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: Equity Associates Inc.

Heard: June 20, 2018 in Toronto, Ontario
Decision: June 20, 2018
Reasons for Decision: August 22, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth	Chair
Kenneth P. Mann	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

David Halasz	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
Caitlin Sainsbury	)	Counsel for the Respondent

Background

1. By Notice of Settlement Hearing, a Hearing Panel of the Central Regional Council 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 Panel should accept a settlement agreement dated April 30, 2018, ("Settlement Agreement") entered into by the Staff of the MFDA ("Staff") and the Respondent, assisted by its counsel.

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

The Contraventions

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

(a) During the period March 1, 2012 to September 30, 2014, the Respondent failed to adequately supervise, or failed to maintain adequate records of the supervision at its Head Office, sub-branch level, and branch level of:

i. Daily trading activity;
ii. Approval of new accounts;
iii. Approval of amendments to know-your-client information; and
iv. Leveraged accounts,

contrary to MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, and 5.1, and MFDA Policy No. 2;

(b) During the period March 1, 2012 to September 30, 2014, the Respondent failed to establish, implement and maintain adequate policies and procedures to conduct trend analysis reports to supervise its Approved Persons' trading activity, contrary to MFDA Rules 2.1.1, 2.5.1, 2.9, and 2.10, and MFDA Policy No. 2;

(c) During the period March 1, 2012 to September 30, 2014, the Respondent failed to maintain adequate compliance resources, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 2;

(d) During the period October 1, 2014 to July 31, 2016, the Respondent failed to adequately supervise, or failed to maintain adequate records of the supervision of:

i. uniformity of certain client KYC information; and;
ii. concentration of sector mutual funds in client accounts;

contrary to MFDA Rules 2.2.1, 2.5.1, 2.9, and 5.1, and MFDA Policy No. 2;

(e) Commencing on or about August 19, 2014, the Respondent failed to conduct a reasonable supervisory investigation in response to information it received that its Approved Person, Gilles Latour, was charged with offences pursuant to the *Criminal Code of Canada* for alleged conduct involving clients and other individuals, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 3; and

(f) Commencing May 2014, the Respondent failed to conduct a reasonable supervisory investigation regarding investment suitability concerns and portfolio concentration issues in the client accounts serviced by its Approved Person Lawrence Fike, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 3.

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 Agreement. The Settlement Agreement is attached as Appendix "A" to these Reasons.

5. As set out in paragraphs 6, 7 and 8 of the Settlement Agreement, the Respondent was, at all material times, registered in Ontario and other provinces throughout Canada as a mutual fund dealer, and as an exempt market dealer in Ontario. The Respondent has been a Member of the MFDA since March 4, 2003. The Head Office of the Respondent was, at the time of the Hearing, located in Markham, Ontario.

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-law, MFDA Rules or Policies; 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 Panel accepted that the role of a Hearing Panel at a settlement hearing is fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutual Inc. (Re),* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> "We also note that while in a contested hearing, a 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.'" [emphasis added]
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> *Sterling Mutuals Inc. (Re),* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.
>
> *Milewski (Re),* [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

8. The Panel considered in detail the agreed facts set out in the Settlement Agreement, and having done so, concluded that the allegations admitted by the Respondent had been proven and constituted misconduct in contravention of the By-laws, MFDA Rules or Policies.

9. The Panel then proceeded to consider the appropriateness of the proposed penalty as set out in the Settlement Agreement. In doing so, the Panel considered the submissions of Staff and the Respondent's counsel, the MFDA Penalty Guidelines and the substantial case law to which it was referred.

10. The Panel accepted counsels' joint submission that the primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is the protection of the investor. In addition to protection of the investor, the goals of securities regulation, include fostering public confidence in the capital markets and the securities industry.

> *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557.
>
> *Breckenridge (Re)*, MFDA File No. 200718, Hearing Panel of the Central Regional Council, Decision and Reasons dated November 14, 2007 at para. 71.

11. The Panel also 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 to those who are permitted to participate in the capital markets; and

k) Previous decisions made in similar circumstances.

Breckenridge, supra.

