Re Banks

IN THE MATTER OF:

The Mutual Fund Dealer Rules[i]

and

Benjamin Thomas Banks

2024 CIRO 59

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: May 9, 2024 by electronic hearing in Calgary, Alberta
Decision: May 9, 2024
Reasons for Decision: June 25, 2024

Hearing Panel:
Omolara Oladipo, Chair
Patricia Rigsby, Industry Representative
Birju Shah, Industry Representative

Appearances:
Jennifer Galarneau, Enforcement Counsel
Loni Da Costa, for Benjamin Thomas Banks
Benjamin Thomas Banks, Respondent

DECISION ON ACCEPTANCE OF SETTLEMENT

I. INTRODUCTION

¶ 1 On February 9, 2024, Benjamin Thomas Banks (the "Respondent") entered into a settlement agreement with the Canadian Industry Regulatory Organization ("CIRO") (the "Settlement Agreement"). The Settlement Agreement is attached as an appendix to this decision. Pursuant to the Settlement Agreement, the Respondent agreed to pay a fine of $12,500 and $5,000 of costs. The Respondent also agreed to comply with Rule 2.1.1, 2.3.1(b), 5.1(b), 2.5.1 and 1.1.2 of the Mutual Fund Dealer Rules (formerly MFDA Rule).

¶ 2 On May 9, 2024, the Hearing Panel considered the Settlement Agreement to decide whether the Settlement Agreement should be accepted. CIRO Enforcement Staff represented by Ms. Galarneau, made submissions which the Panel considered and found helpful in its analysis. The Respondent was present and represented by Ms. Loni Da Costa who agreed with Ms. Galarneau's submissions.

¶ 3 The Hearing Panel unanimously accepted the Settlement Agreement.

II. BACKGROUND

¶ 4 The Respondent has been a registered representative with CIRO and its predecessors including the Mutual Fund Dealers Association of Canada since March 28, 2012.

¶ 5 Pursuant to the Settlement agreement, the Respondent admitted to contraventions of the Dealer Member's policies and procedures and Rule 2.1.1, 5.1(b), 1.1.2 (as it related to Rule 2.5.1) 2.1.1, 5.1(b) and

1.1.2 (as it related to Rule 2.5.1) of the Mutual Fund Dealer Rules when between:

(a) July 9, 2020 and November 20, 2020, the Respondent engaged in discretionary trading by processing trades without obtaining client instructions with respect to all elements of the trades, contrary to the Dealer Member's policies and procedures and Rules 2.3.1(b) and 2.1.1. (formerly MFDA Rules 2.3.1(b) and 2.1.1) of the Mutual Fund Dealer Rules; and

(b) January 3, 2020 and May 17, 2021, the Respondent failed to:

i. verify client trade instructions received by email; and

ii. record notes of client trade instructions or authorization.

¶ 6 At the outset of the proceeding, the Hearing Panel considered a motion by Enforcement Counsel (unopposed by 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 to accept or reject the Settlement Agreement.

¶ 7 Between July 9, 2020 and November 20, 2020, the Respondent contravened Rule 2.3.1(b) and 2.1.1 of the Mutual Fund Dealer Rules by engaging in discretionary trading by processing eleven switches for three clients without obtaining instructions from the clients with respect to the timing of the trades in the clients' accounts.

¶ 8 The Hearing Panel received the submissions and representations of Ms. Jennifer Galarneau Enforcement Counsel, Mutual Fund Dealer Division of the Canadian Investment Regulatory Organization (CIRO) which are mostly outlined below. Ms. Galarneau and Ms. Loni Da Costa on behalf of the Respondent jointly recommended that the Hearing Panel accept the Settlement Agreement.

Contravention #1 - Discretionary Trading

¶ 9 As set out by the Alberta Securities Commission in various decisions, trading instructions must be specific on all the elements of the trade. Discretionary trading contrary to Rules 2.3.1(b) and 2.1.1 of the Mutual Fund Dealer Rules. includes failure to receive express instructions from clients in relation to even one of the following elements of the trade from a client:

(a) the specification of which security is to be traded;

(b) the amount of the trade;

(c) the timing of the trade; and

(d) the specific details of any costs for fees associated with executing the trade.

¶ 10 Even if a client asks an Approved Person to exercise discretion with respect to trading in the client's account, the Approved Person may not accept this authorization to conduct discretionary trading on behalf of a client.

