Respondent recommended to client SF that she borrow money from her credit card and invest the money in her Non-Registered Account (the "Recommendations").

44. In the Recommendations, the Respondent did not disclose to client SF any of the risks associated with borrowing to invest, including:

- the risk that the value of the investment may fall below the value of the loan;
- the risk that interest costs may exceed the returns received from investments purchased with the borrowed money; and
- the risk that client SF could default on the loan if the investment fell in value and she was relying on investment returns to cover her borrowing costs.

45. On June 17, 2013, March 7, 2014 and February 17, 2015, shortly after she received the Respondent's Recommendations, client SF made three mutual fund purchases (the "Purchases") in her Non-Registered Account. The Purchases were funded in whole or in part with money that client SF had borrowed from her credit card. The Purchases are summarized in the table below:

Purchase No.	Date of Purchase	Purchase Amount
1	June 17, 2013	$15,000
2	March 7, 2014	$23,000
3	February 17, 2015	$21,000

46. The Respondent processed Purchases #1 and #2 described above. Another mutual fund salesperson at SSI processed Purchase #3.

47. The Respondent failed to provide a Risk Disclosure Form to client SF prior to processing Purchases #1 and #2.

48. The Respondent failed to classify client SF's Non-Registered Account as "leveraged" on SSI's back office system after he processed Purchases #1 and #2.

49. On May 7, 2015, the Respondent sent an email to client SF once again recommending that she borrow money for the purpose of investing in her Non-Registered Account. In the email, the Respondent stated: "Also, have an idea for you because we have an introductory rate card at 1.99% for 6 months if you think you might want to swing another go at the Investment like last time as it worked out pretty well."

50. In the email described above, the Respondent did not disclose to client SF any of the risks associated with borrowing to invest.

51. Despite having on four occasions recommended to client SF that she borrow money for the purpose of investing, the Respondent did not, at any time, provide a Risk Disclosure Form to client SF or discuss with client SF the risks associated with borrowing to invest. The Respondent thereby failed to ensure that client SF understood and accepted the risks associated with borrowing to invest.

52. By failing to:

- explain the risk of borrowing to invest to client SF prior to recommending that she borrow to invest on four occasions;
- provide a Risk Disclosure Form to client SF prior to processing two mutual fund purchases in her Non-Registered Account that were made with borrowed money; and
- classify client SF's Non-Registered Account as "leveraged" on SSI's back office system after processing two mutual fund purchases in the account that were made with borrowed money;

the Respondent engaged in conduct contrary to MFDA Rules 2.2.1, 2.6(b), 2.1.1, 2.5.1, 1.1.2 and the Member's policies and procedures.

Additional Factors

53. The Respondent states that he is impecunious and unable to pay an amount greater than $1,000 toward either a fine or costs. The Respondent has provided documentary evidence to MFDA Staff substantiating that he is impecunious.

54. The Respondent acknowledges that if it were not for his financial situation the misconduct described above would warrant a monetary penalty that is significantly greater than the $1,000 costs award set out in this Settlement Agreement.

55. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement.

56. In May 2016, SSI paid $4,500 to compensate client SF for the Redemptions that the Respondent had processed in her Non-Registered Account without her authorization.

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

58. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

59. The Respondent admits that:

a) between December 2012 and February 12, 2016, the Respondent failed to follow client SF's instructions to process the transfer of an existing Registered Education Savings Plan account to the Member, contrary to MFDA Rule 2.1.1;

b) between May 25, 2015 and January 11, 2016, the Respondent made three representations to client SF which falsely indicated that the client's Registered Education Savings Plan account had been transferred to the Member, contrary to MFDA Rule 2.1.1;

c) between June 8, 2015 and November 16, 2015, the Respondent processed five unauthorized redemptions from client SF's non-registered account without the client's knowledge when he knew that she intended to process the redemptions

from a Registered Education Savings Plan account, contrary to MFDA Rules 2.3.1 and 2.1.1;

d) on January 11, 2016, the Respondent falsely represented to client SF that the decline in value of her non-registered account was caused by market volatility when in fact the decline in value of the account was attributable at least in part due to unauthorized redemptions that the Respondent had processed in the account without the client's knowledge, contrary to MFDA Rule 2.1.1;

e) between July 6, 2015 and October 28, 2015, the Respondent altered the dates of client SF's signature on two account forms and altered the date of the joint account holder's signature on one account form, contrary to MFDA Rule 2.1.1; and

f) between June 12, 2013 and May 7, 2015, the Respondent:

- failed to explain the risk of borrowing to invest to client SF prior to recommending that she borrow to invest on four occasions;
- failed to provide a risk disclosure document to client SF prior to processing two mutual fund purchases in the client's non-registered account that were made with borrowed money; and
- failed to classify client SF's non-registered account as "leveraged" on the Member's back office system after processing two mutual fund purchases in the account that were made with borrowed money;

contrary to MFDA Rules 2.2.1, 2.6(b), 2.1.1, 2.5.1, 1.1.2 and the Member's policies and procedures.