12. The Panel accepted the submissions of Staff that trade and account supervision is an essential element of investor protection and critical to the process of ensuring that, among other things, all trade orders accepted and recommendations made for clients are suitable. In addition, the Panel accepted Staff's submissions that the Respondent's supervisory deficiencies were serious, in that the misconduct at issue reflects a range of deficiencies involving significant aspects of the Respondent's supervisory practices. In addition, the Respondent failed to conduct adequate supervisory investigations in relation to conduct of two Approved Persons.

13. It was clear that, as a result of the Respondent's supervisory deficiencies, the Respondent:

a) Processed trades in some instances without evidence of adequate trade supervision and suitability review;

b) Allowed new accounts to be opened without adequate supervision;

c) Processed amendments to client KYC information in some instances without adequate supervision; and

d) Processed leveraging recommendations which may have been unsuitable without adequate supervision.

14. The Panel was aware that the Respondent has addressed the deficiencies that are the subject of the Settlement Agreement, in that the Respondent has:

a) Revised its compliance policies and procedures with respect to daily trade supervision, approval of new accounts, approval of amendments to KYC information, and leverage supervision and suitability;
b) Hired a consultant to review the revised policies and procedures and to conduct testing with respect to their implementation;
c) Hired a consultant to: perform a complete review of all transferred in leverage accounts from March 2012 to December 2015; and to review and approve all new leverage accounts opened from August 2015 onwards;
d) Implemented amended procedures with respect to monthly trend analysis; and
e) More than doubled the number of employees and the salary costs in the compliance department.

15. The Panel was also aware that in 2015, the Respondent entered into a Settlement Agreement with MFDA Staff, in which it admitted to deficiencies related to, among other things, supervision of new accounts, as follows: the Respondent did not obtain new account application forms for two new client accounts or have a new account approved by a designated trading officer; and did not ensure that accurate KYC information was obtained in respect of two new client accounts or that the investments recommended to the clients were suitable. Additional misconduct in the prior case included that the Respondent failed to handle a complaint from the affected clients promptly and fairly. The terms of the settlement included a fine of $40,000, the Respondent made payments of $50,000 to clients, and paid costs of $10,000.

Equity Associates Inc. (Re), 2015 CanLII 39873 (CA MFDAC)

16. It was clear to the Panel that the 2015 contraventions set out above, related to a limited number of new account problems and was not a general systemic deficiency as were the present contraventions.

17. The Panel was satisfied that the proposed penalties appropriately considered and balanced the principles of both general and specific deterrents.

Result

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

a) The Respondent shall pay a fine in the amount of $125,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;

b) The Respondent shall pay costs in the amount of $20,000 to the MFDA, pursuant to section 24.2 of By-Law No. 1;

c) The payment by the Respondent of the fine and costs in paragraphs (a) and (b) above, shall be made to and received by MFDA Staff in certified funds as follows:

i. $82,500 (fine and costs) upon the acceptance of the Settlement Agreement; and

ii. $62,500 (fine) no later than 6 months after the acceptance of the Settlement Agreement;

d) The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, 2.10 and 5.1 and MFDA Policy No. 2 and No. 3; and

e) If at any time a non-party to this proceeding, with the exception of the bodies set out in section 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 22nd day of August, 2018.

"Frederick W. Chenoweth"

Frederick W. Chenoweth
Chair

"Kenneth P. Mann"

Kenneth P. Mann
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

DM 629936

Appendix "A"

Settlement Agreement

File No. 201716

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: Equity Associates Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada ("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 ("Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Equity Associates Inc. ("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 X) 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. At all material times, the Respondent has been registered in Ontario and other provinces throughout Canada as a mutual fund dealer, and as an exempt market dealer in Ontario.

7. The Respondent has been a Member of the MFDA since March 4, 2003.

8. The Respondent's head office (the "Head Office") is located in Markham, Ontario.

Compliance Deficiencies – March 2012 to September 20, 2014

9. MFDA Compliance Staff conducted a compliance examination of the Respondent in order to assess its compliance with MFDA By-laws, Rules and Policies during the period March 1, 2012 to September 30, 2014 (the "2014 Compliance Examination").