¶ 11 The prohibition on discretionary ensures that a client give clear and complete directions to an Approved Person prior to a trade being executed in a client's account. It also seeks to guard against trading by Approved Persons who do not possess the necessary proficiencies, training and experience to exercise discretionary trading authority over a client's investments.

¶ 12 Enforcement Staff submitted that by processing trades on behalf of clients without specific instructions as to the timing of the trades, the Respondent engaged in discretionary trading contrary to Rules 2.3.1(b) and 2.1.1 of the Mutual Fund Dealer Rules.

Contravention #2 - Failure to Record and Maintain Adequate Evidence of Client Instructions

¶ 13 Between January 3, 2020 and May 17, 2021, the Respondent contrary to Mutual Fund Dealer Rule 5.1(b) carried out eighteen transactions relating to three clients without calling or meeting with the clients to verify instructions that the client's provided to the Respondent by email. In instances where the Respondent had

conversations with clients, he failed to record notes of such conversations regarding the instructions or authorization by the clients.

¶ 14 Prior Hearing Panels have held that processing trades on behalf of clients while failing to make or maintain written record of the client instructions constitutes a contravention of Mutual Fund Dealer Rule 5.1(b).

¶ 15 Additionally, the Member's policies and procedures requires Members to document all client conversations and verbally authenticate electronic instructions from clients, prior to making any changes to their account or submission of trade instructions. Such notes or records must be retained in the client file.

¶ 16 Previous Hearing Panels have held that an Approved Person's failure to comply with the Dealer Member's policies and procedures is conduct which is contrary to Rules 2.5.1, 1.1.2 and 2.1.1 of the Mutual Fund Dealer Rules.

¶ 17 A review of previous decisions relied upon by the Enforcement Counsel reveals a common thread that the requirement to document client instructions is a fundamental obligation of acting as an Approved Person and failing to meet this standard are both wide reaching and understood by the mutual fund industry.

¶ 18 Ms. Galarneau, relying on multiple precedents, pointed out that failure to record and maintain adequate notes, even where the client has authorized the transaction, can have serious consequences.

¶ 19 Enforcement Staff submitted that by the Respondent failing to call or meet with the clients to verify instructions that the clients provided to the Respondent by email, or in instances where the Respondent failed to record notes of his conversation of the client's instructions or authorization, he contravened the Dealer Members policies and procedures and Rules 2.1.1, 5.1(b), 1.1.2 (as it relates to Rule 2.5.1) of the Mutual Fund Dealer Rules.

¶ 20 The Respondent represented by Ms. Da Costa agreed with Ms. Galarneau's submissions.

¶ 21 The Hearing Panel subsequently adjourned to deliberate and the main question it considered was the appropriateness of the penalties provided under the Settlement Agreement.

¶ 22 After a brief deliberation and at the conclusion of the hearing, the Hearing Panel found that the Settlement Agreement was within a reasonable range of appropriateness, having considered previous CIRO decisions. Accordingly, the Hearing Panel accepted the Settlement Agreement with written reasons to follow. Below are the Hearing Panel's reasons.

ANALYSIS

Test for Acceptance of a Settlement Agreement

¶ 23 As Enforcement Counsel Galarneau reminded the Panel, it is well accepted that in considering a settlement agreement, a hearing panel's role is not to decide whether it would have imposed the same sanctions as those negotiated by the parties, nor is it to modify or alter the sanctions. A hearing panel's task is to decide whether the agreed sanctions fall within a "reasonable range of appropriateness."

¶ 24 Accordingly, in considering the acceptance of a settlement agreement, a hearing panel must be satisfied that the agreed sanctions are within an acceptable range, are fair and reasonable, and serve as a deterrent to a respondent and to the industry. A hearing panel should also accept the settlement agreement where it is in the public interest to do so.

¶ 25 Enforcement Counsel also made the point that pursuant to Mutual Fund Dealer Rule 7.4.1.1(i) and 7.4.2 the Panel should be guided by the penalties set out in subsections 7.4.1.1 (a)-(f) including a fine, not exceeding the greater of $5,000,000 or three times the profit obtained or loss avoided by engaging in the misconduct as well as the discretion to require a Respondent to pay the whole or part of the costs of the proceeding before the Hearing Panel and any investigation relating to these proceedings.

¶ 26 The primary goal of securities regulation, whether in the context of a settlement hearing or a contested hearing, is the protection of investors and fostering public confidence in the capital markets and the securities

industry. Disciplinary sanctions imposed in a securities regulatory context are intended to restrain future misconduct in furtherance of these goals.

