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: Sun Life Financial Services (Canada) Inc.

Heard: December 20, 2017 in Toronto, Ontario
Decision: December 20, 2017
Reasons for Decision: March 5, 2018

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

John Lorn McDougall, QC	Chair
Brigitte J. Geisler	Industry Representative
Joseph Yassi	Industry Representative

Appearances:

David Halasz	)	Counsel for the Mutual Fund Dealers Association of Canada
David Di Paolo	)	Counsel for the Respondent
Rocco Taglioni	)	Respondent Officer
Karen Woodman	)	Respondent Officer

I. INTRODUCTION

1. By Notice of Settlement Hearing dated December 15, 2017, a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("Hearing Panel" and "MFDA") was convened on December 20, 2017, to consider whether, pursuant to section 24.4 of By-law No. 1 of the MFDA, the Hearing Panel should accept a Settlement Agreement dated December 18, 2017 ("Settlement Agreement") entered into by Staff of the MFDA ("Staff") and Sun Life Financial Investments Services (Canada) Inc. ("Respondent').

2. At the outset of the proceedings, Staff advised that the requisite notice to the public was posted and circulated to the public on December 18, 2017. As that was not within the requirement under MFDA Rule of Procedure 15.2 that 10 days' notice of a settlement hearing be provided, Staff sought an abridgment of the notice period so the matter could proceed. After hearing both parties, the Hearing Panel was satisfied that there would be no prejudice to members of the public in the circumstances of this case and granted the order sought.

3. We also considered a joint Motion by Staff and the Respondent to move the proceedings "*in-camera*". This Motion was brought pursuant to Rule 15.2(2) of the MFDA Rules of Procedure, which provides as follows:

> "(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8".

4. Rule 1.8(2) provides as follows:

> "(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public."

5. We granted the Motion on the condition that should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision which, along with the Record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the MFDA Rules of Procedure, and was agreeable to both Staff and the Respondent.

6. After considering the Settlement Agreement, together with thorough and helpful submissions by Staff and counsel for the Respondent, the Hearing Panel retired to consider the matter. After having done so, and having then had the opportunity to read the material filed in the matter, on December 21, 2017, we each signed an order accepting the Settlement Agreement.

II. CONTRAVENTIONS

7. As set out in paragraph 58 of the Settlement Agreement, the Respondent admitted to the following contraventions of the MFDA Rules and MFDA Policies:

a) between April 1, 2013 and June 30, 2015, it failed to adequately supervise leveraged accounts and concentration risk, contrary to MFDA Rules 2.5.1 and 2.2.1;

b) between January 2010 and June 2015, it failed to report client complaints, bankruptcy and termination of Approved Persons within 5 business days, contrary to MFDA Policy No. 3 and MFDA Policy No. 6;

c) between June 2014 and June 3, 2016, it failed to adequately supervise the suitability of the sale of DSC mutual funds to clients, contrary to MFDA Rules 2.5.1 and 2.2.1;

d) between November 2015 and January 2016, it failed to adequately supervise a trade, contrary to MFDA Rule 2.5.1; and

e) commencing in 2002, it failed to establish and maintain an adequate system of controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices, and marketing and educational practices, contrary to MFDA Rules 2.5.1 and 2.1.1.

III. TERMS OF SETTLEMENT

8. The Respondent has agreed to the following terms of settlement:

a) The Respondent will pay a fine of $1,700,000;
b) The Respondent will pay costs of $100,000;
c) The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.2.1, and 2.5.1, and MFDA Policy No. 3 and 6.
d) A senior officer of the Member will attend in person on the date set for the Settlement Hearing.

9. The Agreed Facts which form the foundation of this application are set out in Part IV of the Settlement Agreement, attached as Schedule "1" to these Reasons. For the purposes of the discussion which follows regarding the question of the acceptance of the proposed settlement the following is an abridged version of the Agreed Facts.

10. There are five separate contraventions listed in paragraph 7 above. The particular contravention to which the Agreed Facts set out below primarily relate has been identified by subparagraph number in brackets.

IV. AGREED FACTS

The Respondent

6. The Respondent is registered as a mutual fund dealer and has been a Member of the MFDA since January 11, 2002.

7. The Respondent's head office is located in Waterloo, Ontario.

The Compliance Examination

8. Commencing on August 17, 2015, MFDA Compliance Staff conducted a compliance examination (the "2015 Examination") in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period from April 1, 2013 to June 30, 2015. During the Compliance Examination, MFDA Compliance

Staff conducted a review of the Respondent's operations at the Respondent's head office and at several branch offices.

9. The results of the 2015 Examination were summarized and delivered to the Respondent in a report dated January 5, 2016 (the "2016 Report").

10. Prior to the 2015 Examination, the MFDA had conducted a compliance examination of the Respondent in order to assess the Respondent's compliance with MFDA By-laws, Rules and Policies during the period from May 1, 2010, to March 31, 2013 (the "2013 Examination"). The results of the 2013 Examination were summarized and delivered to the Respondent in a report dated September 20, 2013 (the "2013 Report").