10. At the time of the 2014 Compliance Examination, the Respondent's compliance structure included a branch manager located at Head Office who conducted centralized Tier 1 supervision of approximately 138 Approved Persons operating out of approximately 86 sub-branch locations. The Respondent also had approximately 14 branches at which Tier 1 supervision was conducted by an on-site branch manager. Tier 2 supervision of all branches and sub-branches was conducted by compliance Staff of the Respondent at Head Office.

11. The 2014 Compliance Examination included a review by MFDA Compliance Staff of the Respondent's supervision conducted at Head Office as well as its supervision at the following 5 sub-branches and 1 branch:

a) 1459 Bancroft Drive, Sudbury, Ontario ("Sudbury sub-branch");
b) 302 – 1900 City Park Drive, Ottawa, Ontario ("Ottawa sub-branch");
c) 465 Waterloo Street, London, Ontario ("London sub-branch");
d) 102 Chain Lake Drive, Unit 236, Halifax, Nova Scotia ("Halifax sub-branch");
e) 65 Kimberly Street, Fredericton, New Brunswick ("Fredericton sub-branch"); and
f) 950 Main Street, Hampton, New Brunswick ("Hampton branch").

12. The results of the 2014 Compliance Examination were summarized and delivered to the Respondent in a report dated April 24, 2015 (the "2015 Report").

13. The 2015 Report identified certain compliance deficiencies, including in the following areas: (a) daily trade supervision; (b) approval of new accounts; (c) approval of amendments to Know-Your-Client ("KYC") information; (d) leverage supervision and suitability; (e) trend analysis reports; and (f) maintenance of compliance resources.

Inadequate Daily Trade Supervision

14. During the period March 1, 2012 and September 30, 2014, the Respondent's supervision of daily trading activity at Tier 1 and 2 was deficient in that:

a) the Respondent could not produce daily trade blotters in some instances to evidence trade review and suitability supervision;
b) trades processed by the Respondent in some instances did not appear on any trade blotters; and
c) trades appeared on the trade blotter in some instances without evidence of review.

15. As a result, in some instances, the Respondent processed trades in some instances without evidence of adequate trade supervision and suitability review.

Inadequate Approval of New Accounts

16. The Respondent's supervision of the approval of new accounts was deficient in that supervisory staff at the Respondent, in some instances, opened new accounts or transferred in accounts without evidence of approval.

17. As a result, the Respondent, in some instances, allowed new accounts to be opened without adequate supervision.

Inadequate Approval of Amendments to Know-Your-Client Information

18. The Respondent's approval of amendments to KYC information was deficient in that the Respondent could not produce evidence of review and approval of amendments to client KYC information in some instances.

19. As a result, the Respondent processed amendments to client KYC information in some instances without adequate supervision

Inadequate Supervision of Leveraging and Suitability

20. The Respondent's supervision of leveraging and suitability was deficient in that the Respondent allowed the purchases of securities with borrowed monies in some instances where:

a) there was inadequate information on file to assess the suitability of the leveraging strategy in accounts at either Tier 1 or 2 for accounts held at the Respondent; and
b) there was no evidence that the suitability of the leveraged accounts was assessed by supervisory staff at either Tier 1 or 2 for accounts held at the Respondent.

21. As a result, in some instances, leveraging recommendations which may have been unsuitable were processed by the Respondent without adequate supervision.

Failure to Adequately Conduct Trend Analysis Reports

22. The Respondent failed to adequately conduct trend analysis reports of its Approved Person's trade activity, in that the Respondent:

a) did not have policies and procedures in place for conducting trend analysis reviews of its Approved Persons' trade activity on certain of its back office systems[1], and there was no evidence that any such reviews had been performed; and
b) did not conduct reviews of the Dealer Commission Report, Assets Under Administration Trend Report; Sales Commission Trend Report, since the period ending December 2013.

