



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: Charles James White

Heard: January 19, 2017, in Halifax, Nova Scotia
Reasons for Decision: April 18, 2017

REASONS FOR DECISION

Hearing Panel of the Atlantic Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Ann C. Etter	Industry Representative
Susan Nixon	Industry Representative

Appearances:

Lyla Simon)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Ron Chisholm)	Counsel for the Respondent
)	
)	

A. HISTORY OF PROCEEDINGS

1. By Notice of Hearing, dated the 14th day of June, 2016, (the “Notice of Hearing”), the Mutual Fund Dealers Association of Canada (“MFDA”) made three Allegations against Charles James White (“Respondent”).

2. The Respondent served and filed a Reply to the Notice of Hearing on July 23, 2016.

3. The First Appearance took place on September 27, 2016, via teleconference, before a public representative of a Regional Council, acting on behalf of the Atlantic Regional Council of the MFDA (the “Hearing Panel”), pursuant to section 19.13(b) of MFDA By-law No. 1.

4. After hearing the submissions of Counsel for the Respondent and Counsel for Staff of the MFDA (“Staff”), a procedural Order was made. The Hearing on the Merits was scheduled to take place from January 16 to 20, 2017, in Halifax, Nova Scotia, at a venue to be announced.

5. On December 5, 2016, a Settlement Agreement was entered into between Staff and the Respondent.

6. On December 12, 2016, the MFDA announced that the Settlement Hearing would take place on January 19, 2017, at a specified place in Halifax.

B. THE SETTLEMENT HEARING

7. At the commencement of the Settlement Hearing, on January 19, 2017, the Hearing Panel granted a joint Motion by Counsel for Staff and Counsel for the Respondent to move the proceedings “*in camera*” while we considered the Settlement Agreement, as well as the written and oral submissions of Staff and the oral submissions of Counsel for the Respondent.

8. After a detailed review of the Settlement Agreement, as well as a consideration of the submissions of the parties, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

9. On January 19, 2017, the Hearing Panel executed an Order giving effect to the terms of the Settlement Agreement. At that time, we stated that we would provide written Reasons for our Decision. These are those Reasons.

C. THE SETTLEMENT AGREEMENT

10. The salient portions of the Settlement Agreement are as follows:

“AGREED FACTS

Registration History

6. Since March 2007, the Respondent has been registered in Alberta, British Columbia, New Brunswick, and Nova Scotia, as a mutual fund salesperson (now known as a dealing representative) with Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA.

7. Prior to being registered with Keybase, the Respondent was registered as a mutual fund salesperson as follows:

- a) from September 1993 to May 1998 with Investors Group Financial Services, a Member of the MFDA;
- b) from May 1998 to March 2005 with Dundee Private Investors Inc. (or Member firms it acquired), a Member of the MFDA; and
- c) from March 2005 to March 2007 with Global Maxfin Investments Inc., a Member of the MFDA.

8. At all material times, the Respondent carried on business from a sub-branch located in Truro, Nova Scotia.

9. At all material times, the Respondent was also licensed to sell insurance.

The Leverage Investment Strategy

10. The Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, and clients RG and AG, whereby the clients would borrow monies and invest the proceeds in return of capital mutual funds (“ROC mutual funds”).

11. The leverage investment strategy was based on the premise that the investments purchased by the clients using the investment loans would generate sufficient returns to pay the clients’ borrowing costs, as well as provide them with the ability to pay down their mortgages faster and/or generate excess discretionary income, such that the clients would not have to incur any out-of-pocket expenses to sustain the leveraged investment strategy.¹

12. Clients FL and SM are former spouses. On or about September 27, 2007, clients FL and SM borrowed \$120,000 from B2B Trust in order to implement the leverage investment strategy based upon the Respondent’s recommendation. The investment loan was structured as a 2-for-1 loan whereby clients FL and SM invested \$64,000 to secure the investment loan and B2B Trust loaned them \$120,000. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount of \$121,000. The Respondent believed that the clients were carrying too much debt at the time that he recommended the investment loan, but proceeded to recommend and implement the leverage investment strategy anyway.

13. Clients RG and AG are spouses. On December 31, 2007, clients RG and AG applied for a \$150,000 investment loan from AGF Trust in order to implement the leverage investment

¹ When dealing with clients, the Respondent referred to the leverage investment strategy as the “Smith Manoeuvre”.

strategy recommended by the Respondent. On January 31, 2008, clients RG and AG were approved for a \$121,000 investment loan.