Inadequate Supervision of Leveraging [Contravention 7(a)]

11. During the 2015 Examination, MFDA Compliance Staff found that the Respondent failed to adequately supervise leveraged accounts. In particular:

a) the Respondent's supervisory staff failed to identify and/or query some concerns related to leveraged accounts that did not meet the Respondent's leveraging guidelines;
b) where the Respondent identified and queried concerns with regards to leverage, the Respondent's supervisory staff in some cases accepted inadequate responses to its queries and failed to take adequate steps to resolve the instances where it had identified the leveraged accounts that did not meet the Respondent's leveraging guidelines;
c) the Respondent's policies and procedures required the pre-approval of leveraging but the Respondent's supervisory staff allowed the use of leveraging in some client accounts without pre-approving it; and
d) the Respondent's supervisory staff approved leveraging in some client accounts despite the fact that insufficient information was on file to adequately perform a leverage suitability assessment.

12. As a result of these deficiencies, leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision.

13. Deficiencies regarding leverage supervision, suitability and discrepancies in clients' information were also identified in the 2013 Report.

Inadequate Supervision of Concentration Risk [Contravention 7(a)]

14. In response to a finding in the 2013 Report, the Respondent prepared an action plan dated June 30, 2014, which included the evaluation of concentration risk during the assessment of account suitability. The Respondent did not implement the processes in the action plan pertaining to the evaluation of concentration risk until April 2015.

15. During the 2015 Examination, MFDA Compliance Staff determined that the processes implemented by the Respondent in April 2015 did not result in adequate supervision of concentration risk. In particular, MFDA Compliance Staff found that:

a) the Respondent's supervisory staff did not take adequate steps to resolve some cases where concentration limits outlined in the Respondent's policies and procedures were exceeded in client accounts; and
b) the Respondent relied on a supervisory tool at the Tier 1 level (Branch level) for daily investment suitability assessment that did not assess concentration risk, and therefore the Respondent did not review for concentration risk at the Tier 1 level.

Deficiencies in METS Reporting [Contravention 7(b)]

17. Separate and apart from the 2015 Examination, in 2015, MFDA Enforcement Staff identified deficiencies in the timeliness of the Respondent's reporting of events on the MFDA's Member Event Tracking System ("METS") as required by MFDA Policy No. 6. In particular, between January 2010 and June 2015, the Respondent failed to report on METS on a timely basis at least 7 events consisting of client complaints, bankruptcy and terminations of the registration of Approved Persons by the Respondent.

Failure to Supervise the Sale of DSC Mutual Funds [Contravention 7(c)]

18. The Respondent did not maintain adequate policies and procedures necessary to ensure that the sale of DSC mutual funds was suitable for clients. Among other things, the Respondent's policies and procedures did not include consideration of the client's age and time horizon as factors in reviewing trades involving DSC funds.

19. Commencing June 3, 2016, the Respondent established policies and procedures to review trades by seniors of DSC mutual funds.

Failure to Adequately Supervise a Trade [Contravention 7(d)]

20. On November 3, 2015, Approved Person JD processed switches from a money market fund into mutual funds with an equity component (the "Switches") in the accounts of a client.

21. On November 10, 2015, compliance personnel at the Respondent advised JD that, as result of the Switches, the client's account holdings did not match the Know Your Client ("KYC") information on file. The Respondent's compliance personnel asked JD to resolve the deficiency.

22. By November 12, 2015, compliance personnel of the Respondent identified that the client's KYC information had been updated on the Respondent's back office system, and now matched the holdings in the client's account. Compliance personnel of the Respondent requested that JD provide evidence that the client authorized the changes to his KYC information, in order to close the query by compliance personnel.

23. JD did not submit evidence to the Respondent showing that the client authorized the updates to his KYC information. The Respondent's compliance personnel nevertheless closed the query.

24. In January 2016, the client complained to the Respondent alleging that he did not authorize the Switches.

25. The Respondent determined that there was insufficient evidence to show that the client authorized the Switches and reversed the transactions.

Programs Offered by the Respondent [Contravention 7(e)]

26. The Respondent permitted its Approved Persons to sell mutual fund investments offered by Sun Life Global Investments ("SLGI"), CI Investments ("CI") and other third party mutual fund companies. Between July 25, 2002 and December 30, 2008, the Respondent and CI were related entities. SLGI is an affiliate of the Respondent.

27. The Respondent maintained two programs described in greater detail below which inadvertently created incentives for advisors to distribute mutual funds offered by CI and SLGI, rather than mutual funds offered by other third parties. These sales incentives were contrary to National Instrument 81-105 ("NI 81-105").

28. MFDA Staff identified the programs, in part, through a project known as the Targeted Review of Member Compensation and Incentive Programs conducted in collaboration with the Ontario Securities Commission ("OSC"), other provincial securities regulators and the Investment Industry Regulatory Organization of Canada, as part of a larger initiative to coordinate compliance efforts on common issues such as sales incentives and related conflicts of interest.

