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: Scott Charles Nichols

Heard: September 30, 2021 by electronic hearing in Halifax, Nova Scotia
Decision: September 30, 2021
Reasons for Decision: May 12, 2022

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Noella Martin, Q.C.	Chair
Ann C. Etter	Industry Representative
Joshua Martin	Industry Representative

Appearances:

Paul Blasiak	)	Senior Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Scott Charles Nichols	)	Respondent
Michael Krygier-Baum	)	Counsel for Respondent

I. INTRODUCTION

1. At a settlement hearing held electronically by videoconference on September 30, 2021, this Hearing Panel was asked to accept a settlement agreement dated September 28, 2021 ("Settlement Agreement") negotiated between Staff of the Mutual Fund Dealers Association of Canada ("MFDA") and Scott Charles Nichols ("Respondent").

2. Mr. Nichols was present before us and was represented by counsel, Michael Krygier-Baum.

3. In accordance with section 24.4.3 of By-law No. 1 of the MFDA, the Settlement Agreement was referred to this Hearing Panel for acceptance or rejection. After hearing counsel for the MFDA, considering the exhibits filed and the written submissions of Staff of the MFDA, and deliberating, we concluded that we should accept the Settlement Agreement. These are our written reasons for so doing.

II. THE SETTLEMENT AGREEMENT

4. The Settlement Agreement is attached as Schedule "1" to these Reasons for Decision.

5. The key portions of the Settlement Agreement entered into with the MFDA by the Respondent are as follows:

III. AGREED FACTS

6. Since January 2, 2004, the Respondent has been registered in Nova Scotia as a dealing representative with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA.

7. From January 2, 2012 to December 29, 2015, the Respondent was also registered in New Brunswick as a dealing representative with Quadrus.

8. From June 14, 2012 to May 5, 2015, and from December 18, 2015 to May 8, 2017, the Respondent was also designated as a branch manager with Quadrus.

9. At all material times, the Respondent was also licensed to sell insurance and was authorized to process his insurance and mutual fund commissions through his personal business corporation Nichols Wealth Management Inc. ("NWM"), which was previously called Harvest Wealth Management Inc.

10. At all material times, the Respondent carried on business in Kentville, Nova Scotia.

11. From in or about 2011 to 2013, KK was registered as a dealing representative with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

12. While KK was registered with Investors Group, he serviced the Investors Group accounts of his spouse, client #1.

13. At no time was KK a joint account holder with client #1, nor was he ever granted power of attorney or any other form of trading authority over client #1's investment accounts at Investors Group.

14. Unbeknownst to client #1 at the time, KK processed redemptions from client #1's investment accounts at Investors Group totaling $87,657 that client #1 did not request or authorize.

15. In or about 2013, KK and the Respondent, who had known each other previously, discussed working together at the Quadrus branch from which the Respondent conducted his business (the "Branch").

16. KK resigned from Investors Group but he was not able to immediately transfer his registration as a dealing representative to become an Approved Person at Quadrus.

17. From September 2013 until April 23, 2014 (when KK became an Approved Person of Quadrus), KK worked at the Branch in an unregistered support role and was paid by NWM directly.

18. The Respondent states he believed that KK was registered with Quadrus as a Licensed Marketing Assistant / Licensed Marketing Associate ("Licensed MA") for the periods of October 25, 2013 to December 3, 2013, and January 1, 2014 to April 24, 2014.

19. In October 2013, with client #1's knowledge and authorization, KK facilitated the transfer of client #1's mutual fund accounts from Investors Group to Quadrus. At the time of the transfer, client #1 was not aware that the value of the remaining investments in her accounts amounted to only approximately $83,538, less than half of the value of the account prior to the processing of the unauthorized redemptions at Investors Group.

20. At no time was KK a joint account holder with client #1, nor was he ever granted power of attorney or any other form of trading authority over client #1's investment accounts at Quadrus.

21. On April 24, 2014, approximately six months after KK began working at the Branch in an unregistered capacity, KK became registered as a dealing representative with Quadrus.

22. As set out in more detail below, unbeknownst to the Respondent or Quadrus, starting in September 2014, KK facilitated the processing of unauthorized redemptions from client #1's accounts at Quadrus and engaged in additional misconduct.

23. On April 17, 2018, KK committed suicide, and subsequently, the misconduct described herein was discovered.

Respondent Engaged in Stealth Advising and Failed to Know the Clients

Quadrus' Policies and Procedures

24. At all material times, Quadrus' policies and procedures prohibited unregistered individuals from, among other things:

a) opening new client accounts at Quadrus or collecting and recording KYC information for client accounts; and
b) engaging in securities related business by recommending or facilitating investment transactions in client accounts.

The Opening of New Accounts at Quadrus for Four Clients

25. Between September 2013 and April 2014, while KK was not yet registered as a dealing representative at Quadrus, the Respondent allowed KK to facilitate the transfer of accounts from Investors Group to Quadrus of client #1, clients #2 and #3 (spouses), and client #4. KK had been the Approved Person responsible for servicing the accounts of all four clients at Investors Group prior to his resignation. KK met with the clients to complete the documentation necessary to process the account transfers from Investors Group to Quadrus without the Respondent in attendance to receive and execute the clients' instructions.

26. The Respondent did not meet with any of the four clients or otherwise participate in the process of:

a) obtaining KYC information from the clients and recording it on account documentation to open their new accounts at Quadrus;

b) recommending and facilitating the purchase of investments in 9 instances in the new accounts that were opened for the clients at Quadrus; or

c) setting up Pre-Authorized Contribution plans ("PACs") for the clients in 8 instances so that regular contributions and purchases could be processed in their accounts at Quadrus.

27. The Respondent signed the new account application forms and trade documentation as the Approved Person responsible for servicing the accounts of the four clients, thereby making it appear as though he had met with the clients and provided the advice and recommendations to facilitate the opening of their accounts and the processing of their investment transactions at Quadrus.