VI. TERMS OF SETTLEMENT

60. 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 Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

b) the Respondent shall pay costs in the amount of $1,000 pursuant to s. 24.2 of MFDA By-law No 1; and

c) the Respondent will attend in person on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

61. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

62. 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.

63. 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.

64. 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.

65. 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

66. 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

67. 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.

68. 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

69. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 4th day of July, 2018.

"Robert Mark Loney"
Robert Mark Loney

"OC"
Witness – Signature

OC
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.

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: Robert Mark Loney

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Robert Mark Loney (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 on the basis of the admissions of the Respondent as set out in the Settlement Agreement, the Hearing Panel is of the opinion that:

a) between December 2012 and February 12, 2016, the Respondent failed to follow client SF's instructions to process the transfer of an existing Registered Education Savings Plan account to the Member, contrary to MFDA Rule 2.1.1;

b) between May 25, 2015 and January 11, 2016, the Respondent made three representations to client SF which falsely indicated that the client's Registered Education Savings Plan account had been transferred to the Member, contrary to MFDA Rule 2.1.1;

c) between June 8, 2015 and November 16, 2015, the Respondent processed five unauthorized redemptions from client SF's non-registered account without the client's knowledge when he knew that she intended to process the redemptions from a Registered Education Savings Plan account, contrary to MFDA Rules 2.3.1 and 2.1.1;

d) on January 11, 2016, the Respondent falsely represented to client SF that the decline in value of her non-registered account was caused by market volatility when in fact the decline in value of the account was attributable at least in part due to unauthorized redemptions that the Respondent had processed in the account without the client's knowledge, contrary to MFDA Rule 2.1.1;

e) between July 6, 2015 and October 28, 2015, the Respondent altered the dates of client SF's signature on two account forms and altered the date of the joint account holder's signature on one account form, contrary to MFDA Rule 2.1.1; and

f) between June 12, 2013 and May 7, 2015, the Respondent:

- failed to explain the risk of borrowing to invest to client SF prior to recommending that she borrow to invest on four occasions;
- failed to provide a risk disclosure document to client SF prior to processing two mutual fund purchases in the client's non-registered account that were made with borrowed money; and
- failed to classify client SF's non-registered account as "leveraged" on the Member's back office system after processing two mutual fund purchases in the account that were made with borrowed money;

contrary to MFDA Rules 2.2.1, 2.6(b), 2.1.1, 2.5.1, 1.1.2 and the Member's policies and procedures.

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 Member of the MFDA, pursuant to s. 24.1.1.(e) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of $1,000 pursuant to s. 24.2 of MFDA By-law No 1; and

3. 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]

Schedule "2"

Order

File No. 201874

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: Robert Mark Loney

ORDER

(ARISING FROM SETTLEMENT HEARING OCTOBER 26, 2018)

WHEREAS on July 5, 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 Robert Mark Loney (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 4, 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 on the basis of the admissions of the Respondent as set out in the Settlement Agreement, the Hearing Panel is of the opinion that:

a) between December 2012 and February 12, 2016, the Respondent failed to follow client SF's instructions to process the transfer of an existing Registered Education Savings Plan account to the Member, contrary to MFDA Rule 2.1.1;

b) between May 25, 2015 and January 11, 2016, the Respondent made three representations to client SF which falsely indicated that the client's Registered Education Savings Plan account had been transferred to the Member, contrary to MFDA Rule 2.1.1;

c) between June 8, 2015 and November 16, 2015, the Respondent processed five unauthorized redemptions from client SF's non-registered account without the client's knowledge when he knew that she intended to process the redemptions from a Registered Education Savings Plan account, contrary to MFDA Rules 2.3.1 and 2.1.1;

d) on January 11, 2016, the Respondent falsely represented to client SF that the decline in value of her non-registered account was caused by market volatility when in fact the decline in value of the account was attributable at least in part due to unauthorized redemptions that the Respondent had processed in the account without the client's knowledge, contrary to MFDA Rule 2.1.1;

e) between July 6, 2015 and October 28, 2015, the Respondent altered the dates of client SF's signature on two account forms and altered the date of the joint account holder's signature on one account form, contrary to MFDA Rule 2.1.1; and

f) between June 12, 2013 and May 7, 2015, the Respondent:

- failed to explain the risk of borrowing to invest to client SF prior to recommending that she borrow to invest on four occasions;
- failed to provide a risk disclosure document to client SF prior to processing two mutual fund purchases in the client's non-registered account that were made with borrowed money; and
- failed to classify client SF's non-registered account as "leveraged" on the Member's back office system after processing two mutual fund purchases in the account that were made with borrowed money;

contrary to MFDA Rules 2.2.1, 2.6(b), 2.1.1, 2.5.1, 1.1.2 and the Member's policies and procedures.

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 Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of $1,000 pursuant to s. 24.2 of MFDA By-law No. 1; and

3. 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 26th day of October, 2018.

"Malliha Wilson"

Malliha Wilson
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative