



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: Carte Wealth Management Inc.

Heard: December 22, 2020 by electronic hearing in Toronto, Ontario

Decision: December 22, 2020

Reasons for Decision: February 4, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W Chenoweth
Kenneth P. Mann
Tim Pryor

Chair
Industry Representative
Industry Representative

Appearances:

| | | |
|-----------------|---|---|
| Alan Melamud |) | Enforcement Counsel for the Mutual Fund |
| |) | Dealers Association of Canada |
| |) | |
| |) | |
| Anna Markiewicz |) | Counsel for the Respondent |
| |) | |
| |) | |
| Kirk Purai |) | CEO of the Respondent |
| |) | |
| |) | |

Background

1. By Notice of Settlement Hearing, dated December 4, 2020, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (the “MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept a settlement agreement dated November 25, 2020, (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Carte Wealth Management Inc. (“Respondent”).

2. At the outset of the proceeding, the Hearing Panel considered a joint motion by Staff and the Respondent to move the proceedings “*in camera*”. The Hearing Panel granted the motion. The Hearing Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Hearing Panel in determining whether or not to accept or reject the Settlement Agreement. The Hearing Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Hearing Panel’s reasons for doing so.

The Contravention

3. In the Settlement Agreement, the Respondent admits that:

- a) between June 30, 2019 and December 31, 2019, the Respondent failed to maintain a risk adjusted capital greater than zero, contrary to MFDA Rule 3.1.1.

The Facts

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to the existence of a series of facts, which are set out in Part IV of the said Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

5. As set out in the Settlement Agreement, the Respondent had, since April 20, 2007, been registered in the securities industry as a mutual fund dealer, in all the provinces of Canada, except Newfoundland and Labrador. The Respondent was designated as a Level 3 Member of the MFDA.

Discussion

6. The Hearing Panel was aware that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-laws, MFDA Rules or policies, or provincial securities legislation; and
- b) 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 the circumstances.

7. The Hearing Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. It is generally accepted that Hearing Panels will not lightly interfere in a settlement agreement reached by Staff and a respondent. Section 24.4.3 of MFDA By-law No. 1 provides that Hearing Panels may only accept or reject a settlement in its entirety. A Hearing Panel's role is therefore not to determine the correct sanction, but instead to ascertain whether the sanction agreed to between Staff and a respondent falls within the reasonable range of appropriateness:

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.** As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.

MFDA By-law No. 1

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

Ho (Re), 2018 LNCMFDA 21 at paras. 24-26.

Misconduct

8. The Respondent admits that for the period between June 30, 2019 and December 31, 2019, it failed to maintain a risk adjusted capital ("RAC") greater than zero. The Respondent is a Level 3 Dealer. Therefore, pursuant to MFDA Rule 3.1.1, it is required to maintain a minimum capital of \$75,000 and RAC greater than zero at all times.

MFDA Rule 3.1.1.

9. The purpose of RAC is set out in “The Form 1 Reference Manual” (the “Reference Manual”), which states the following:

In order to monitor the financial viability of mutual fund dealers, the MFDA has adopted a risk adjusted capital calculation, also known as the “capital formula”. RAC is derived from the Member’s working capital and is the primary means of financial reporting to the MFDA. RAC is a measure of the Member’s liquidity and its ability to withstand any adverse fluctuations in operations. In addition to a minimum amount of capital required by MFDA rules, certain provisions or “cushions” are taken into consideration in order to assess the Member’s capacity to manage its obligations and protect its clients. The capital formula seeks to assess the Member’s ability to continue as a going concern.

10. The Reference Manual further explains that pursuant to MFDA Rule 3.1.1, “it is the responsibility of all Members to continuously monitor and evaluate its capital to ensure RAC is positive at all times.”

The Form 1 Reference Manual, March 2014.

11. Accordingly, by failing to ensure its RAC was greater than zero between June 30, 2019 and December 31, 2019, the Respondent contravened MFDA Rule 3.1.1.

The Penalty

12. The primary goal of securities regulation is the protection of the investing public. Disciplinary sanctions imposed in a securities regulatory context are protective and preventative, and intended to be exercised to prevent likely future harm.