28. The Respondent did not ensure that the clients' KYC information was accurate, the transactions were authorized by the clients, or that the clients were aware that the Respondent was the Approved Person responsible for servicing their new accounts at Quadrus.

Trading Activity

29. Between September 2013 and April 2014, while KK was not yet registered as a dealing representative at Quadrus, the Respondent allowed KK to facilitate the processing of approximately 20 transactions in the new accounts of clients #2, #3, and #4 at Quadrus to make some initial investment purchases in their accounts. In some cases, PACs were set up for the clients at Quadrus.

30. The Respondent did not make the investment recommendations or obtain client instructions concerning the transactions that were processed in the accounts of clients #2, #3, and #4 at Quadrus.

31. At the time that their accounts were transferred to Quadrus, clients #2, #3, and #4 believed that KK (rather than the Respondent) was the Approved Person of Quadrus responsible for servicing their accounts. The clients did not know that KK was not registered.

32. By allowing an unregistered individual to open new accounts at the Member and make investment recommendations for clients that the Respondent had not met, the Respondent facilitated stealth advising by the unregistered individual, and failed to perform the necessary due diligence to learn the essential facts relative to the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

Respondent Engaged in Unauthorized Trading

Quadrus' Policies and Procedures

33. At all material times, Quadrus required its Approved Persons to obtain client instructions for every transaction and maintain evidence of the client's instructions when using a Limited Trading Authorization ("LTA") form. The LTA authorizes Approved Persons to accept verbal trade instructions from a client without requiring the Approved Person to obtain the client's signature on trading forms prior to processing transactions in the client's accounts. The Member used a form known as a Record of Verbal Instructions that was required to be completed to document instructions received pursuant to an LTA.

Limited Trading Authorization Form for Client #1

34. On or about October 30, 2013, the Respondent received a completed LTA for client #1 from KK that appeared to be signed by client #1.

35. Client #1 was not aware that an LTA had been submitted in respect of her account and unbeknownst to the Respondent, client #1 had not signed the LTA that KK provided to the Respondent.

36. Although the Respondent had not spoken with client #1 about the LTA and had not received it from her directly, the Respondent signed the LTA as the Approved Person responsible for servicing the account, and as the witness to client #1's signature on the form, thereby making it appear as though he had explained the provisions and implications of the LTA to client #1 and witnessed her signature on the form.

37. The LTA was subsequently relied upon to process switches in the accounts of client #1 without her knowledge or authorization, as is set out in further detail below.

Switches in Client #1's accounts — April 2014

38. On or about April 14, 2014, KK prepared switch forms to process 10% free switch transactions in two of client #1's accounts. (In order to transfer units out of deferred sales charge ("DSC") versions of funds and into front end versions of those funds so that a client would not have to pay DSC fees on those units in the event of a future redemption.) Client #1 had no knowledge of and had not authorized the switches.

39. Although the Respondent had not spoken with client #1 about the switches, he signed the transaction documents (switch forms and Records of Verbal Instructions) as the Approved Person responsible for servicing the account. The switches were processed using the LTA that KK had provided to the Respondent containing the falsified signature of client #1.

40. The Record of Verbal Instructions included a statement by the Respondent falsely indicating that:

a) he had spoken with client #1 on the telephone; and
b) client #1 had requested a transfer of her free units to front end load funds.

Redemption in Client #1's account — September 2014

41. As noted above, by September 2014, KK was registered as a dealing representative at Quadrus; however, the Respondent remained the Approved Person of record for client #1's accounts until approximately February 2015.

42. In or about mid-September 2014, KK advised the Respondent (via the Respondent's assistant) that client #1 wished to make a redemption totaling approximately $40,041 gross from client # 1's LIRA account.

43. Due to the large amount of the redemption request, the Respondent instructed KK to obtain client #1's signature on the trade tickets, rather than relying on the LTA to process the redemptions.

44. On or about September 22, 2014, KK produced two completed trade tickets to the Respondent, bearing what appeared to be the signature of client #1 in order to process the redemptions.

45. Unbeknownst to the Respondent, client #1 had not signed the trade tickets and she had no knowledge of and had not authorized any redemptions from her LIRA account.

46. The Respondent signed the two trade tickets as the Approved Person responsible for servicing client #1's accounts and the redemptions recorded on the trade tickets were processed.

47. Unbeknownst to the Respondent and client #1 at the time, KK arranged for the proceeds from the redemptions to be deposited into a joint bank account that KK held with client #1. As described above, client #1 had not authorized the redemptions and she was unaware that the

proceeds from the redemptions had been deposited to the joint bank account that she and KK could both access.

48. Beginning in or around February 2015, when KK became the representative of record for client #1's accounts at Quadrus, KK facilitated redemptions of the remaining balance of client #1's accounts, without client #1's knowledge or authorization.

49. As described above, the Respondent signed and submitted account documents to process switches and redemptions in client #1's investment accounts on the basis of trading instructions received from KK who did not have trading authorization on the accounts without confirming those instructions with client #1, thereby engaging in unauthorized trading in the client's accounts, contrary to MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.1.1, 2.5.1, and 1.1.2.

Failure to Appropriately Address Suitability Inquiry

50. The risk tolerance recorded on the KYC form for client #1's LIRA account was "medium". After the switch transactions were processed in client #1 's LIRA account on or about April 14, 2014 (as set out in paragraph 39 above), Quadrus trade supervision staff observed that the investments in client #1's account were inconsistent with her documented risk tolerance and, therefore, potentially unsuitable.

51. On or about April 15, 2014, Quadrus trade supervision staff queried the suitability of client #1's account. As the Respondent was the Approved Person responsible for servicing client #1's accounts, the trade query was directed to him.

52. Quadrus requested that the Respondent verify the risk tolerance for client #1's LIRA account and contact the client to discuss rebalancing if necessary.

53. On April 16, 2014, the Respondent responded to the supervisory query by email and agreed to address the suitability concern that had been raised regarding client #1.