14. The clients used the proceeds from the investment loans to purchase ROC mutual funds as recommended by the Respondent. The Respondent arranged for the distributions paid by the mutual funds to be deposited in the clients' bank account and advised the clients to use the distributions to make the monthly payments on the loans.

15. In the course of recommending the leverage investment strategy, the Respondent did not adequately explain to clients RG and AG the risks inherent in using borrowed monies to invest generally, or the risks specific to the leveraged investment strategy he recommended.

16. In the case of clients FL and SM, the leveraged investment strategy was unsuitable for the clients having regard to their personal and financial circumstances, including the clients' low investment risk tolerance, limited investment knowledge, and inability to make the payments on their investment loans without using their own monies in the event the leveraged investment strategy did not perform as the Respondent represented it would.

17. By late 2008 or early 2009, the unit values of the mutual funds purchased by the clients had declined and the distributions paid by the mutual funds to investors were reduced. The clients' portfolios declined significantly in value. This jeopardized the clients' financial security and caused them financial hardship.

Failure to Explain Leveraged Investment Strategy

18. From about September to December 2007, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the leveraged investment strategy and its underlying investments that he recommended and implemented in the accounts of clients RG and AG.

19. In particular, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain:

- a) the nature of the distributions that the ROC mutual funds paid to investors such that the clients were not aware that a substantial portion of the distributions paid to investors may consist of a return of the investors' own capital;
- b) the risk that the ROC mutual funds might decline in value over time, particularly since the recommendation was that the clients would use the distributions paid to them by the ROC mutual funds to pay their investment loans or for discretionary expenses;
- c) the risk that if the ROC mutual funds declined in value, the clients may not be able to redeem the ROC mutual funds to pay back the entirety of their investment loans or cover investment losses; and
- d) the risk that the ROC mutual funds might reduce, suspend or cancel altogether the distributions paid to investors due to declining market conditions, poor investment performance or other factors, such that the clients would be forced to incur out-of-pocket expenses to make the payments on their investment loans and sustain the leveraged investment strategy.

20. During his discussions with clients RG and AG, the Respondent focused on the positive aspects of the leveraged investment strategy and did not disclose or discuss all of the attendant risks and potentially negative outcomes. The Respondent either did not disclose and discuss the likelihood of any risks materializing, or if he did discuss such risks and the likelihood of the risks materializing, he did so in a manner that downplayed the likelihood of the risks arising and the potential consequences for the clients if the risks did materialize.

21. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent presented and relied on documents which showed only positive financial outcomes, and contained no substantial information regarding possible risks or downsides of the leveraged investment strategy, such as investment losses or the possibility that the clients might

be paid distributions by the ROC mutual funds that would be insufficient to cover the costs of servicing their investment loans.

22. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent also prepared and relied on personalized spreadsheets (“Spreadsheets”) for the clients that showed only positive financial outcomes, and did not contain information regarding possible risks or downsides of the leveraged investment strategy.

23. Specifically, the Spreadsheets used illustrations and calculations which:

- a) assumed the ROC mutual fund would pay investors a monthly distribution of \$0.08 per unit without alerting the client of the potential risk (and negative impact) of the distributions being reduced or cancelled altogether; and
- b) did not take into account any decreases in the value of the units of the ROC mutual funds which would reasonably be expected to occur as a result of high or unsustainable distribution payments to investors.

24. The Respondent did not present the leveraged investment strategy in the Spreadsheets he provided to clients RG and AG in a fair and balanced manner. The Respondent failed to include performance projections based on more conservative rates of return or declining market conditions, including a negative rate of return (i.e., investment losses), which would have demonstrated to the clients the potential range of outcomes that might arise if they chose to implement the leveraged investment strategy and in particular, the consequences if the leveraged investment strategy did not generate distributions sufficient to cover the clients’ costs of servicing their investment loans.

25. Based on the Respondent’s misrepresentations and omissions, the clients believed that:

- a) the leveraged investments they purchased would increase in value significantly while also generating a continuous monthly cash flow;

- b) the leveraged investment strategy was low risk and their investments were secure; and
- c) they would not have to incur out-of-pocket expenses in order to implement and sustain the leveraged investment strategy in their accounts.