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

Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission), [2001] 2 S.C.R. 132 at para. 42,

13. The Panel accepted the submissions of Staff that the following factors are frequently considered by Hearing Panels when determining whether a penalty is appropriate:

- 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 activity;
- 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 activity in the capital markets; and
- k) Previous decisions made in similar circumstances.

Sterling Mutuals Inc. (Re), MFDA File No. 200820 dated August 21, 2008

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

Mutual Fund Dealers Association of Canada Sanction Guidelines,
dated November 15, 2018

15. The Hearing Panel took into consideration the above factors when considering the Settlement Agreement with the Respondent. Set out below are the factors that are particularly pertinent to this case:

- a) The Respondent's failure to maintain a RAC greater than zero is serious misconduct. As stated by the Hearing Panel in *Global Maxfin Investments Inc. (Re)*, the requirement that members maintain a RAC greater than zero is necessary "to protect the financial integrity of individual MFDA firms, their clients, the MFDA and the securities markets". When a Member's financial viability is threatened, its

clients are put at significant risk, and accordingly it is critical that Members maintain a positive RAC at all times.

Global Maxfin Investments Inc. (Re) 2015 LNCMFDA 65 at para. 10.

- b) The Respondent has not previously been the subject of an MFDA disciplinary proceeding.
- c) The Hearing Panel was satisfied that the Respondent had accepted responsibility for its misconduct. The Respondent entered into a Settlement Agreement which substantially reduced the length and complexity of the disciplinary proceeding that might have otherwise been necessary.
- d) There is no evidence that any client suffered any harm as a result of the Respondent's misconduct, nor is there any evidence that the Respondent received any benefit as a result of the misconduct.
- e) Importantly, the Respondent had rectified the RAC deficiency and maintained a positive RAC since January 21, 2020.
- f) Additionally, the Respondent had taken substantial voluntary remedial measures, including hiring a chartered accountant who is now responsible for the Respondent's financial affairs on a full-time basis, and made changes to its policies and procedures to ensure it maintained a RAC greater than zero.
- g) The proposed sanctions served the purpose of specific and general deterrence. Although the Hearing Panel might have preferred a larger fine, the \$10,000 fine was sufficiently large to deter the Respondent from again contravening MFDA Rule 3.1.1 while taking into account the size of the Respondent, the nature of the misconduct, and the fact that this was a single financial compliance contravention which had been rectified.
- h) Additionally, the Hearing Panel understood that the sanction ought not to exacerbate the financial difficulties that the MFDA, by its prosecution, was attempting to rectify.
- i) The Hearing Panel was of the view that the proposed sanctions would also send a message to the industry of the importance of maintaining RAC greater than zero, and that Members can suffer a penalty from even a single financial compliance contravention.

16. In coming to its conclusion, the Hearing Panel considered all of the facts and circumstances of the case, the substantial case law to which it had been referred, and the Sanction Guidelines.

17. Staff proposed that costs in the amount of \$5,000 be awarded against the Respondent. In the Settlement Agreement, the Respondent agreed to Staff's proposal. In its submissions, Staff made it clear to the Hearing Panel, that costs incurred more than justified the imposition of the above costs award.

Result

18. For all the above reasons, the Hearing Panel concluded that the Settlement Agreement was reasonable and proportionate. Accordingly, the following penalties were imposed upon the Respondent:

- a) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
- b) The Respondent shall pay costs in the amount of \$5,000, pursuant s. 24.2 of MFDA By-Law No. 1;
- c) The Respondent shall, in the future, comply with MFDA Rule 3.1.1; and
- d) If at any time a non-party to this proceeding, with the exception of the bodies set out in s. 23 of the 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 4th day of February, 2021.

“Frederick W. Chenoweth”

Frederick W Chenoweth
Chair

“Kenneth P. Mann”

Kenneth P. Mann
Industry Representative

“Tim Pryor”

Tim Pryor
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: Carte Wealth Management Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Carte Wealth Management Inc. (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. ACKNOWLEDGMENT

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. The Respondent is registered as a mutual fund dealer in all the provinces of Canada except Newfoundland and Labrador, and has been a Member of the MFDA since April 20, 2007.

