



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES¹**

and

Bernard Kevin Phanthavong

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA (the “Corporation”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Ontario District Committee (the “Hearing Panel”) of the Corporation should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the Corporation (“Staff”) and Bernard Kevin Phanthavong (the “Respondent”).

2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

II. CONTRAVENTIONS

4. The Respondent admits to the following violations of the Mutual Fund Dealer Rules:

Between February 2018 to June 2018, the Respondent altered client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).¹

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(b) of the Mutual Fund Dealer Rules;
- b) the Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules;
- c) the Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of two months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;
- d) the Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules;
- e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2); and
- f) the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

¹Pursuant to Mutual Fund Dealer Rule 1A(1) of the Corporation and s.14.6 of the Corporation By-Law No.1, contraventions of the MFDA By-laws, Rules and Policies that were applicable to the Respondent prior to January 1, 2023 may be enforced by the Corporation. The contraventions reference Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2) which correspond to former MFDA Rules 2.1.1 and 2.1.4. Unless otherwise indicated, the wording of the current Mutual Fund Dealer Rules is the same as the wording of the regulatory requirements that were contravened. On June 30, 2021, amendments to former MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding predated the amendment to that Rule, the contravention of Former MFDA Rule 2.1.4 that is addressed in this proceeding is of the version of former MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein and consent to the making of an Order in the form attached as Schedule “A”.

IV. AGREED FACTS

Registration History

7. Commencing in December 2011, the Respondent became registered in Manitoba with TD Investment Services Inc. (the “Member”), a Member of the MFDA.

8. Commencing in December 2014, the Member designated the Respondent as a branch manager.

9. At all material times, the Respondent was also employed with the Toronto-Dominion Bank (the “Bank”), which is affiliated with the Member.

10. At all material times, the Respondent conducted business in the Winnipeg, Manitoba area.

Background

The Variable Compensation Program

11. At all material times, a portion of the Respondent’s compensation consisted of variable compensation (the “Variable Compensation Program”). The Respondent’s variable compensation was based on a composite of metrics, one of which was a customer feedback metric (the “Customer Feedback Metric”) derived from satisfaction surveys completed by clients (the “Surveys”).

12. The Surveys were sent to a random sample of clients by email using the client’s email address stored on the Client Contact Information Systems (described below) used by the Dealer Member.

13. The Surveys were emailed to clients after, among other things, an Approved Person had processed transactions or account changes on behalf of the client.

14. The Dealer Member collected client feedback information through the Surveys in order to, among other things, assess in relation to branch staff: Approved Persons: (1) the performance of Approved Persons; (2) variable compensation payable to Approved Persons; (3) eligibility of Approved Persons for rewards and recognition programs of the Dealer Member and the Bank; and (4) any client complaints or concerns with the services provided by Approved Persons to clients.

15. The Surveys posed questions to clients related to the services offered by branch staff, including Approved Persons, and asked the clients to score their responses. Survey results of a certain value reduced the Customer Feedback Metric for the Respondent's branch.

16. The Survey results from all clients who were serviced by Approved Persons who worked at the Respondent's branch were factored into calculating the Customer Feedback Metric for the Respondent's branch.

17. The Respondent was provided with documentation which described how the Customer Feedback Metric was calculated and how it affected his variable compensation.

Misconduct

18. At all material times, Approved Persons were subject to a Code of Conduct and Ethics which prohibited Approved Persons from engaging in unethical business practices.

19. At all material times, Approved Persons registered with the Dealer Member had access to systems used by the Dealer Member to collect client information (the "Client Contact Information Systems").

20. The Client Contact Information Systems contained a feature which allowed Approved Persons to select whether the client wished to be contacted by the Dealer Member for certain purposes. If the Approved Person selected "No" on behalf of the client, a client would not receive Surveys or promotional communications from the Dealer Member.

21. Between February 2018 to June 2018, the Respondent set the contact preferences to "No" for five clients who held investment accounts at the Dealer Member and 8 other individuals who held accounts at the Bank, without their consent. As a result, these clients and other individuals did not receive the Surveys.