Inadequate Maintenance of Compliance Resources

23. During the period March 1, 2012 and September 30, 2014, the Respondent did not maintain adequate compliance resources. As a result:

[1] Some Approved Persons of the Respondent conducted trading using certain back-office systems that were not subject to review by the Respondent's supervisory staff.

a) the Respondent's supervisory staff did not conduct periodic sub-branch visits for any of their approximately 100 sub-branches and branches;
b) the Respondent's supervisory staff conducted MFDA Policy No. 5 branch reviews on only approximately 28 of their 100 sub-branch and branch locations.
c) testing conducted by MFDA in key supervision areas described above in paragraphs 14 to 22, identified that between 35% and 50% of the samples tested lacked evidence of adequate, or any, supervision;
d) the Respondent was unable to produce to MFDA Staff during its review of the Respondent, certain client complaint files and know-your-product due diligence files requested by MFDA Staff during its review of the Respondent; and
e) did not conduct trend analysis as described above in paragraph 22.

Compliance Deficiencies - October 1, 2014 to July 31, 2016

Uniformity of Client KYC Information

24. During the 2014 Compliance Examination described above at paragraph 9, MFDA Staff identified certain of the Respondent's Approved Persons who had a practice of recording uniform client KYC information across different client accounts at the Respondent's Ottawa, London, Fredericton, and Halifax sub-branches. As part of the resolution to these issues, the Respondent agreed to test for uniformity of KYC information during their Policy No. 5 branch and sub-branch reviews.

25. In addition, on or about April 11, 2016, the Member agreed to take action by sending letters to the affected clients requesting that the clients contact the Respondent to discuss their KYC information, and having a staff person independent of the Approved Person who services the client's account (i.e. Head Office compliance staff or a branch manager) participate in the client discussion. The Respondent was to have the client's KYC information reassessed by the Approved Person in an objective manner and appropriately supervised by the Member's supervisory staff. The Respondent agreed to meet with and reassess the KYC information for the affected clients no later than June 30, 2016.

26. MFDA Compliance Staff conducted a compliance examination of the Respondent in order to assess its compliance with MFDA By-laws, Rules and Policies during the period October 1, 2014 to July 31, 2016 (the "2016 Compliance Examination"), and identified that the Respondent had not attempted to contact clients until approximately August 15, 2016.

27. The Member's supervisory staff therefore did not meet with or reassess the KYC information for the affected clients by the agreed timeline of June 30, 2016.

28. In addition, during the 2016 Compliance Examination MFDA Staff identified deficiencies relating to uniformity of client KYC information in client accounts at the Respondent's Head Office, the London sub-branch, and the Guelph, Ontario sub-branch. The Respondent's supervisory staff:

a) failed to identify uniformity of client KYC issues;
b) did not maintain evidence of supervisory inquiries regarding uniformity of client KYC information; and
c) failed to perform a follow-up review once an instance of uniformity of client KYC issues was identified to determine whether there was a larger pattern of uniformity.

Supervision of Concentration of Sector Mutual Funds

29. During the period of review of the 2016 Compliance Examination (October 1, 2014 to July 31, 2016), MFDA Staff identified concentration issues in some client accounts at the Respondent's Head Office; Garson, Ontario branch, Moncton, New Brunswick sub-branch; and Guelph, Ontario sub-branch. In these instances, the exempt securities and high-risk or specialty mutual funds holdings, such as precious metals sector mutual funds, comprised more than 25% of the clients' accounts.

30. The Respondent's supervision of concentration issues in client accounts were deficient, as the Respondent's supervisory Staff:

a) did not identify a concentration issue in a client account; and/or

b) accepted an acknowledgment letter signed by the client regarding the concentrated holdings in their accounts, with no evidence of any recommendations made to clients to rebalance their accounts.

Failure to Conduct a Reasonable Supervisory Investigation - Approved Person Gilles Latour

31. From May 1, 2007 until October 31, 2014, when he was terminated by the Respondent, Gilles Latour ("Latour") was registered as a mutual fund salesperson with the Respondent. At all material times, Latour operated from a sub-branch in Cornwall, Ontario.

32. Latour was the subject of a MFDA disciplinary proceeding where a Hearing Panel of the MFDA found that:

a) between May 2007 and October 31, 2014, Latour solicited and accepted a total of at least $651,946 from at least three clients, which Latour has failed to return or otherwise account for; and
b) commencing August 22, 2014, Latour failed or refused to provide documents and information, and attend an interview, as requested by MFDA Staff during the course of an investigation into his conduct.