29. MFDA Staff and OSC Staff jointly investigated the two programs offered by the Respondent.

(a) *CORe Program*

30. Commencing in about 1989, the Respondent maintained a program known as "CORe" or "Commissions on Release". The CORe program was established for the primary purposes of ensuring continuity of advice and service for clients when their advisor leaves Sun Life and a seamless transition of that advisor's insurance and mutual fund business to another Sun Life advisor. Although advisors have other options for transitioning their insurance and mutual fund business to other Sun Life advisors, the CORe program was, and remains, an important succession management tool to ensure that clients continue to receive advice and service as long as they have accounts with the Respondent.

31. The program is intended to recognize the contribution of departing advisors in establishing and advising on the client accounts in their book of business. When an advisor leaves, Sun Life facilitates the transition of their client accounts to a new advisor in exchange for payments that are made to the departing advisor over a period of 10 years. This payment is an allocation of the continuing premiums, commissions and other revenue generated by that business and is not new money. The payment is consistent with the amount an advisor could expect to receive by selling his/her book of business to another Sun Life advisor directly, without the challenges associated with doing so. Until March 2017, the payment was calculated on the basis of insurance commissions, and mutual fund commissions on Sun Life and CI funds only. For the majority of advisors, the largest component of the payment related to insurance commissions.

32. The CORe program was established before NI 81-105 was enacted. The Respondent failed to re-evaluate the program to ensure it complied with the requirements in NI 81-105 once it came into force.

(ii) Auxiliary Commission Program

33. In addition to the CORe program, since 1989, the Respondent maintained a program under which auxiliary commissions (i.e. in addition to standard sales and trailing commissions) were paid to advisors based upon the revenue they generated. The purpose of the program was to provide advisors, who are independent contractors and not employees of Sun Life, with compensation they could use to purchase life and health insurance benefits. Until May 2017, the payment was calculated on the basis of insurance commissions, and mutual fund commissions on Sun Life and CI funds only. As with the CORe program, the largest component of the calculation for the majority of advisors related to insurance commissions.

34. The auxiliary commission program was established before NI 81-105 was enacted. The Respondent failed to re-evaluate the program to ensure it complied with the requirements in NI 81-015 once it came into force.

IV. DISCUSSION AND ANALYSIS

11. The Respondent has admitted to what broadly are three types of contraventions of the MFDA Rules. The first type is those which are fact specific and limited both in time and involvement of personnel. These are the offences listed above in paragraph 7 (the "Supervisory Contraventions"):

7 (a) inadequate supervision of leveraging;

7 (a) inadequate supervision of concentration risk;

7 (d) failure to adequately supervise a trade.

12. The second type of contravention is one that was systemic in nature; that is to say the deficiencies, which led to the acknowledged contraventions, were embedded in the Respondent's overall system (the "Systemic Contraventions").

13. The third type of contravention was the failure to establish and maintain an adequate system of controls and supervision to ensure that there was compliance with securities legislation relating to internal dealer incentive and sales practices, and marketing and educational practices,

prescribed in NI 81-105. These contraventions are set out in sub paragraph 7(e) above (the "NI 81-105 Contraventions").

14. The agreed fine is an aggregate amount of $1,700,000 (the "Agreed Fine"). While it is a substantial amount, the Hearing Panel was provided with no allocation of the total fine between the three types of acknowledged contraventions. This obviously presented something of an obstacle for the Hearing Panel in determining whether the Agreed Fine fell outside a range of what is reasonably appropriate. The Hearing Panel was left to assess the appropriateness of the Agreed Fine against the contraventions taken as a whole.

15. Staff advised the Hearing Panel, in both its written and oral submissions, that the NI 81-105 Contraventions were regarded by Staff as significant for regulatory purposes because this case is the first instance of a MFDA Hearing Panel being asked to deal with a breach of NI 81-105.

16. While that appears to be correct, the subject of NI 81-105 and the issue of a failure to establish or maintain adequate systems of control or supervision regarding securities legislation that pertain to internal dealer incentive and sale practices, as well as marketing and educational practices, was recently canvassed by Professor Philip Anisman, an OSC Commissioner sitting alone, in *Sentry Investments Inc.*, 2017 ONSEC 7. Staff heavily relied on that decision in its submissions and specifically asked the Hearing Panel to read it and consider it in the context of the present case.