22. The Dealer Member prohibited Approved Persons from changing client contact preferences contained in the Client Contact Information Systems without the consent of the client.
23. Changing client contact preferences did not restrict the client's ability to access their investment accounts or bank accounts online.
24. The Respondent engaged in the misconduct set out above in order to prevent the clients from receiving a Survey which could have potentially negatively affected the Customer Feedback Metric for the Respondent's branch as well as his eligibility for rewards and recognition programs. The impact on the Respondent's compensation is not known.
25. As a consequence of the Respondent's misconduct, he:
 - (a) prevented clients from receiving the Survey which may have affected the Customer Feedback Metric and consequently the variable compensation the Respondent and Approved Persons in his branch would receive as well as his eligibility for rewards and recognition programs maintained by the Dealer Member; and
 - (b) prevented clients from receiving promotional communications about products and services offered by the Dealer Member.

Additional Factors

26. On September 14, 2018, the Dealer Member issued the Respondent a letter of reprimand in respect of the misconduct described in this Settlement Agreement.
27. As a result of the misconduct described above, the Dealer Member imposed a three day unpaid suspension on the Respondent, prohibited the Respondent from participating in the Dealer Member's rewards and recognition programs in 2018, and negatively impacted the Respondent's managerial assessment rating for the remaining calendar year, which negatively affected the Respondent's base salary for the following year.
28. The Dealer Member has contacted affected clients in order to confirm the client's contact preferences contained in the Client Contact Information Systems.

29. There is no evidence of financial losses to clients arising from the misconduct described in this Settlement Agreement.

30. The Respondent has not previously been the subject of MFDA or Corporation disciplinary proceedings.

31. By entering into this Settlement Agreement, the Respondent has saved the Corporation the time, resources and expenses associated with conducting a full hearing of the allegations.

V. ADDITIONAL TERMS OF SETTLEMENT

32. This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the MFDA Rules of Procedure.²

33. The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to Mutual Fund Dealer Rule 7.3.5 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

34. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

35. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

² Pursuant to Mutual Fund Dealer Rule 7.2.3, the MFDA Rules of Procedure are the prescribed Rules of Procedure for the conduct of Hearings that are conducted pursuant to the Mutual Fund Dealer Rules.

- a. the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the MFDA Rules of Procedure;
- b. the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal, including before the Board of Directors of the Corporation 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;
- c. except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. 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, 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;
- d. the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with Mutual Fund Dealer Rule 7.4.5; and
- e. 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 the Respondent.

36. 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 Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this 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.

37. If, for any reason, this Settlement Agreement is not accepted 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 Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

38. 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. The terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

39. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 1st day of February, 2023.

“Bernard Kevin Phanthavong”

Bernard Kevin Phanthavong

“BM”

Witness – Signature

BM

Witness – Print name

“Charles Toth”

Staff of the Corporation

Per: Charles Toth

New Self-Regulatory Organization of Canada

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization that is temporarily called the New Self-Regulatory Organization of Canada (referred to herein as the “Corporation”) and is recognized under applicable securities legislation. The Corporation adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies

of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of the Corporation, contraventions of former MFDA regulatory requirements may be enforced by the Corporation. Pursuant to Mutual Fund Dealer Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.



Now New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES¹
and
Bernard Kevin Phanthavong**

ORDER

WHEREAS on [date], the New Self-Regulatory Organization of Canada, a consolidation of IIROC and the MFDA, (the "Corporation") provided notice to the public of a Settlement Hearing in respect of Bernard Kevin Phanthavong (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the Corporation ("Staff"), dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant Mutual Fund Dealer Rules 7.3 and 7.4.1;

AND WHEREAS based upon the admissions of the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that, between February 2018 to June 2018, the Respondent altered client contact information on the Dealer Member's system without the knowledge or authorization of the client, which had the effect of interfering with the Member's supervision of the Respondent and impacted its ability to communicate with clients, contrary to Mutual Fund Dealer Rules 2.1.1 and 2.1.4(2).

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 \$7,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(b) of the Mutual Fund Dealer Rules.
2. The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 7.4.2 of the Mutual Fund Dealer Rules.
3. The Respondent shall be suspended from acting as a branch manager or in any supervisory capacity for a Dealer Member registered as a mutual fund dealer (formerly Members of the MFDA) for a period of two months commencing upon the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules.
4. The Respondent shall successfully complete an industry course that is acceptable to Staff of the Corporation, within 12 months of the acceptance of the Settlement Agreement, pursuant to s. 7.4.1.1(f) of the Mutual Fund Dealer Rules.
5. If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by the Corporation's Privacy Policy, then the Corporation's 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], 2023.

Name,
Chair

Name,
Industry Representative

Name,
Industry Representative

ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization recognized under applicable securities legislation. The New Self-Regulatory Organization of Canada (referred to herein as the “Corporation”) adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules the relevant section of the Interim Rules have been referenced.