54. The Respondent then told KK that he had received a trade query from Quadrus and required a KYC update from client #1. A few days later, KK provided a KYC update form to the Respondent that appeared to be signed by client #1.

55. On or about April 27, 2014, the Respondent signed the KYC update form as the Approved Person responsible for servicing client #1's account, and submitted the KYC update form to

Quadrus to update the KYC information on file for client #1's account, thereby addressing the trade supervision query to the satisfaction of Quadrus' compliance staff.

56. Unbeknownst to the Respondent, the KYC update form that KK had provided to increase client #1's risk tolerance from "medium" to "high" had been provided without her knowledge or authorization and had not been signed or initialed by her.

57. On or about April 28, 2014, based on the representations in the KYC update form, Quadrus closed the suitability query concerning client #1's account.

58. By signing the KYC update form as the Approved Person responsible for servicing her account when he had not communicated with client #1 about the updates, the Respondent failed to learn the essential facts relative to client #1 and prevented Quadrus from ensuring that the investments in client #1's account were suitable for the client, contrary to MFDA Rules 2.2.1 and 2.1.1.

Action Taken by the Member

59. On April 25, 2018, following the death of KK, client #1 complained to Quadrus about the unauthorized transactions that she discovered had been processed in her accounts.

60. During Quadrus' investigation of client #1's complaint, the Member discovered and reported the misconduct described in this Settlement Agreement to the MFDA.

61. During its investigation into this matter, Quadrus contacted and sent portfolio statements to 15 clients who had transferred their accounts from Investors Group to Quadrus in order to have their accounts serviced by KK, asking clients to:

a) review the portfolio summary and advise if there are any discrepancies;
b) advise if they engaged in borrowing from or lending to KK, or accepted cheques from or wrote cheques to KK, outside of the funds invested;
c) confirm whether they met with the Respondent to open their accounts; and
d) if they did not meet with the Respondent to open the accounts, identify who they had met with.

62. During its investigation, Quadrus identified clients #2, #3, and #4 referenced in this Settlement Agreement, who reported that they had met with KK to open their accounts at Quadrus.

Client Losses

63. As noted above, beginning in or around February 2015, during the period after KK became the representative of record for client #1's accounts at Quadrus, KK facilitated redemptions of the remaining balance of client #1's accounts, without her knowledge or authorization.

64. During the time that she was a client of Quadrus, client #1 sustained losses in the approximate amount of $83,538 as a result of unauthorized redemption transactions that were processed in her account. Client #1 has been fully reimbursed by the Respondent's Errors & Omissions Insurance and Quadrus for the losses sustained while she was a client of Quadrus.

65. Client #1 was the only client who submitted a complaint to Quadrus or to the MFDA claiming that a financial loss resulted from the conduct described in this Settlement Agreement.

66. There is no evidence that any other clients suffered financial losses as a result of the conduct described in this Settlement Agreement.

Additional Factors

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

68. By entering into this Settlement Agreement, the Respondent has expressed remorse for his actions and has saved the MFDA time, resources, and expenses associated with conducting a full hearing of the allegations.

IV. GENERAL PRINCIPLES ON THE ACCEPTANCE OF A SETTLEMENT AGREEMENT

69. At a settlement hearing the role of a Hearing Panel is fundamentally different than its role at a contested hearing. The often-cited reasoning from the I.D.A. decision of *Milewski (Re)* succinctly sets out the role of the Hearing Panel at a settlement hearing:

> We also note that while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "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."
>
> *Milewski (Re)* [1999] I.D.A.C.D. No.17 at p. 10, Ontario District Council Decision dated July 28, 1999.

70. A Hearing Panel, pursuant to section 24.4.3 of MFDA By-law No. 1, has two options with respect to a settlement agreement; it can only accept or reject the settlement agreement.

71. It is clear from the jurisprudence emanating from the Courts and previous MFDA hearing panels that this Hearing Panel's task is not to decide whether we would have arrived at the same decision as that reached by the parties in this case. Rather, it is this Hearing Panel's responsibility to determine whether the penalty agreed upon falls within a reasonable range of appropriateness having regard to the conduct of the Respondent. If the negotiated settlement maintains the integrity of the investment industry, it is our duty to accept it.

72. In deciding whether to accept or reject the proposed Settlement Agreement in this matter, we have taken into account the following considerations as set out by previous decisions of Courts and MFDA hearing panels:

a) Whether acceptance of the Settlement Agreement would be in the public interest;
b) Whether the Settlement Agreement is reasonable in proportion 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 deterrents;
d) Whether the proposed Settlement Agreement 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.

> Re: P*rofessional Investments (Kingston) Inc. (Re),* [2009] MFDA, Ontario Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009 at page 9.
>
> Re: *Melvin Robert Penny (Re),* [2009] MFDA, Atlantic Regional Council, File No. 200831, Hearing Panel Decision dated May 13, 2009, at page 8.
>
> Re: *Alden M. Kaley (Re),* MFDA, Atlantic Regional Council, File No 200911, Hearing Panel Decision dated August 21, 2009, at page 6.

73. We have also considered the factors that previous Hearing Panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

a) The seriousness of the allegations proven against the Respondent;
b) The Respondent's past conduct, including prior sanctions;

c) The Respondent's experience and level of activity in the Capital Market;

d) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;

e) The harm suffered by investors as a result of the Respondent's conduct;

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 the 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 determine whether not only those involved in the case being considered, but also any others participating in the capital markets engaged in a similar improper activity;

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

k) Previous decisions made in similar circumstances.

> Re: *Lamoureux (Re),* [2002] A.S.G.D. No. 125 at para. 11.
>
> Re: *In the matter of Robert Roy Parkinson* [2005] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006, at pages 25-26.
>
> Re: *Alden M. Kaley (Re)*, [2009] MFDA Atlantic Regional Council, File No. 200911, Hearing Panel Decision dated September 28, 2009 at page 7.