7. The Respondent is designated as a Level 3 Member of the MFDA for the purposes of determining its minimum capital. In accordance with MFDA Rule 3.1.1, a Level 3 Member of the MFDA must maintain minimum capital of \$75,000 and risk adjusted capital (“RAC”) greater than zero at all times.

History of Early Warning

8. From September 4, 2008 to September 25, 2015, the Respondent was designated in Early Warning as a result of variously triggering the Capital Deficiency, Liquidity, and/or the Profitability Tests, as defined in MFDA Rule 3.4.2(a). During this period, the Respondent was able to only temporarily rectify these deficiencies from time to time with capital injections via subordinated loans. On September 25, 2015, the Respondent was removed from Early Warning after having satisfied an Agreement and Undertaking it entered into with Staff on November 5, 2014, which required it to maintain a RAC in excess of \$30,000 for one year.

9. On April 10, 2017 and November 30, 2018, the Respondent was additionally placed in Early Warning due to failing to maintain a sufficient RAC as required by MFDA Rule 3.4.2. In each case, the Member was able to promptly rectify the capital issue.

The Respondent Fails to Maintain its RAC Above Zero

10. On August 1, 2019, the Respondent was designated in Early Warning as a result of its RAC falling below zero on its June 30, 2019 Form 1, triggering the Capital Deficiency Test. The Respondent continued to trigger the Capital Deficiency Test on its July 31, 2019 Form 1. The Respondent also triggered the Frequency Test due to the multiple triggers of the early warning tests.

11. On August 15, 2019, the Respondent obtained \$50,000 via a subordinated loan to rectify the capital deficiency.

12. On the Respondent's November 30, 2019 Form 1, however, the Respondent again reported a RAC deficiency of \$36,016, triggering the Capital Deficiency Test.

13. On its December 31, 2019 Form 1, the Respondent reported that the RAC deficiency had been rectified and that it had a positive RAC of \$5,978.

14. On January 21, 2020, the Respondent obtained an additional \$30,000 via a subordinated loan, which further ensured the Respondent would maintain a RAC above zero.

15. The Respondent has maintained a positive RAC since the January 21, 2020 capital injection.

V. ADDITIONAL FACTORS

16. The Respondent has not previously been the subject of an MFDA disciplinary proceeding.

17. Following the events at issue, the Respondent hired a new staff member, a Chartered Accountant, who is now responsible for the Respondent's financial affairs on a full-time basis.

18. The Respondent has taken remedial measures acceptable to Staff, including establishing policies and procedures to prevent its RAC from falling below zero again.

VI. CONTRAVENTIONS

19. The Respondent admits that between June 30, 2019 and December 31, 2019, it failed to maintain at all times a risk adjusted capital greater than zero, contrary to MFDA Rule 3.1.1.

VII. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine of \$10,000, pursuant to section 24.1.2(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs of \$5,000, pursuant to section 24.2 of MFDA By-law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 3.1.1; and
- d) a senior officer of the Respondent will attend in person, by videoconference, or by telephone on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

21. 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 or any of its officers or directors 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.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

22. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

23. 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 its 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.

24. 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. 24.1.2 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.

25. 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 it.

26. 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 or any of its officers or directors 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

27. 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.

28. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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

29. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

32. An electronic copy of any signature shall be effective as an original signature.

DATED this 25th day of November, 2020.

“Kirk Purai”

Carte Wealth Management Inc.

“PH”

Witness – Signature

PH

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

Schedule "A"

Order
File No.



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: Carte Wealth Management Inc.

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Carte Wealth Management Inc. (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 the Hearing Panel is of the opinion that between June 30, 2019 and December 31, 2019, the Respondent failed to maintain at all times a risk adjusted capital greater than zero, contrary to MFDA Rule 3.1.1.

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

1. The Respondent shall pay a fine of \$10,000, pursuant to section 24.1.2(b) of MFDA By-law No. 1;

2. The Respondent shall pay costs of \$5,000, pursuant to section 24.2 of MFDA By-law No 1;
3. The Respondent shall in the future comply with MFDA Rule 3.1.1; and
4. 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 792147