26. By misrepresenting, failing to fully and adequately explain, or omitting to explain the risks, benefits, material assumptions, features and costs of the leveraged investment strategy to two clients as described above, the Respondent failed to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Unsuitable Leveraging Recommendations

27. In September 2007, the Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, that was not suitable for the clients having regard to the clients' KYC information and financial circumstances including:

- a) the clients' low risk tolerance;
- b) the clients' limited or total lack of investment knowledge;
- c) the ability of the clients to afford the costs associated with the investment loans, regardless of the performance of the investments and without relying on anticipated income or gains from the investments;
- d) the ability of the clients to withstand investment losses without jeopardizing their financial security if the leverage investment strategy did not perform as the Respondent represented it would.

28. As stated above, based upon the Respondent's recommendation, clients FL and SM borrowed \$120,000 in order to implement the leverage investment strategy. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount of \$121,000. At the time he recommended the investment loan to clients FL and SM, the Respondent believed that the clients

were carrying too much debt. The Respondent nonetheless proceeded to recommended (sic) the investment loan and implement the leverage investment strategy anyway.

29. The Respondent's leverage recommendations resulted in the clients having loan-to-net-worth ratio of approximately 153%.

30. The Respondent's leverage recommendation was unsuitable for clients FL and SM having regard to the resulting debt servicing obligations that would be imposed on the clients and the potential for the clients' obligation to repay the investment loans to erode a substantial portion, and potentially all, of the clients' net worth in the event the leveraged investment strategy did not perform as the Respondent represented it would.

31. In implementing the leveraged investment strategy, FL and SM were relying entirely upon the distributions generated by the ROC mutual funds to pay all of the costs of servicing their investment loans. They did not have the means to cover the costs of servicing the investment loans in the event the leveraged investment strategy did not perform as the Respondent represented it would.

32. Clients FL and SM had limited or no investment knowledge, notwithstanding that the Respondent recorded them as having a risk tolerance of "medium high", such that they did not understand and appreciate the potential risks of the leveraged investment strategy before agreeing to implement it in their accounts. The Respondent's conduct exacerbated the effect of client FL and SM's limited investment knowledge by leading the clients to believe, through his representations and omissions, that the leveraged investment strategy was low risk and secure.

33. As a result of implementing the leveraged investment strategy, clients FL and SM incurred significant investment losses attributable to both a decline in the value of the investments they purchased and the distributions paid by these investments (which required the clients to draw on other sources of assets or income to sustain the leveraged investment strategy).

34. By engaging in the conduct described above, the Respondent failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

CONTRAVENTIONS

35. The Respondent admits that:

- i) between September and December 2007, he misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, costs and features of a leveraged investment strategy that he recommended and implemented in the accounts of two clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.1.1 and 2.2.1.
- ii) in about September 2007, he failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.1.1 and 2.2.1.

TERMS OF SETTLEMENT

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

- i) 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 two months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- ii) the Respondent shall be permanently prohibited from engaging in any leveraging activities with clients, including recommending or applying for investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- iii) the Respondent shall pay a fine in the amount of \$5,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iv) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- v) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.2.1; and
- vi) the Respondent will attend in person on the date scheduled for the MFDA settlement hearing.”

D. THE LAW RELATING TO SETTLEMENT AGREEMENTS

11. Section 24.4.3 of MFDA By-law No. 1 provides the Hearing Panel with only two options when considering a Settlement Agreement. The Panel must either accept or reject the Settlement Agreement. It does not have the power to modify or vary any part of it.

12. The role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As the Hearing Panel stated in *Professional Investments (Kingston) Inc.*:

“In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.”

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

13. Settlements do assist the MFDA in fulfilling its regulatory objective of protecting the public. They advance this objective by proscribing activities which are harmful to the public, while enabling the parties to reach a flexible remedy to address the interests of both the regulator and the Respondent.

14. Past MFDA Hearing Panels have set out a number of considerations which should be taken into account when determining whether a proposed settlement should be accepted. These include:

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

Investors Group Financial Services [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated October 16, 2004 at pp. 2-3.

15. The primary goal of securities regulation is the protection of the investor.

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 (S.C.C.) at paras. 59 & 68.

16. Past MFDA Hearing Panels have also delineated a number of factors which should be considered when determining whether a proposed penalty is appropriate. These include:

- a) the seriousness of the allegations proved against the Respondent;
- b) the Respondent's past conduct, including prior sanctions;
- c) the Respondent's experience and level of activity in the capital markets;
- d) whether the Respondent recognizes the seriousness of the improper activity;
- e) the harm suffered by investors as a result of the Respondent's activities;
- f) the benefits received by the Respondent as a result of the improper activity;
- g) the risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) the damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) previous decisions made in similar circumstances.