17. Having done as asked, we can do no better than to quote from Professor Anisman's Reasons for Decision. We do so for two purposes. The first is to explain the regulatory issues addressed by NI 81-105. The second is to adopt the expression of the test to be applied for acceptance of the Settlement Agreement propounded in the *Sentry* case for application in the present case:

> [2] The Settlement Agreement resolves a proceeding that raises serious regulatory issues of two types. The first is sales practices that may adversely affect investors and investor confidence in the integrity of our markets. The proceeding is based

on failures to comply with national Instrument 81-105 – *Mutual Fund Sales Practices,* (1998) 21 OSCB 2713 ("National Instrument 81-105"), which limits payments and gifts by mutual funds to registered dealers and their representatives who sell the funds' securities. Such payments and gifts may influence registered representatives to consider factors other than the best interests of their clients when recommending investments to them. National Instrument 81-105 was adopted to prohibit payments and gifts that are likely to have this effect in an attempt to ensure that registered representatives who sell mutual funds act in the best interests of their clients on the basis of the clients' investment objectives and circumstances and the merits of the investments they recommend, without being influenced by conflicting monetary or other inducements.

[3] The second issue addressed in this proceeding is the obligation of all registrants to ensure that their business is operated in compliance with their regulatory obligations by establishing internal supervisory procedures, controls and recordkeeping practices that are appropriate to their business.

[4] This is the first Commission proceeding that addresses sales practices involving prohibited payments and gifts made by an investment fund manager and the systemic supervisory failures that permitted them. The seriousness of the conduct admitted by the respondents in the Settlement Agreement is reflected in the sanctions they agreed to. These include a significant administrative fine paid by Sentry Investments Inc. and a ban on acting in a senior position with a registrant agreed to by Mr. Driscoll.

[5] These sanctions, albeit serious, are not necessarily the sanctions that might have been imposed by a panel, had this matter proceeded to a hearing on the merits in which Commission Staff were successful in proving their case. A settlement is based on the facts admitted by the respondents and agreed to by Staff, which may or may not be the facts that a Commission panel would find after a contested hearing on the merits. Even on the same facts, a panel might impose a different sanction, as in a sanctions hearing a panel must impose the sanction it considers to be correct.

[6] But this is a settlement hearing convened to consider a settlement agreement. A settlement will be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness in light of the admitted facts, recognizing and taking into account the settlement process and its benefits. A settlement reached early in a proceeding reduces the costs required to conduct a lengthy hearing and permits the Commission's resources, including Staff time, that would otherwise

have been expended to be directed to other matters, increasing the Commission's overall enforcement capabilities.

18. It is noteworthy that the *Sentry* case is also helpful in that the quantum of the fine levied, $1,500,000 is comparable to the Agreed Fine in the present case. While the facts in *Sentry* are more egregious than those before us, there are more contraventions in the present case. At the very least the *Sentry* case provides some comfort that the present settlement is in a "reasonable range of appropriateness".

19. It is also important, when assessing the appropriateness of the Agreed Fine, to consider what remedial steps have been taken by the Respondent. They are set out in the Settlement Agreement. The overall remedial work is described under the heading "Proactive Cooperation" in the Settlement Agreement as follows:

> 51. The Respondent has at all times fully cooperated with the MFDA's review of the issues that form the subject matter of this Settlement Agreement.
>
> 52. The Respondent has acted proactively in addressing the deficiencies noted above. The Respondent developed a comprehensive plan that went above and beyond simply addressing these deficiencies and is enhancing its entire compliance and supervisory structure. The Respondent has met with MFDA Staff and proactively provided updates on actions it has taken, including its plans to remediate clients (as described below). Staff has considered this proactive cooperation as a factor in agreeing to the sanction set out below.

20. The remedial steps taken by the Respondent overall can be summarized as follows:

- Voluntarily developed and is implementing a remedial plan for clients affected by leveraging and concentration risk including compensation for clients where appropriate;
- Revised overall compliance policies and procedures, including revisions to address N1 81-105 and is implementing them;
- Added resources, restructured existing resources and implemented new procedures to improve its reporting through METS;

- Enhanced its compliance governance infrastructure by creating a new risk review committee which includes senior management and members of the Board of Directors.

21. This remedial effort was described and amplified by counsel for the Respondent in his oral submissions as follows:

> You asked the question about the scope of the harm. We haven't disclosed to you in the settlement agreement how many clients were affected, but these programs, these policies, affect the entire book of business. They supervise the entire book of business with respect to Sun Life. What that means is that, to the extent there are clients impacted by leveraging, impacted by concentration issues, impacted by DSC, they're covered by the remediation plan.
>
> In my respectful submission, this Panel can take some comfort with respect to that, and it puts this settlement agreement in the same vein as the settlement agreement in the HollisWealth case, where remediation was effected with respect to the entire book of business, where clients were impacted by the failure to have proper policies and procedures relative to the sale of exempt market products.

22. It remains to consider, putting aside the NI 81-105 Contraventions, whether the Supervisory Contraventions and Systemic Contraventions taken together render the Agreed Fine outside the range of what is reasonably appropriate. We have concluded that they clearly do not, largely because of the extensive remedial action by the Respondent. While the delays in implementation may be subject to criticism, it is not enough to affect our conclusion that the agreed settlement falls within the range of reasonable appropriateness.

V. CONCLUSION

23. The foregoing constitutes the Hearing Panel's Reasons for Decision for accepting the Settlement Agreement on December 21, 2017.