33. On August 19, 2014, Latour was charged with fraud and theft related offences under the *Criminal Code of Canada*, R.S.C., 1985, c. C-46. On November 26, 2014, the Respondent was charged with additional fraud and theft related offences. The charges related to Latour's alleged dealings with the Respondent's clients and other individuals.

34. On August 19, 2014, the Respondent became aware by receiving a copy of a news article that Latour had been charged with criminal offences. The Respondent was therefore under a regulatory obligation to conduct a reasonable supervisory investigation to determine the full nature and extent of Latour's activities, and take such supervisory and disciplinary steps as were warranted in the circumstances.

35. On August 20, 2014, the Respondent placed Latour under heightened trade review.

36. On or about August 26, 2014, the Respondent conducted a review of redemptions in client accounts serviced by Latour. During the redemption review, on or about August 27, 2014, compliance Staff became aware that client JS had redeemed approximately $412,000 between September 2007 and July 2008.

37. Supervisory Staff of the Respondent agreed with Latour to conduct an on-site review of Latour's sub-branch on September 2, 2014 (the "On-site Visit"). The Respondent states that it identified no irregularities when its supervisory staff reviewed client files at Latour's sub-branch, and that Latour denied the accusations against him in the criminal charges.

38. On September 11, 2014, the Respondent obtained a copy of a document which may have indicated that client JS loaned monies to Latour. The document showed the names of client JS and Latour, and listed specific dates, principal amounts invested and the interest earned or to be earned.

39. On September 29, 2014, the Ontario Securities Commission put terms and conditions (the "Terms and Conditions") on Latour's registration requiring Equity to place Latour under strict supervision.

40. On October 15, 2014, the Respondent spoke with client JS, who advised that he provided loans to Latour and he had lost his monies.

41. On October 27, 2014, the Respondent sent letters to all current clients whose accounts were serviced by Latour asking them to contact the Respondent if they engaged in personal financial dealings with Latour.

42. On October 31, 2014, the Respondent terminated Latour's registration for, among other reasons, failing to provide the Respondent with responses and requested banking documentation, failing to notify the Respondent of the arrest and charges against him, and for engaging in personal financial dealings with clients.

43. The Respondent's supervisory investigation after becoming aware of the charges against Latour was deficient including for the following reasons:

a) despite being aware of the serious nature of the criminal charges against Latour, supervisory staff of the Respondent failed to conduct a timely visit of Latour's sub-branch, and provided Latour advance notice of the date, and time of the visit, which allowed Latour the opportunity to remove any material from his office related to misconduct involving clients or other individuals;

b) supervisory staff of the Respondent did not maintain any record of its investigation during the On-Site visit, including a statement from Latour or from his employee at his sub-branch about Latour's activities;

c) on or about August 26, 2014, the Respondent identified historical redemptions in the accounts of various clients serviced by Latour, including redemptions by client JS between September 2007 and July 2008 totaling approximately $412,000, but did not query client JS until October 15, 2014, and did not query other clients;

d) on September 11, 2014, supervisory staff of the Respondent had a copy of a document pertaining to client JS listing principal amounts invested and the interest earned, but did not make inquiries of client JS until October 15, 2014, at which time client JS advised a representative of the Respondent that he had provided loans to Latour;

e) the Respondent became aware that Latour was charged with criminal offences on August 19, 2014, but did not, until October 27, 2014, communicate with clients whose accounts were serviced by Latour to determine whether Latour had borrowed monies from them or engaged in any other misconduct;[2] and

f) supervisory staff of the Respondent failed to maintain adequate records of their discussions with client about the redemptions in their accounts in the period after the criminal charges, including the date of the call, the name of the individual spoken to, and any details behind the redemption request, until October 2014.

[2] There is no evidence that Latour obtained any additional monies from clients after the Member became aware on August 19, 2014 that Latour was subject to criminal charges.

Failure to Conduct a Reasonable Supervisory Investigation - Approved Person Lawrence Fike

44. Between December 1, 2005 and March 2017, Lawrence Fike ("Fike") was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with the Respondent.