74. We have also been guided by the MFDA Sanction Guidelines, which came into effect on November 15, 2018.

V. STANDARD OF CONDUCT

75. MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires, among other things, that:

> "Each Member and Approved Person of a Member shall: deal fairly, honestly and in good faith with its clients; observe high standards of ethics and conduct in the transaction of business; and not engage in any business conduct or practice which is unbecoming or detrimental to the public interest."

Applicable Rules and Provisions

76. The following rules and provisions are applicable in this matter:

Provision	Description
MFDA Rule 2.2.1	Know-Your-Client
MFDA Rule 2.1.1	Standard of Conduct
MFDA Rule 2.3.1(a)[1]	Discretionary Trading
MFDA Rule 2.5.1	Policies and Procedures
MFDA Rule 1.1.2	Compliance by Approved Persons
MFDA Staff Notice #MSN-0067	Stealth Advising
MFDA By-law No. 1, Section 24.1.1	Powers of Hearing Panels to Discipline Approved Persons
MFDA By-law No. 1, Section 24.2	Costs
MFDA By-law No. 1, Section 24.4	Settlement Agreements
Rules 14 and 15 of the Rules of Procedure	Settlement Agreements and Settlement Hearings

Rules 2.2.1 and 2.1.1

77. MFDA Rule 2.2.1 states:

> **2.2.1 "Know-Your-Client"**
>
> Each Member and Approved Person shall use due diligence:
>
> (a) to learn the essential facts relative to each client and to each order or account accepted;
>
> (b) to ensure that the acceptance of any order for any account is within the bounds of good business practice;
>
> (c) to ensure that each order accepted or recommendation made, including recommendations to borrow to invest, for any account of a client is suitable for the client based on the essential facts relative to the client and any investments within the account;
>
> […]
>
> (e) To ensure that the suitability of the investments within each client's account is assessed:
>
> i. whenever the client transfers assets into an account at the Member;
>
> ii. whenever the Member or Approved Person becomes aware of a material change in client information, as defined in Rule 2.2.4; or
>
> iii. by the Approved Person when there has been a change in the Approved Person responsible for the client's account at the Member;
>
> […]

[1] Staff has included the version of the Rule that was in effect during the material time. Effective January 19, 2017, Rule 2.3.1 was amended and the prohibition on discretionary trading was moved from Rule 2.3.1(a) to Rule 2.3.1(b).

78. Due diligence includes the obligation to know and fully understand the client's financial situation, current and continuing financial obligations, net worth, income, liquid assets, understanding of the market, and age relative to retirement.

> *Badasha (Re)*, [2015] Hearing Panel of the Pacific Regional Council, MFDA File No. 201424, Panel Decision dated June 9, 2015, at para. 46.
>
> *Hagerman (Re)*, [2020] Hearing Panel of the Central Regional Council, MFDA File No. 202021, Panel Decision dated September 25, 2020, at para. 10.

79. MFDA Rule 2.1.1 is a rule of general application which prescribes the standard of conduct applicable to Members and Approved Persons. The Rule is designed to protect the public interest by requiring registrants in the mutual fund industry to adhere to a high standard of conduct in the transaction of business.

80. Previous MFDA Hearing Panels have held that where an Approved Person opens a client account, updates the client's Know-Your-Client information and/or processes trades in the client's account without communicating directly with the client, the Approved Person has violated the Know-Your-Client obligation in Rule 2.2.1 and the standard of conduct in Rule 2.1.1.

> *Hagerman (Re), supra*, at para. 11.

81. In order to fulfill the Know-Your-Client obligation, an Approved Person is required to learn the essential facts about his or her client directly from the client.

> *Hagerman (Re), supra,* at para. 12.

82. As stated by the Hearing Panel in *Badasha (Re):*

> MFDA and Investment Industry Regulatory Organization of Canada ("IIROC") Hearing Panels have made clear that, given that the underlying client protection objective of the Know-Your-Client Rule, the due diligence obligation resides solely with an Approved Person. The obligation is non-transferrable and due diligence undertaken by a third party is insufficient to meet an Approved Person's obligations under Rule 2.2.1.
>
> *Badasha (Re), supra,* at para. 48.

83. It is not possible to "know-your-client" without having communication with the client.

> *Sukhdeo (Re),* [2017] Hearing Panel of the Central Regional Council, MFDA File No. 2016103, Panel Decision dated October 6, 2017.

84. "Stealth advising" is a practice whereby an individual who is not registered and may not have fulfilled the requirements necessary to engage in securities related business, holds him/herself out as a qualified investment advisor.

85. MFDA Approved Persons are prohibited from facilitated stealth advising by unregistered individuals. As stated in MFDA Staff Notice #MSN-0067, stealth advising arrangements:

> raise several significant regulatory concerns. Individuals in the above scenarios are providing advice with respect to trades in securities without registration with the appropriate securities regulatory authorities. [...]
>
> From a practical perspective, Members are constrained in their abilities to properly supervise the trading activities taking place under such arrangements. Further, there is a danger that individuals may use these types of sales arrangements to make recommendations to divert client money to unregulated investment schemes or other purposes. Conflicts of interest that are not properly managed with respect to personal financial dealings involving other business pursuits may lead to situations where clients are exposed to significant potential harm. Members may also be exposed to significant liability.
>
> MFDA Staff Notice #MSN-0067.

86. As stated by the Hearing Panel in *Hagerman (Re)*:

> [Stealth advising] arrangements prevent the Member from adequately supervising trading activity conducted on behalf of clients. They lead to clients receiving investment advice from unregistered and unqualified individuals. The clients are left unprotected.
>
> *Hagerman (Re), supra,* at para. 14.

VI. THE SERIOUSNESS OF THE VIOLATION IN THIS MATTER

87. The conduct in this matter is serious.

88. The Respondent opened accounts for four clients who he had not met, and he did not participate in the process of obtaining the clients' KYC information, or recommending and facilitating the purchase of investments in the new accounts. The Respondent allowed another individual ("KK", who was not registered) to facilitate the transfer of the clients' accounts to the Member.