DATED this 5th day of March, 2018.

"John Lorn McDougall"

John Lorn McDougall, QC
Chair

"Brigitte J. Geisler"

Brigitte J. Geisler
Industry Representative

"Joseph Yassi"

Joseph Yassi
Industry Representative

DM 600991

Schedule "1"

Settlement Agreement

File No. 201775

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: Sun Life Financial Investment Services (Canada) 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 MFDA By-law No. 1, a hearing panel of the Central Regional Council ("Hearing Panel") of the MFDA should accept the settlement agreement ("Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Sun Life Financial Investment Services (Canada) Inc. ("Respondent").

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff has concluded that the Respondent has 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 MFDA By-law No. 1.

3. Staff and the Respondent recommend settlement of the matter 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

The Respondent

6. The Respondent is registered as a mutual fund dealer and has been a Member of the MFDA since January 11, 2002.

7. The Respondent's head office is located in Waterloo, Ontario.

The Compliance Examination

8. Commencing on August 17, 2015, MFDA Compliance Staff conducted a compliance examination (the "2015 Examination") in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period from April 1, 2013 to June 30, 2015. During the Compliance Examination, MFDA Compliance Staff conducted a review of the Respondent's operations at the Respondent's head office and at several branch offices.

9. The results of the 2015 Examination were summarized and delivered to the Respondent in a report dated January 5, 2016 (the "2016 Report").

10. Prior to the 2015 Examination, the MFDA had conducted a compliance examination of the Respondent in order to assess the Respondent's compliance with MFDA By-laws, Rules and Policies during the period from May 1, 2010, to March 31, 2013 (the "2013 Examination"). The results of the 2013 Examination were summarized and delivered to the Respondent in a report dated September 20, 2013 (the "2013 Report").

Inadequate Supervision of Leveraging

11. During the 2015 Examination, MFDA Compliance Staff found that the Respondent failed to adequately supervise leveraged accounts. In particular:

a) the Respondent's supervisory staff failed to identify and/or query some concerns related to leveraged accounts that did not meet the Respondent's leveraging guidelines;
b) where the Respondent identified and queried concerns with regards to leverage, the Respondent's supervisory staff in some cases accepted inadequate responses to its queries and failed to take adequate steps to resolve the instances where it had identified the leveraged accounts that did not meet the Respondent's leveraging guidelines;

c) the Respondent's policies and procedures required the pre-approval of leveraging but the Respondent's supervisory staff allowed the use of leveraging in some client accounts without pre-approving it; and

d) the Respondent's supervisory staff approved leveraging in some client accounts despite the fact that insufficient information was on file to adequately perform a leverage suitability assessment.

12. As a result of these deficiencies, leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision.

13. Deficiencies regarding leverage supervision, suitability and discrepancies in clients' information were also identified in the 2013 Report.

Inadequate Supervision of Concentration Risk

14. In response to a finding in the 2013 Report, the Respondent prepared an action plan dated June 30, 2014, which included the evaluation of concentration risk during the assessment of account suitability. The Respondent did not implement the processes in the action plan pertaining to the evaluation of concentration risk until April 2015.

15. During the 2015 Examination, MFDA Compliance Staff determined that the processes implemented by the Respondent in April 2015 did not result in adequate supervision of concentration risk. In particular, MFDA Compliance Staff found that:

a) the Respondent's supervisory staff did not take adequate steps to resolve some cases where concentration limits outlined in the Respondent's policies and procedures were exceeded in client accounts; and

b) the Respondent relied on a supervisory tool at the Tier 1 level (Branch level) for daily investment suitability assessment that did not assess concentration risk, and therefore the Respondent did not review for concentration risk at the Tier 1 level.

16. In addition, MFDA Compliance Staff found that the Respondent failed to supervise concentration issues pertaining to Approved Person DM. DM serviced approximately 829 client accounts with assets under administration of $18.238 million. Approximately 96% of the assets under administration were invested in natural resource and precious metals sector funds. In addition, approximately 96% of the client accounts serviced by DM had a risk tolerance of "100% high", an investment objective of "100% aggressive growth", and a time horizon of "20 years or more." The Respondent did not query DM's client accounts that exceeded its concentration guidelines or did not take adequate steps to resolve cases where it did inquire about concentration issues in client accounts. The Respondent also failed to identify and investigate the fact that a large proportion of the clients serviced by DM had identical or near identical KYC information.

Deficiencies in METS Reporting

17. Separate and apart from the 2015 Examination, in 2015, MFDA Enforcement Staff identified deficiencies in the timeliness of the Respondent's reporting of events on the MFDA's Member Event Tracking System ("METS") as required by MFDA Policy No. 6. In particular, between January 2010 and June 2015, the Respondent failed to report on METS on a timely basis at least 7 events consisting of client complaints, bankruptcy and terminations of the registration of Approved Persons by the Respondent.