45. On October 17, 2017, Fike entered into a settlement agreement (the "Fike Settlement") with MFDA Staff in which he admitted that between October 2008 and May 2014, he: (i) failed to use due diligence to learn and accurately record the essential Know-Your-Client factors relative to 5 clients prior to making investment recommendations and accepting investment orders from the clients; (ii) failed to use due diligence to ensure that each order accepted and recommendations made to 5 clients was suitable for the clients and in keeping with their investment objectives having regard to the concentration of precious metal sector funds in the client accounts and the clients' Know-Your-Client information, including the client's investment knowledge and objectives, risk tolerance, age, and time horizon; and (iii) failed to present a balanced explanation of the risks and benefits of investing in precious metals sector funds, thereby failing to ensure that his recommendations were suitable for clients and in keeping with their investment objectives. Fike was permanently prohibited from engaging in securities related business with an MFDA Member, ordered to pay a fine of $10,000 and costs of $5,000.

46. On or about May 6, 2014, clients JL and DL filed a written complaint with the Respondents regarding the handling of their account by their advisor, Fike, in which they describe significant decreases in the value of their accounts and various representations that Fike made to them that they would never lose their money that was invested in precious metal sector funds.

47. On or about May 16, 2014, the Respondent became aware that the KYC information recorded on account forms for clients JL and DL may not be a reliable or accurate reflection of the clients' actual KYC information. Fike advised the Respondent that in February 2011, the clients' portfolio profiles were out of line with their KYC information due to appreciation of the value of precious metal sector funds. Fike further advised the Respondent that JL was adamant that Fike

not decrease her precious metals shares and further advised that clients JL and DL had agreed to update their KYC information in order to bring them in line with their portfolios.

48. On September 30, 2014, Clients MG and SG submitted a complaint about their accounts and Fike's recommendations of precious metal sector funds. On October 14, 2014, Client SL filed a complaint alleging that the account value declined due to unsuitable investments that Fike had recommended.

49. In December 2014, the Respondent advised MFDA Staff of supervisory steps the Respondent expected to complete by February 2015, which included:

a) reviewing Fike's book of business to determine whether the leveraging he recommended was suitable based on suitability guidelines;
b) reviewing 50 files to assess Fike's compliance;
c) informing clients if the Respondent determines the holding in the accounts are not suitable;
d) performing an analysis of the integrity of the KYC information obtained by Fike;
e) reviewing of any transaction blotters in relation to Fike's trading;
f) interviewing Fike;
g) interviewing Fike's Branch Manager and reviewing prior audit and supervising documentation;
h) completing an investigation report;
i) performing a concentration analysis on Fike's book of business; and
j) reviewing client files to determine whether Fike used pre-signed forms.

50. As at September 20, 2016, the Respondent had only prepared a list of affected clients whose accounts may be concentrated and unsuitable.

51. By letter dated September 20, 2016, Staff wrote the Respondent indicating, among other things, that the Respondent had not completed the supervisory steps that it had advised Staff in December 2014 that it would complete.

52. Since September 20, 2016, the Respondent has:

a) prepared a list of clients whose accounts Fike serviced at the time of his termination in March 2017 whose holdings in precious metal sector funds exceed the Respondent's concentration guidelines;
b) prioritized the client list into high risk clients, including clients over 65 years of age with high concentration levels;
c) sent letters to all clients who exceeded the concentration threshold in its guidelines;
d) restricted the purchase of any precious metals trades in all client accounts;
e) prepared an action plan approved by MFDA Staff in April 2017;
f) tracked a process whereby the new advisor assigned to the accounts of client's formerly serviced by Fike (the "New Advisor") spoke and met with the clients to review and update KYC information and to implement strategies for reducing concentration and diversifying their portfolios, including discussing with clients the volatile nature of precious metal holdings, the risk of having a concentrated portfolio, and the Respondent's concentration policy and threshold limits;
g) reviewed new account application forms and KYC form updates along with the New Advisor's notes and client's responses, and conducted telephone and in-person meetings with the New Advisor to discuss status of the action plan and any queries;
h) had the New Advisor maintain a tracking spreadsheet of all contact with clients, action steps taken regarding reduction in concentration levels and updates of KYCs, and had the Head Office supervisory staff use the tracking sheet to record and review approvals and follow-ups;
i) had Tier 1 supervisory staff at the Respondent review all KYC changes and where there were any concerns, held discussions with the New Advisor and/or contacted the client for clarification; and
j) in consultation with MFDA Staff, implemented new procedures with respect to concentration.