89. With regard to one of the four clients ("client #1"), the Respondent also, without speaking to the client or confirming the client's instructions:

a) signed an LTA form as the Approved Person responsible for servicing the client's account and as the witness to the client's signature on the form, without receiving the LTA form directly from the client;
b) signed transaction documents to process switches in the client's account, which the client had not authorized (the switches were processed using the LTA form described above);

c) signed two trade tickets to process redemptions totaling approximately $40,000 from the client's account, which the client had not authorized; and

d) in response to a supervisory query from the Member, signed, as the Approved Person responsible for servicing the client's account, a KYC update form, which contained KYC updates that the client had not authorized.

90. Notwithstanding the seriousness of the Respondent's conduct, Staff notes that the Respondent was unaware that client #1 had not, in fact, signed the LTA form, trade tickets, and KYC update form described above. Client #1's spouse ("KK") had provided the forms to the Respondent and they appeared to be signed by client #1.

Client Loss

91. On September 22, 2014, the Respondent signed two trade tickets in order to process redemptions from client #1's account in the total amount of $40,041 gross. Unbeknownst to the Respondent, client #1 had not signed the trade tickets and she had no knowledge of and had not authorized the redemptions.

92. The Respondent did not process any other redemptions from client #1's accounts.

93. Beginning in or around February 2015, when KK became the representative of record for client #1's accounts at the Member, KK facilitated redemptions of the remaining balance of client #1's accounts, without client #1's knowledge or authorization.

94. During the time that she was a client of the Member, client #1 sustained losses in the approximate amount of $83,538 as a result of unauthorized redemption transactions that were processed in her account. Client #1 has been fully reimbursed by the Respondent's Errors & Omissions Insurance and the Member for the losses sustained while she was a client of the Member.

95. There is no evidence that any other clients suffered financial losses as a result of the conduct described in the Settlement Agreement.

96. However, we also note that the Respondent has not previously been the subject of MFDA disciplinary proceedings.

97. The Respondent and Staff have agreed to the following penalties if the Settlement Agreement is accepted by the Hearing Panel:

a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 4 months, commencing on October 1, 2021, pursuant to section 24.1.1(c) of MFDA By-law No.1;

b) the Respondent shall pay a fine in the amount of $30,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

c) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1;

d) the payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:

   i. $17,500 upon acceptance of the Settlement Agreement by a Hearing Panel;

   ii. $8,750 on or before December 31, 2021; and

   iii. $8,750 on or before March 31, 2022.

e) following the 4-month suspension, in the event that the Respondent seeks to become re-registered to conduct securities related business while in the employ of or associated with any MFDA Member, the Respondent shall be subject to close supervision by the Member with which he becomes re-registered for a period of 12 months from the date that he becomes re-registered;

f) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.3.1, 2.1.1, 2.5.1 and 1.1.2; and

g) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

98. The Hearing Panel agrees that the penalties proposed in the Settlement Agreement are consistent with those issued in previous MFDA decisions under similar circumstances.

Previous Decisions Made in Similar Circumstances

99. The proposed penalties are consistent with the penalties imposed by MFDA Hearing Panels in previous cases as reflected in the examples cited in the following chart:

CASE	MISCONDUCT	PENALTIES
Guglielmi (Re), [2016] Hearing Panel of the Central Regional Council, MFDA File No. 201517, Panel Decision dated January 14, 2016.	The Respondent: • facilitated stealth advising by WB, PA and WM, in relation to at least 12 clients who the Respondent had never met. The Respondent opened new accounts and processed trades for those clients without performing the necessary due diligence to learn the essential facts relative to the clients and failing to ensure that the investments were suitable and appropriate for the clients.	Agreed Statement of Facts: • 1 year prohibition • Fine of $15.000 • Costs of $5,000
Stutz (Re), supra	The Respondent: • submitted for processing, 11 redemptions from the accounts of 2 clients based on instructions from third parties who did not have trading authorization on the accounts, without confirming those instructions with the clients; • created and submitted for processing, 31 trading forms, which indicated that she had confirmed instructions by telephone when such confirmations had not been made; and • failed to keep adequate and accurate documentation and notes of investment instructions that she received.	Settlement Agreement: • 6-month prohibition • Fine of $15,000 • Costs of $5,000
Hagerman (Re), supra	The Respondent: • opened an account and processed trades in an account for a client that he had never met or communicated with on the basis of advice and instructions provided by an unregistered individual.	Settlement Agreement: • 4-month prohibition • Fine of $7,500 • Costs of $5,000

100. After considering the submissions and upon reviewing the relevant authorities, in our opinion the Settlement Agreement negotiated between the parties is in keeping with the purpose of the MFDA Rules which are intended to enhance investor protection and to promote public confidence in the Canadian Mutual Fund Industry.

101. We believe that the penalties provided for in the Settlement Agreement are within the range of reasonableness under the circumstances, will specifically deter the Respondent, Mr. Nichols, and will also deter others from engaging in similar misconduct, thereby protecting the investing public and fostering confidence in the Mutual Fund Industry in Canada.

102. After considering all of the above, we unanimously agree that the Settlement Agreement reached in this case was reasonable in the circumstances, is in the public interest, and is hereby accepted by this Hearing Panel pursuant to section 24.4.3 of the MFDA By-law.

DATED this 12th day of May, 2022.

"Noella Martin"
Noella Martin, Q.C.
Chair

"Ann C. Etter"
Ann C. Etter
Industry Representative

"Joshua Martin"
Joshua Martin
Industry Representative

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: Scott Charles Nichols

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By News Release, 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 Atlantic 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, Scott Charles Nichols (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. Since January 2, 2004, the Respondent has been registered in Nova Scotia as a dealing representative with Quadrus Investment Services Ltd. ("Quadrus"), a Member of the MFDA.

7. From January 2, 2012 to December 29, 2015, the Respondent was also registered in New Brunswick as a dealing representative with Quadrus.

8. From June 14, 2012 to May 5, 2015, and from December 18, 2015 to May 8, 2017, the Respondent was also designated as a branch manager with Quadrus.