Re: *Headley (Re)*, 2006 LNCMFDA 3, at para. 85.

17. The MFDA Penalty Guidelines, while not mandatory, are an additional source which Hearing Panels can refer to in determining the appropriateness of the proposed penalties.

E. CONSIDERATIONS IN THE PRESENT CASE

(i) Nature of the Misconduct

18. The misconduct engaged in by the Respondent was of a very serious nature.

19. MFDA Rule 2.2.1 states, in part, as follows:

“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 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;
- d) to ensure that, notwithstanding the provisions of paragraph (c), where a transaction proposed by a client is not suitable for the client based on the essential facts relative to the client and the investments in the account, the Member or Approved Person has so advised the client before execution thereof and the Member or Approved Person has maintained evidence of such advice;”

20. MFDA Rule 2.2.1 codified the “know your client” and “suitability” obligations long recognized by securities regulators. In E.A. Manning Ltd. et al (Re), the Ontario Securities Commission held that “these requirements are an essential component of the consumer protection scheme of the *Act* and a basic obligation of a registrant and a course of conduct by a registrant involving the failure to comply with them is an extremely serious matter.”

Re: *E.A. Manning Ltd. et al (Re)*, 1995 LNONOSC377 (Ontario Securities Commission) at page 30 of Quicklaw Decision.

21. The comments by the Ontario Securities Commission have been adopted, with approval, by subsequent MFDA Hearing Panels. See, for example: Snyder (Re), 2015 LNCMFDA 15 at para. 24 and Laurie (Re), 2015 LNCMFDA 119 at para. 28.

22. In Lamoureux (Re), the Alberta Securities Commission stated that:

“The “know your client” and “suitability” objectives are conceptually distinct but, in practice, they are so closely connected and interwoven that the terms are sometimes used interchangeably.

The “know your client” obligation is the obligation to learn about the client, their personal financial situation, financial sophistication and investment experience, investment objectives and risk tolerance. The “suitability” obligation is the obligation on a registrant to determine whether an investment is appropriate for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and client are a match.”

Lamoureux (Re), [2001] A.S.C.D. No. 613 (Alberta Securities Commission) at page 10.

23. In Lamoureux (Re), the Alberta Securities Commission indicated that suitability must be assessed prior to any investment recommendation to a client. It set out the following sequential, three-stage process:

- (i) use due diligence to know the product and know the client;
- (ii) apply sound professional judgment to determine the suitability of the investment for the client; and
- (iii) make the client aware of the recommended investment, while disclosing the negative as well as the positive aspects of the proposed investment.

Lamoureux (Re), *supra*, at pp 13-16.

24. In Lamoureux (Re), it was explained that:

“The disclosure of material negative factors in the third stage of the process is intended to assist the client in making an informed investment decision. It should be emphasized that such disclosure cannot ameliorate deficiencies in either of the first two stages of the process. If a registrant recommends securities that are not suitable for a particular client, then disclosure by the registrant during the third stage is irrelevant to their suitability obligation in stage two. The registrant’s failure may have been the result of not knowing the client, or not knowing the securities, or an error in the suitability determination but,

once the improper recommendation has been made, it does not matter whether or how the registrant discloses the material negative factors, or whether the client claims to understand and accept the risks involved in the investment. The registrant has failed to fulfil their obligations.”

Lamoureux (Re), supra, at page 14.

25. This three-stage approach has been followed in numerous subsequent decisions including:

- a) *Daubney (Re)*, 2008 LNONOSC 338 (Ontario Securities Commission).
- b) *De Vuono*, 2012 LNCMFDA 103, Decision of the Pacific Regional Council.
- c) *Laurie, supra*, Decision of the Atlantic Regional Council.

(ii) Client Harm

26. The conduct involved a total of four clients. The total borrowed funds were a little over \$240,000. There were client complaints.

(iii) The Respondent’s Past Conduct, Experience and Disciplinary History

27. The Respondent has been registered in the financial services industry since 1993 and has not been the subject of any previous disciplinary hearings. We view these as mitigating factors.

(iv) The Respondent’s Recognition of the Seriousness of His Misconduct

28. The Respondent accepted responsibility for his misconduct by co-operating with Staff and entering into the Settlement Agreement, thereby reducing the length and complexity of the disciplinary proceedings that might otherwise have been necessary.