53. The Respondent has advised Staff that in December 2017, it completed the steps in its supervisory investigation relating to Fike.

54. The Respondent failed to complete its supervisory investigation in a timely manner.

55. In addition, the Respondent's supervisory investigation was deficient for the following reasons:

a) the Respondent was aware of concerns about the reliability of client KYC information, but conducted its suitability review of accounts for clients JL and DL, client SL, and clients MG and SG (the "Complainants") based only on the KYC information on record with the Respondent, and did not contact the Complainants to verify the accuracy of their KYC information when conducting the suitability review;

b) the Respondent failed to contact the Complainants to determine whether risks associated with investing in precious metals sector funds were appropriately explained to them; and

c) the Respondent failed to take timely and adequate steps to communicate with clients whose accounts were serviced by Fike to inform them of potential suitability concerns in their accounts due to concentration in precious metal sector funds; and the Respondent failed to impose effective close supervision on Fike in that, despite a requirement that that trades be pre-approved prior to the trades taking place, supervisory staff of the Respondent did not adequately query new purchase by clients of precious metal sector funds, including purchases by clients that held accounts that were already heavily concentrated in precious metal sector funds.

56. The Respondent has paid compensation to clients JL and DL, and has made offers to compensate client SL and clients MG and SG.

V. CURRENT PRACTICES

57. Following the 2014 Compliance Examination and receipt of the 2015 Report, Equity revised its compliance policies and procedures with respect to daily trade supervision, approval of new accounts, approval of amendments to KYC information, and leverage supervision and suitability.

58. In addition, Equity Associates hired a consultant (the "Consultant") to review the revised policies and procedures and to conduct testing with respect to their implementation.

59. The Consultant tested the revised procedures in February 2016.

60. Equity also hired the Consultant to perform a complete review of all transferred in leverage accounts from March 2012 to December 2015 and to review and approve all new leverage accounts opened from August 2015 onwards. The Consultant continues to be engaged in the review of all new leverage accounts.

61. Equity Associates also implemented amended procedures in 2015 with respect to monthly trend analysis.

62. Between December 2014 and October 2016, Equity Associates more than doubled the number of employees in its compliance department.

VI. CONTRAVENTIONS

63. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

a) during the period March 1, 2012 to September 30, 2014, the Respondent failed to adequately supervise, or failed to maintain adequate records of the supervision at its Head Office, sub-branch level, and branch level, of:

i. daily trading activity;
ii. approval of new accounts;
iii. approval of amendments to know-your-client information; and
iv. leveraged accounts;

contrary to MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, and 5.1, and MFDA Policy No. 2;

b) during the period March 1, 2012 to September 30, 2014, the Respondent failed to establish, implement and maintain adequate policies and procedures to conduct trend analysis reports to supervise its Approved Persons' trading activity, contrary to MFDA Rules 2.2.1, 2.5.1, 2.9, and 2.10, and MFDA Policy No. 2;

c) during the period March 1, 2012 to September 30, 2014, the Respondent failed to maintain adequate compliance resources, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 2;

d) during the period October 1, 2014 to July 31, 2016, the Respondent failed to adequately supervise, or failed to maintain adequate records of the supervision of:

i. uniformity of certain client KYC information; and
ii. concentration of sector mutual funds in client accounts;

contrary to MFDA Rules 2.2.1, 2.5.1, 2.9, and 5.1, and MFDA Policy No. 2;

e) commencing on or about August 19, 2014, the Respondent failed to conduct a reasonable supervisory investigation in response to information it received that its Approved Person, Gilles Latour, was charged with offences pursuant to the *Criminal Code of Canada* for alleged conduct involving clients and other individuals, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 3; and

f) commencing May 2014, the Respondent failed to conduct a reasonable supervisory investigation regarding investment suitability concerns and portfolio concentration issues in the client accounts serviced by its Approved Person Lawrence Fike, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 3.