9. At all material times, the Respondent was also licensed to sell insurance and was authorized to process his insurance and mutual fund commissions through his personal business corporation Nichols Wealth Management Inc. ("NWM").[2]

10. At all material times, the Respondent carried on business in Kentville, Nova Scotia.

Background

11. From in or about 2011 to 2013, KK was registered as a dealing representative with Investors Group Financial Services Inc. ("Investors Group"), a Member of the MFDA.

[2] Previously NWM was called Harvest Wealth Management Inc.

12. While KK was registered with Investors Group, he serviced the Investors Group accounts of his spouse, client #1.

13. At no time was KK a joint account holder with client #1, nor was he ever granted power of attorney or any other form of trading authority over client #1's investment accounts at Investors Group.

14. Unbeknownst to client #1 at the time, KK processed redemptions from client #1's investment accounts at Investors Group totaling $87,657 that client #1 did not request or authorize.

15. In or about 2013, KK and the Respondent, who had known each other previously, discussed working together at the Quadrus branch from which the Respondent conducted his business (the "Branch").

16. KK resigned from Investors Group but he was not able to immediately transfer his registration as a dealing representative to become an Approved Person at Quadrus.

17. From September 2013 until April 23, 2014 (when KK became an Approved Person of Quadrus), KK worked at the Branch in an unregistered support role and was paid by NWM directly.

18. The Respondent states he believed that KK was registered with Quadrus as a Licensed Marketing Assistant/ Licensed Marketing Associate ("Licensed MA") for the periods of October 25, 2013 to December 3, 2013, and January 1, 2014 to April 24, 2014.

19. In October 2013, with client #1's knowledge and authorization, KK facilitated the transfer of client #1's mutual fund accounts from Investors Group to Quadrus. At the time of the transfer, client #1 was not aware that the value of the remaining investments in her accounts amounted to only approximately $83,538, less than half of the value of the account prior to the processing of the unauthorized redemptions at Investors Group.

20. At no time was KK a joint account holder with client #1, nor was he ever granted power of attorney or any other form of trading authority over client #1's investment accounts at Quadrus.

21. On April 24, 2014, approximately six months after KK began working at the Branch in an unregistered capacity, KK became registered as a dealing representative with Quadrus.

22. As set out in more detail below, unbeknownst to the Respondent or Quadrus, starting in September 2014, KK facilitated the processing of unauthorized redemptions from client #1's accounts at Quadrus and engaged in additional misconduct.

23. On April 17, 2018, KK committed suicide, and subsequently, the misconduct described herein was discovered.

Respondent Engaged in Stealth Advising and Failed to Know the Clients

Quadrus' Policies and Procedures

24. At all material times, Quadrus' policies and procedures prohibited unregistered individuals from, among other things:

a) opening new client accounts at Quadrus or collecting and recording KYC information for client accounts; and
b) engaging in securities related business by recommending or facilitating investment transactions in client accounts.

The Opening of New Accounts at Quadrus for Four Clients

25. Between September 2013 and April 2014, while KK was not yet registered as a dealing representative at Quadrus, the Respondent allowed KK to facilitate the transfer of accounts from Investors Group to Quadrus of client #1[3], clients #2 and #3 (spouses), and client #4. KK had been the Approved Person responsible for servicing the accounts of all four clients at Investors Group prior to his resignation. KK met with the clients to complete the documentation necessary to process the account transfers from Investors Group to Quadrus without the Respondent in attendance to receive and execute the clients' instructions.

26. The Respondent did not meet with any of the four clients or otherwise participate in the process of:

a) obtaining KYC information from the clients and recording it on account documentation to open their new accounts at Quadrus;
b) recommending and facilitating the purchase of investments in 9 instances in the new accounts that were opened for the clients at Quadrus; or

[3] As noted above, client #1 was KK's spouse.

c) setting up Pre-Authorized Contribution plans ("PACs") for the clients in 8 instances so that regular contributions and purchases could be processed in their accounts at Quadrus.

27. The Respondent signed the new account application forms and trade documentation as the Approved Person responsible for servicing the accounts of the four clients, thereby making it appear as though he had met with the clients and provided the advice and recommendations to facilitate the opening of their accounts and the processing of their investment transactions at Quadrus.

28. The Respondent did not ensure that the clients' KYC information was accurate, the transactions were authorized by the clients, or that the clients were aware that the Respondent was the Approved Person responsible for servicing their new accounts at Quadrus.

Trading Activity

29. Between September 2013 and April 2014, while KK was not yet registered as a dealing representative at Quadrus, the Respondent allowed KK to facilitate the processing of approximately 20 transactions in the new accounts of clients #2, #3, and #4 at Quadrus to make some initial investment purchases in their accounts. In some cases, PACs were set up for the clients at Quadrus.

30. The Respondent did not make the investment recommendations or obtain client instructions concerning the transactions that were processed in the accounts of clients #2, #3, and #4 at Quadrus.

31. At the time that their accounts were transferred to Quadrus, clients #2, #3, and #4 believed that KK (rather than the Respondent) was the Approved Person of Quadrus responsible for servicing their accounts. The clients did not know that KK was not registered.

32. By allowing an unregistered individual to open new accounts at the Member and make investment recommendations for clients that the Respondent had not met, the Respondent facilitated stealth advising by the unregistered individual, and failed to perform the necessary due diligence to learn the essential facts relative to the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

Respondent Engaged in Unauthorized Trading

Quadrus' Policies and Procedures

33. At all material times, Quadrus required its Approved Persons to obtain client instructions for every transaction and maintain evidence of the client's instructions when using a Limited Trading Authorization ("LTA") form. The LTA authorizes Approved Persons to accept verbal trade instructions from a client without requiring the Approved Person to obtain the client's signature on trading forms prior to processing transactions in the client's accounts. The Member used a form known as a Record of Verbal Instructions that was required to be completed to document instructions received pursuant to an LTA.