Failure to Supervise the Sale of DSC Mutual Funds

18. The Respondent did not maintain adequate policies and procedures necessary to ensure that the sale of DSC mutual funds was suitable for clients. Among other things, the Respondent's policies and procedures did not include consideration of the client's age and time horizon as factors in reviewing trades involving DSC funds.

19. Commencing June 3, 2016, the Respondent established policies and procedures to review trades by seniors of DSC mutual funds.

Failure to Adequately Supervise a Trade

20. On November 3, 2015, Approved Person JD processed switches from a money market fund into mutual funds with an equity component (the "Switches") in the accounts of a client.

21. On November 10, 2015, compliance personnel at the Respondent advised JD that, as result of the Switches, the client's account holdings did not match the Know Your Client ("KYC") information on file. The Respondent's compliance personnel asked JD to resolve the deficiency.

22. By November 12, 2015, compliance personnel of the Respondent identified that the client's KYC information had been updated on the Respondent's back office system, and now matched the holdings in the client's account. Compliance personnel of the Respondent requested that JD provide evidence that the client authorized the changes to his KYC information, in order to close the query by compliance personnel.

23. JD did not submit evidence to the Respondent showing that the client authorized the updates to his KYC information. The Respondent's compliance personnel nevertheless closed the query.

24. In January 2016, the client complained to the Respondent alleging that he did not authorize the Switches.

25. The Respondent determined that there was insufficient evidence to show that the client authorized the Switches and reversed the transactions.

Programs Offered by the Respondent

26. The Respondent permitted its Approved Persons to sell mutual fund investments offered by Sun Life Global Investments ("SLGI"), CI Investments ("CI") and other third party mutual

fund companies. Between July 25, 2002 and December 30, 2008, the Respondent and CI were related entities. SLGI is an affiliate of the Respondent.

27. The Respondent maintained two programs described in greater detail below which inadvertently created incentives for advisors to distribute mutual funds offered by CI and SLGI, rather than mutual funds offered by other third parties. These sales incentives were contrary to National Instrument 81-105 ("NI 81-105").

28. MFDA Staff identified the programs, in part, through a project known as the Targeted Review of Member Compensation and Incentive Programs conducted in collaboration with the Ontario Securities Commission ("OSC"), other provincial securities regulators and the Investment Industry Regulatory Organization of Canada, as part of a larger initiative to coordinate compliance efforts on common issues such as sales incentives and related conflicts of interest.

29. MFDA Staff and OSC Staff jointly investigated the two programs offered by the Respondent.

(i) <u>CORe Program</u>

30. Commencing in about 1989, the Respondent maintained a program known as "CORe" or "Commissions on Release". The CORe program was established for the primary purposes of ensuring continuity of advice and service for clients when their advisor leaves Sun Life and a seamless transition of that advisor's insurance and mutual fund business to another Sun Life advisor. Although advisors have other options for transitioning their insurance and mutual fund business to other Sun Life advisors, the CORe program was, and remains, an important succession management tool to ensure that clients continue to receive advice and service as long as they have accounts with the Respondent.

31. The program is intended to recognize the contribution of departing advisors in establishing and advising on the client accounts in their book of business. When an advisor

leaves, Sun Life facilitates the transition of their client accounts to a new advisor in exchange for payments that are made to the departing advisor over a period of 10 years. This payment is an allocation of the continuing premiums, commissions and other revenue generated by that business and is not new money. The payment is consistent with the amount an advisor could expect to receive by selling his/her book of business to another Sun Life advisor directly, without the challenges associated with doing so. Until March 2017, the payment was calculated on the basis of insurance commissions, and mutual fund commissions on Sun Life and CI funds only. For the majority of advisors, the largest component of the payment related to insurance commissions.

32. The CORe program was established before NI 81-105 was enacted. The Respondent failed to re-evaluate the program to ensure it complied with the requirements in NI 81-105 once it came into force.

(ii) Auxiliary Commission Program

33. In addition to the CORe program, since 1989, the Respondent maintained a program under which auxiliary commissions (i.e. in addition to standard sales and trailing commissions) were paid to advisors based upon the revenue they generated. The purpose of the program was to provide advisors, who are independent contractors and not employees of Sun Life, with compensation they could use to purchase life and health insurance benefits. Until May 2017, the payment was calculated on the basis of insurance commissions, and mutual fund commissions on Sun Life and CI funds only. As with the CORe program, the largest component of the calculation for the majority of advisors related to insurance commissions.

34. The auxiliary commission program was established before NI 81-105 was enacted. The Respondent failed to re-evaluate the program to ensure it complied with the requirements in NI 81-105 once it came into force.

(iii) Additional Factors

35. Except as described above with respect to the CORe and auxiliary commission programs, the Respondent's advisor compensation structures (including its standard sales and trailing commission rates payable in respect of mutual fund sales) and its other recognition programs did not and do not differentiate between mutual funds offered by SLGI and CI, and other third party mutual funds.

36. Neither the CORe program nor the auxiliary commission program was paid for from monies that would otherwise have been payable to investors.