VII. TERMS OF SETTLEMENT

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

a) the Respondent shall pay a fine in the amount of $125,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1; and

b) the Respondent shall pay costs in the amount of $20,000 to the MFDA, pursuant to s. 24.2 of MFDA By-law No. 1;

c) the payment by the Respondent of the fine and costs in subparagraphs (a) and (b) above shall be made to and received by MFDA Staff in certified funds as follows:

   i. $82,500 (fine and costs) upon the acceptance of the Settlement Agreement; and

   ii. $62,500 (fine) no later than 6 months after the acceptance of the Settlement Agreement;

d) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, 2.10 and 5.1, and MFDA Policy No. 2 and No. 3; and

e) a senior officer of the Member will attend in person on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

65. 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 facts set out in Part IV and the contraventions described in Part VI of this Settlement Agreement, subject to the provisions of Part X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and VI of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and VI, 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

66. 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.

67. 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 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.

68. 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.

69. 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.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

70. 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.

71. If the Respondent does not comply with paragraph 3 of the attached Order, Staff and the Respondent shall have the right to appear before the Hearing Panel, upon 7 days' notice to the parties, for additional guidance on fulfilling the terms of the Order. Notwithstanding paragraph 68 of the Settlement Agreement the Hearing Panel may provide such further guidance and directions or impose such further and other terms, conditions, or penalties as allowed under section 24.1.2 of MFDA By-law No. 1, as the Hearing Panel considers appropriate in the circumstances.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

72. 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.

73. 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.

XII. DISCLOSURE OF AGREEMENT

74. 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.

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

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 30th day of April, 2018.

"Robert Goodish"
Equity Associates Inc.
Per: Robert Goodish
Ultimate Designated Person

"KN"
Witness – Signature

KN
Witness – Print Name

"Shaun Devlin"
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – 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: Equity Associates 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 By-law No. 1 in respect of [Respondent] (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

a) during the period March 1, 2012 to September 30, 2014, failed to adequately supervise, or failed to maintain adequate records of the supervision at its Head Office, sub-branch level, and branch level, of:

   i. daily trading activity;
   ii. approval of new accounts;

iii. approval of amendments to know-your-client information; and
iv. leveraged accounts;

contrary to MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, and 5.1, and MFDA Policy No. 2;

b) during the period March 1, 2012 to September 30, 2014, failed to establish, implement and maintain adequate policies and procedures to conduct trend analysis reports to supervise its Approved Persons' trading activity, contrary to MFDA Rules 2.2.1, 2.5.1, 2.9, and 2.10, and MFDA Policy No. 2;

c) during the period March 1, 2012 to September 30, 2014, failed to maintain adequate compliance resources, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 2;

d) during the period October 1, 2014 to July 31, 2016, the Respondent failed to adequately supervise, or failed to maintain adequate records of the supervision of:

i. uniformity of certain client KYC information; and
ii. concentration of sector mutual funds in client accounts;

contrary to MFDA Rules 2.2.1, 2.5.1, 2.9 and 5.1, and MFDA Policy No. 2;

e) commencing on or about August 19, 2014, failed to conduct a reasonable supervisory investigation in response to information it received that its Approved Person, Gilles Latour, was charged with offences pursuant to the *Criminal Code of Canada* for alleged conduct involving clients and other individuals, contrary to MFDA Rules 2.5.1 and MFDA Policy No. 3; and

f) commencing May 2014, failed to conduct a reasonable supervisory investigation regarding investment suitability concerns and portfolio concentration issues in the client accounts serviced by its Approved Person Lawrence Fike, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 3.

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

1. The Respondent shall pay a fine in the amount of $125,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of $20,000 to the MFDA, pursuant to s. 24.2 of MFDA By-law No. 1;

3. The payment by the Respondent of the fine and costs in paragraphs 1 and 2 above shall be made to and received by MFDA Staff in certified funds as follows:

(i) $82,500 (fine and costs) upon the acceptance of the Settlement Agreement; and

(ii) $62,500 (fine) no later than 6 months after the acceptance of the Settlement Agreement;

4. The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5.1, 2.9, 2.10 and 5.1, and MFDA Policy No. 2 and No. 3; and

5. 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]