Limited Trading Authorization Form for Client #1

34. On or about October 30, 2013, the Respondent received a completed LTA for client #1 from KK that appeared to be signed by client #1.

35. Client #1 was not aware that an LTA had been submitted in respect of her account and unbeknownst to the Respondent, client #1 had not signed the LTA that KK provided to the Respondent.

36. Although the Respondent had not spoken with client #1 about the LTA and had not received it from her directly, the Respondent signed the LTA as the Approved Person responsible for servicing the account, and as the witness to client #1's signature on the form, thereby making it appear as though he had explained the provisions and implications of the LTA to client #1 and witnessed her signature on the form.

37. The LTA was subsequently relied upon to process switches in the accounts of client #1 without her knowledge or authorization, as is set out in further detail below.

Switches in Client #1's accounts – April 2014

38. On or about April 14, 2014, KK prepared switch forms to process 10% free switch transactions[4] in two of client #1's accounts. Client #1 had no knowledge of and had not authorized the switches.

[4] In order to transfer units out of deferred sales charge ("DSC") versions of funds and into front end versions of those funds so that a client would not have to pay DSC fees on those units in the event of a future redemption.

39. Although the Respondent had not spoken with client #1 about the switches, he signed the transaction documents (switch forms and Records of Verbal Instructions) as the Approved Person responsible for servicing the account. The switches were processed using the LTA that KK had provided to the Respondent containing the falsified signature of client #1.

40. The Record of Verbal Instructions included a statement by the Respondent falsely indicating that:

a) he had spoken with client #1 on the telephone; and
b) client #1 had requested a transfer of her free units to front end load funds.

Redemption in Client #1's account – September 2014

41. As noted above, by September 2014, KK was registered as a dealing representative at Quadrus; however, the Respondent remained the Approved Person of record for client #1's accounts until approximately February 2015.

42. In or about mid-September 2014, KK advised the Respondent (via the Respondent's assistant) that client #1 wished to make a redemption totaling approximately $40,041 gross from client #1's LIRA account.

43. Due to the large amount of the redemption request, the Respondent instructed KK to obtain client #1's signature on the trade tickets, rather than relying on the LTA to process the redemptions.

44. On or about September 22, 2014, KK produced two completed trade tickets to the Respondent, bearing what appeared to be the signature of client #1 in order to process the redemptions.

45. Unbeknownst to the Respondent, client #1 had not signed the trade tickets and she had no knowledge of and had not authorized any redemptions from her LIRA account.

46. The Respondent signed the two trade tickets as the Approved Person responsible for servicing client #1's accounts and the redemptions recorded on the trade tickets were processed.

47. Unbeknownst to the Respondent and client #1 at the time, KK arranged for the proceeds from the redemptions to be deposited into a joint bank account that KK held with client #1. As described above, client #1 had not authorized the redemptions and she was unaware that the

proceeds from the redemptions had been deposited to the joint bank account that she and KK could both access.

48. Beginning in or around February 2015, when KK became the representative of record for client #1's accounts at Quadrus, KK facilitated redemptions of the remaining balance of client #1's accounts, without client #1's knowledge or authorization.

49. As described above, the Respondent signed and submitted account documents to process switches and redemptions in client #1's investment accounts on the basis of trading instructions received from KK who did not have trading authorization on the accounts without confirming those instructions with client #1, thereby engaging in unauthorized trading in the client's accounts, contrary to MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.1.1, 2.5.1, and 1.1.2.

Failure to Appropriately Address Suitability Inquiry

50. The risk tolerance recorded on the KYC form for client #1's LIRA account was "medium". After the switch transactions were processed in client #1's LIRA account on or about April 14, 2014 (as set out in paragraph 39 above), Quadrus trade supervision staff observed that the investments in client #1's account were inconsistent with her documented risk tolerance and, therefore, potentially unsuitable.

51. On or about April 15, 2014, Quadrus trade supervision staff queried the suitability of client #1's account. As the Respondent was the Approved Person responsible for servicing client #1's accounts, the trade query was directed to him.

52. Quadrus requested that the Respondent verify the risk tolerance for client #1's LIRA account and contact the client to discuss rebalancing if necessary.

53. On April 16, 2014, the Respondent responded to the supervisory query by email and agreed to address the suitability concern that had been raised regarding client #1.

54. The Respondent then told KK that he had received a trade query from Quadrus and required a KYC update from client #1. A few days later, KK provided a KYC update form to the Respondent that appeared to be signed by client #1.

55. On or about April 27, 2014, the Respondent signed the KYC update form as the Approved Person responsible for servicing client #1's account, and submitted the KYC update form to

Quadrus to update the KYC information on file for client #1's account, thereby addressing the trade supervision query to the satisfaction of Quadrus' compliance staff.

56. Unbeknownst to the Respondent, the KYC update form that KK had provided to increase client #1's risk tolerance from "medium" to "high" had been provided without her knowledge or authorization and had not been signed or initialed by her.

57. On or about April 28, 2014, based on the representations in the KYC update form, Quadrus closed the suitability query concerning client #1's account.

58. By signing the KYC update form as the Approved Person responsible for servicing her account when he had not communicated with client #1 about the updates, the Respondent failed to learn the essential facts relative to client #1 and prevented Quadrus from ensuring that the investments in client #1's account were suitable for the client, contrary to MFDA Rules 2.2.1 and 2.1.1.

Action Taken by the Member

59. On April 25, 2018, following the death of KK, client #1 complained to Quadrus about the unauthorized transactions that she discovered had been processed in her accounts.

60. During Quadrus' investigation of client #1's complaint, the Member discovered and reported the misconduct described in this Settlement Agreement to the MFDA.

61. During its investigation into this matter, Quadrus contacted and sent portfolio statements to 15 clients who had transferred their accounts from Investors Group to Quadrus in order to have their accounts serviced by KK, asking clients to:

a) review the portfolio summary and advise if there are any discrepancies;
b) advise if they engaged in borrowing from or lending to KK, or accepted cheques from or wrote cheques to KK, outside of the funds invested;
c) confirm whether they met with the Respondent to open their accounts; and
d) if they did not meet with the Respondent to open the accounts, identify who they had meet with.