37. Commencing in November, 2016, the Respondent took reasonable steps to investigate whether the CORe program or the auxiliary commission program caused any harm to clients. No evidence of client harm was identified.

38. In March 2017, the Respondent changed its CORe program to include commissions earned on all mutual funds in the calculation of the CORe payments.

39. In May 2017, the Respondent changed its auxiliary commission program to include commissions earned on all mutual funds in the calculation of payments.

Sales Programs at the Respondent's Branches

40. Six of the Respondent's branches operated sales programs at various times between January 2016 and May 2017 whereby Approved Persons were eligible to receive non-monetary prizes based, in part, on the amount of SLGI mutual funds sold to clients. Two branches were located in Ontario, two were located in Manitoba and two in Saskatchewan.

41. These programs did not include sales of other mutual funds in determining eligibility for the receipt of the non-monetary prizes.

42. The prizes were tickets to a Winnipeg Jets hockey game, a Toronto Blue Jays baseball game, a fishing trip in northern Ontario and a trip to Jamaica.

43. Twelve of the Respondent's Approved Persons received prizes based, in part, on the amount of SLGI mutual funds sold.

44. The total value of the prizes received by these Approved Persons was approximately $6,500.

45. The sales programs maintained by the Respondent's branches created incentives for advisors to distribute mutual funds offered by SLGI, rather than mutual funds offered by third parties. These sales incentives were contrary to NI 81-105.

46. The Respondent failed to establish and maintain an adequate system of controls and supervision to ensure that its branches complied with securities legislation relating to internal dealer incentive and sales practices.

Marketing and Educational Practices

47. Between 2015 and 2016, the Respondent held 7 conferences (the "Conferences") for its Approved Persons where a portion of the costs of the Conferences was paid by CI and/or SLGI, as described below:

Date	**Conference**	**Funding by Mutual Fund Company**	**Percentage of Funding by Mutual Fund Company**
September 22, 2015	Atlantic	$10,000 (CI) $10,000 (SLGI)	26% (CI) 26% (SLGI)
June 21-22, 2016	Quebec	$3,450 (CI) $20,000 (SLGI)	3% (CI) 18% (SLGI)
June 22-23, 2016	Ontario	$24,000 (SLGI)	7% (SLGI)
June 28, 2016	Manitoba	$900 (CI) $6,000 (SLGI)	4% (CI) 29% (SLGI)

September 22-23, 2016	Midwest	$12,000 (SLGI)	15% (SLGI)
September 22, 2016	Atlantic	$16,000 (SLGI)	35% (SLGI)
June 22, 2016	Western	$15,000 (SLGI)	24% (SLGI)

48. The Conferences did not meet the "primary purpose" requirements set out in section 5.5(a) of NI 81-105, which provides that a member of the organization of a mutual fund company may pay to a participating dealer, direct costs incurred by it relating to a conference or seminar that is organized or presented by the participating dealer, and is not an investor conference or seminar, if the primary purpose of the conference or seminar is the provision of educational information about financial planning, investing in securities, mutual fund industry matters, the mutual fund or fund family of which the mutual fund is a member or mutual funds generally. Accordingly, the Respondent ought not to have solicited or accepted any payments from mutual fund companies for the costs the Respondent incurred relating to the Conferences.

49. Further, even if the "primary purpose" requirements in section 5.5(a) of NI 81-105 had been met, the Respondent failed to ensure that it complied with the requirements of section 5.5(b) of NI 81-105 which limits the amount of payment it could receive from mutual fund companies towards the costs of the Conferences to 10 percent of the total direct costs of each of the Conferences. As described in the table above, for 6 of the Conferences CI and/or SLGI paid more than 10% of the total direct costs the Respondent.

50. The Respondent failed to establish and maintain an adequate system of controls and supervision to ensure that it complied with securities legislation relating to marketing and educational practices as prescribed in Part 5 of NI 81-105.

V. MITIGATING FACTORS

Proactive Cooperation

51. The Respondent has at all times fully cooperated with the MFDA's review of the issues that form the subject matter of this Settlement Agreement.

52. The Respondent has acted proactively in addressing the deficiencies noted above. The Respondent developed a comprehensive plan that went above and beyond simply addressing these deficiencies and is enhancing its entire compliance and supervisory structure. The Respondent has met with MFDA Staff and proactively provided updates on actions it has taken, including its plans to remediate clients (as described below). Staff has considered this proactive cooperation as a factor in agreeing to the sanction set out below.

Remedial Steps

53. The Respondent has voluntarily developed and is implementing a remediation plan for clients affected by leveraging and concentration risk. The plan includes a review and suitability assessment of existing accounts that are leveraged or where concentration may exist and, where the leveraging strategy or concentrated holdings are not suitable, recommending rebalancing and offering compensation to clients for losses that might occur as a result of the rebalancing.