29. In addition, the Respondent appeared in person at the Settlement Hearing and, through his Counsel, expressed remorse for his actions.

(v) Deterrence

30. In all of the circumstances of this case, we are confident that the proposed penalty will act as a specific deterrent to the Respondent.

31. With respect to general deterrence, we feel that certain elements of the proposed penalty are at the lower end of the acceptable range. However, in light of the fact that the misconduct in question occurred for a very limited period of time, over nine years ago, we believe that, when all of the relevant circumstances are objectively addressed, the proposed penalty will serve as a general deterrent dissuading current dealing representatives from engaging in similar conduct.

(vi) Public Interest and Proportionality

32. We are aware that this Settlement Agreement is the result of substantial negotiations between the parties. Counsel for the parties submitted that it would be in the public interest to accept the Settlement Agreement. Counsel for Staff submitted that, in her view, the proposed penalties are significant and convey to the public that the Respondent's misconduct constituted a serious regulatory contravention.

(vii) MFDA Penalty Guidelines

33. Staff provided the Hearing Panel with excerpts from the Penalty Guidelines dealing with breaches of MFDA Rule 2.2.1 and 2.1.1. While stressing that the Guidelines were not mandatory, Staff submitted that the proposed penalties are consistent with them.

(viii) Previous Decisions Made in Similar Circumstances

34. In its written submissions, Staff prepared a comprehensive chart detailing twelve previous regulatory Decisions. This chart set out the relevant facts of the case, the amount of

leverage, the type of hearing as well as the Hearing Panel's Decision. The following Decisions were charted:

- a) *Laurie, supra*, Decision of the Atlantic Regional Council, dated October 26, 2015.
- b) *Snyder, supra*, Decision of the Atlantic Regional Council, dated March 13, 2015.
- c) *Gragasin*, 2014 LNCMFDA 44, Decision of the Prairie Regional Council, dated July 9, 2014.
- d) *Sobrevilla*, 2014 LNCMFDA 45, Decision of the Prairie Regional Council, dated July 9, 2014.
- e) *Sulkers*, 2014 LNCMFDA 46, Decision of the Prairie Regional Council, dated July 9, 2014.
- f) *Sarker*, 2014 LNCMFDA 17, Decision of the Central Regional Council, dated February 28, 2014.
- g) *Pretty*, 2014 LNCMFDA 6 (Misconduct), Decision of the Atlantic Regional Council, dated January 30, 2014, and 2014 LNCMFDA 56 (Penalty), Decision of the Atlantic Regional Council, dated July 2, 2014.
- h) *DeVuono, supra* (Misconduct), Decision of the Pacific Regional Council, dated November 22, 2012, and MFDA 2013 LNCMFDA 34 (Penalty), Decision of the Pacific Regional Council, dated May 27, 2013.
- i) *Arseneau*, 2012 LNCMFDA 93, Decision of the Atlantic Regional Council, dated September 28, 2012.
- j) *Mytting*, 2012 IIROC 45, Decision of the Pacific District Council, dated July 30, 2012.
- k) *Gareau*, 2011 LNIROC 53 (Misconduct), Decision of the Saskatchewan District Council, dated September 26, 2011, and 2011 LNIROC 72 (Penalty), Decision of the Saskatchewan District Council, dated January 2, 2012.
- l) *Harding*, 2011 IIROC 65, Decision of the Ontario District Council, dated December 16, 2011.

35. The purpose of the chart was to seek to show that the penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the

nature and extent of the misconduct and all of the relevant circumstances. This chart was of great assistance to the Hearing Panel in its deliberations.

F. DECISION

36. After a detailed consideration of the Settlement Agreement, the applicable law, the submissions of the parties, as well as the factors specific to the Respondent, we unanimously concluded that it was in the public interest that the Settlement Agreement be accepted.

G. PENALTIES IMPOSED

37. As a result of the acceptance of the Settlement Agreement, the following penalties were imposed upon the Respondent:

- 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 two months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- b) the Respondent shall be permanently prohibited from engaging in any leveraging activities with clients, including recommending or applying for investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- c) the Respondent shall pay a fine in the amount of \$5,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- d) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- e) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.2.1; and
- f) 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 18th day of April, 2017.

“Thomas J. Lockwood”

Thomas J. Lockwood, QC
Chair

“Ann C. Etter”

Ann C. Etter
Industry Representative

“Susan Nixon”

Susan Nixon
Industry Representative

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