62. During its investigation, Quadrus identified clients #2, #3, and #4 referenced in this Settlement Agreement, who reported that they had met with KK to open their accounts at Quadrus.

Client Losses

63. As noted above, beginning in or around February 2015, during the period after KK became the representative of record for client #1's accounts at Quadrus, KK facilitated redemptions of the remaining balance of client #1's accounts, without her knowledge or authorization.

64. During the time that she was a client of Quadrus, client #1 sustained losses in the approximate amount of $83,538 as a result of unauthorized redemption transactions that were processed in her account. Client #1 has been fully reimbursed by the Respondent's Errors & Omissions Insurance and Quadrus for the losses sustained while she was a client of Quadrus.

65. Client #1 was the only client who submitted a complaint to Quadrus or to the MFDA claiming that a financial loss resulted from the conduct described in this Settlement Agreement.

66. There is no evidence that any other clients suffered financial losses as a result of the conduct described in this Settlement Agreement.

Additional Factors

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

68. By entering into this Settlement Agreement, the Respondent has expressed remorse for his actions and has saved the MFDA time, resources, and expenses associated with conducting a full hearing of the allegations.

V. CONTRAVENTIONS

69. The Respondent admits that between September 2013 and April 2014, he allowed an unregistered individual to open new accounts at the Member and make investment recommendations for clients who the Respondent had not met, thereby facilitating stealth advising by the unregistered individual and failing to perform the necessary due diligence to learn the essential facts relative to the clients, contrary to MFDA Rules 2.2.1 and 2.1.1.

70. The Respondent admits that between April 2014 and September 2014, he signed and submitted account forms to process switches and redemptions in the investment accounts of a client who the Respondent had not met, based on instructions received from a third party who did not have trading authorization on the accounts without confirming the trading instructions with the

client, thereby engaging in unauthorized trading in the client's accounts, contrary to MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.1.1, 2.5.1 and 1.1.2.

71. The Respondent admits that in April 2014, in response to a supervisory query from the Member, he signed and submitted a client's Know-Your-Client ("KYC") update form as the Approved Person responsible for servicing the client's account when he had not communicated with the client to obtain instructions concerning the KYC update, thereby failing to learn the essential facts relative to the client and preventing the Member from ensuring that the investments in the client's account were suitable for the client, contrary to MFDA Rules 2.2.1 and 2.1.1.

VI. TERMS OF SETTLEMENT

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

(a) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 4 months, commencing on October 1, 2021, pursuant to section 24.1.1(c) of MFDA By-law No.1;

(b) the Respondent shall pay a fine in the amount of $30,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

(c) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1;

(d) the payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:

i. $17,500 upon acceptance of the Settlement Agreement by a Hearing Panel;
ii. $8,750 on or before December 31, 2021; and
iii. $8,750 on or before March 31, 2022.

(e) following the 4 month suspension, in the event that the Respondent seeks to become re-registered to conduct securities related business while in the employ of or associated with any MFDA Member, the Respondent shall be subject to close supervision by the Member with which he becomes re-registered for a period of 12 months from the date that he becomes re-registered;

(f) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.3.1, 2.1.1, 2.5.1 and 1.1.2; and

(g) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

73. 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

74. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic 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.

75. 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 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.

76. 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.

77. 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

78. 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

79. 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.

80. 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

81. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 28th day of September, 2021.

"Scott Charles Nichols"
Scott Charles Nichols

"SH"
Witness – Signature

SH
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: Scott Charles Nichols

ORDER

WHEREAS on December 31, 2020, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to ss. 20 and 24 of MFDA By-law No. 1 in respect of Scott Charles Nichols (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 on the basis of the facts admitted in Part IV of the Settlement Agreement and the contraventions admitted in Part V of the Settlement Agreement, the Hearing Panel is of the opinion that the Respondent:

a) between September 2013 and April 2014, allowed an unregistered individual to open new accounts at the Member and make investment recommendations for clients who the Respondent had not met, thereby facilitating stealth advising by the unregistered individual and failing to perform the necessary due diligence to learn the essential facts relative to the clients, contrary to MFDA Rules 2.2.1 and 2.1.1;

b) between April 2014 and September 2014, signed and submitted account forms to process switches and redemptions in the investment accounts of a client who the Respondent had not met, based on instructions received from a third party who did not have trading authorization on the accounts without confirming the trading instructions with the client, thereby engaging in unauthorized trading in the client's accounts, contrary to MFDA Rules 2.3.1(a) [now MFDA Rule 2.3.1(b)], 2.1.1, 2.5.1 and 1.1.2; and

c) in April 2014, in response to a supervisory query from the Member, signed and submitted a client's Know-Your-Client ("KYC") update form as the Approved Person responsible for servicing the client's account when he had not communicated with the client to obtain instructions concerning the KYC update, thereby failing to learn the essential facts relative to the client and preventing the Member from ensuring that the investments in the client's account were suitable for the client, contrary to MFDA Rules 2.2.1 and 2.1.1.

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

1. The Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 4 months, commencing on October 1, 2021, pursuant to section 24.1.1(c) of MFDA By-law No.1;

2. The Respondent shall pay a fine in the amount of $30,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

3. The Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1;

4. The payment by the Respondent of the fine and costs shall be made to and received by MFDA Staff in certified funds as follows:

i. $17,500 upon acceptance of the Settlement Agreement by a Hearing Panel;
ii. $8,750 on or before December 31, 2021; and
iii. $8,750 on or before March 31, 2022;

5. Following the 4 month suspension, in the event that the Respondent seeks to become re-registered to conduct securities related business while in the employ of or associated with any MFDA Member, the Respondent shall be subject to close supervision by the Member with which he becomes re-registered for a period of 12 months from the date that he becomes re-registered;

6. The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.3.1, 2.1.1, 2.5.1 and 1.1.2; and

7. 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 882103