54. The Respondent has revised its overall compliance policies and procedures since the 2015 Examination, including revisions to address NI 81-105, and represents that it has implemented, and will continue to implement, those revised policies and procedures. The Respondent's revised processes include monitoring by the Respondent's compliance department to detect concentration risk and the reversal of trades in appropriate circumstances. The Respondent has also implemented processes and controls to prevent increased holdings in leveraged accounts or the creation of new leveraged accounts until all suitability issues are addressed with existing leveraged accounts.

55. The Respondent has added resources, restructured existing resources and implemented new procedures to improve its reporting through METS. The result has been improvement in the timeliness of METS reporting.

56. The Respondent has devoted substantial internal and external resources to implementing changes to its policies, procedures and internal controls and in designing and implementing the remediation plan.

57. The Respondent has also enhanced its compliance governance infrastructure by creating a new risk review committee, which includes members of the Respondent's Board of Directors, the Ultimate Designated Person and senior management of the Respondent with the mandate of overseeing and proactively identifying regulatory and compliance risks.

VI. CONTRAVENTIONS

58. The Respondent admits that:

(a) between April 1, 2013 and June 30, 2015, it failed to adequately supervise leveraged accounts and concentration risk, contrary to MFDA Rules 2.5.1 and 2.2.1;

(b) between January 2010 and June 2015, it failed to report client complaints, bankruptcy and termination of Approved Persons within 5 business days, contrary to MFDA Policy No. 3 and MFDA Policy No. 6;

(c) between June 2014 and June 3, 2016, it failed to adequately supervise the suitability of the sale of DSC mutual funds to clients, contrary to MFDA Rules 2.5.1 and 2.2.1;

(d) between November 2015 and January 2016, it failed to adequately supervise a trade, contrary to MFDA Rule 2.5.1; and

(e) commencing in 2002, it failed to establish and maintain an adequate system of controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices, and marketing and educational practices, contrary to MFDA Rules 2.5.1 and 2.1.1.

VII. TERMS OF SETTLEMENT

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

(a) the Respondent will pay a fine of $1,700,000;
(b) the Respondent will pay costs of $100,000;
(c) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.2.1, and 2.5.1, and MFDA Policy No. 3 and 6.
(d) a senior officer of the Member will attend in person on the date set for the Settlement Hearing.

60. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the "Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

61. The Settlement Agreement is subject to acceptance by the Hearing Panel.

62. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement, or Staff may proceed to a disciplinary hearing in relation to the issues that form the subject matter of this Settlement Agreement.

63. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under MFDA rules and any applicable legislation to a disciplinary hearing, review or appeal.

64. The Settlement Agreement will become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

65. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

66. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

67. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon effective date of the Settlement Agreement.

68. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement will commence on the effective date of the Settlement Agreement.

VIII. STAFF COMMITMENT

69. 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 this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement will relieve the Respondent from fulfilling any continuing regulatory obligations.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

70. Acceptance of this Settlement Agreement will 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.

71. 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.

72. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent will 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.

73. 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

74. 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 By-law No. 1 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.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

75. 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.

76. 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

77. 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.

78. Any obligations of confidentiality will terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

80. A facsimile copy of any signature will be effective as an original signature.

DATED this 18th day of November, 2017.

"JB"
Witness – Signature

JB
Witness – Print Name

"Karen Woodman"

Sun Life Financial Investment Services (Canada) Inc.
Per: Karen Woodman

"JV"
Witness – Signature

JV
Witness – Print Name

" Rocco Taglioni"

Sun Life Financial Investment Services (Canada) Inc.
Per: Rocco Taglioni

"Shaun Devlin"
Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule "A"

Order

File No. 201775

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 Sun Life Financial Investment Services (Canada) Inc.

ORDER

WHEREAS on [Date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing pursuant to s. 24.4 of MFDA By-law No. 1 ("By-law No. 1") in respect of Sun Life Financial Investment Services (Canada) Inc. ("Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] ("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:

i. between April 1, 2013 and June 30, 2015, the Respondent failed to adequately supervise leveraged accounts and concentration risk, contrary to MFDA Rules 2.5.1 and 2.2.1;

ii. between January 2010 and June 2015, the Respondent failed to report client complaints, bankruptcy and termination of Approved Persons within 5 business days, contrary to MFDA Policy No. 3 and MFDA Policy No. 6;

iii. between June 2014 and June 3, 2016, the Respondent failed to adequately supervise the suitability of the sale of DSC mutual funds to clients, contrary to MFDA Rules 2.5.1 and 2.2.1;

iv. between November 2015 and January 2016, the Respondent failed to adequately supervise a trade, contrary to MFDA Rule 2.5.1; and

v. commencing in 2002, the Respondent failed to establish and maintain an adequate system of controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices and marketing and educational practices, contrary to MFDA Rules 2.5.1 and 2.1.1.

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

1. The Respondent will pay a fine of $1,700,000 pursuant to section 24.1.2(b) of MFDA By-law No. 1;

2. The Respondent will pay costs of $100,000 pursuant to section 24.2 of MFDA By-law No. 1;

3. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[ ].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]