¶ 27 In applying the "reasonable range of appropriateness" test, Enforcement Counsel pointed the Hearing Panel to Tonnies (Re), [2005] Hearing Panel of the Prairie Regional Council, MFDA File no 200503 where Hearing Panels are asked to consider the following to determine whether a sanction is appropriate:

(a) the protection of the investing public;

(b) the integrity of the securities markets;

(c) specific and general deterrence;

(d) the protection of the MFDA's [now CIRO's] membership; and

(e) the protection of the integrity of the MFDA's [now CIRO's] enforcement processes.

¶ 28 Among other things, the purpose of sanctions in a regulatory proceeding is to protect the interest of the investing public by preventing future conduct that may harm the market. Sanctions should be significant enough to prevent and discourage a respondent from engaging in future misconduct and to deter others from engaging in similar misconduct.

Previous Decisions Made in Similar Circumstances

¶ 29 Ms. Galarneau referenced previous hearing panel decisions for similar types of misconduct. Her written and oral submissions were of assistance to this Hearing Panel in considering whether the agreed sanctions fall within a reasonable range of appropriateness. Ms. Galarneau was especially helpful in her detailed submissions as she guided the Hearing Panel through the following panel decisions which mostly dealt with discretionary trading without adequate instructions or record of the client's instructions:

i. *Charlton (Re)* (2021) Hearing Panel of the Central Regional Panel, MFDA File No. 202116, Panel Decision dated December 10, 2021.

ii. Although this was not a settlement hearing and was considered on the "low end of seriousness" of the cases examined by the Hearing Panel, it found that the Respondent failed to maintain adequate client records trades in client accounts and impose a fine in the amount of $10,000 fine as well as $2,500 in costs.

iii. *Mark (Re)*, (2019) Hearing Panel of the Pacific Regional Council, MFDA File No 201915, Panel Decision. Dated June 10, 2019, involved discretionary trading in client without the authorization of one spouse, trades in client accounts without adequate notes of client instructions as well as making changes to Know-Your-Client form without the authorization of the clients. The Hearing Panel imposed a fine in the amount of $15,000 as well as $2,500 costs. The Respondent was also placed on strict supervision.

iv. *Rhodes (Re)*, (2019) Hearing Panel of the Prairie Regional Council, MFDA File No. 201870 Panel Decision dated September 6, 2019; Notwithstanding a dealer member's policy prohibiting discretionary trading, the Respondent carried out trading in relation to two redemptions on which he determined the timing. The Hearing Panel imposed a fine in the amount of $6,500 and $2,500 in costs.

v. *Carney (Re)*, (2017) Hearing Panel of the Central Regional Council, MFDA File No. 201646, Panel Decision dated May 9, 2017. The Respondent carried out authorized discretionary trading trades as part of a dollar-cost averaging strategy in relation to ten (10) clients as well as 11 unauthorized trades in the accounts of 2 client based on the request from someone other than the clients.

At a settlement Hearing, the Hearing Panel imposed a fine in the amount of $20,000 and $2,500 in costs.

vi. *Ewens (Re)*, (2017) Hearing Panel of the Pacific Regional Council MFDA File No. 201714 Panel Decision dated April 6, 2017. The Dealer Member had a policy in place prohibiting its Approved Persons from engaging in discretionary trading. The Respondent however carried out authorized Discretionary trading in relation to one client. Pursuant to a settlement agreement, the Hearing Panel imposed a fine in the amount of $11,500 and $2,500 in costs.

¶ 30 Enforcement Counsel submitted that the proposed sanctions as agreed upon by Enforcement Staff and the Respondent is in keeping with the purpose of CIRO to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by Dealer Members and Approved Persons. Furthermore, the agreed sanctions are sufficient to deter future misconduct by the Respondent and others, improve overall compliance in the mutual fund industry, and foster public confidence in the enforcement process.

¶ 31 In pursuit of a fair and efficient imposition of sanctions in settled or contested disciplinary proceedings. The Hearing Panel may refer to CIRO's inexhaustive Sanctions Guidelines which have been applied in previous cases. The Guidelines are not binding on the Hearing Panel and provides some key factors to allow a Hearing Panel exercised its discretion consistently and fairly.

¶ 32 Hearing Panels have previously considered the following factors when determining whether a sanction 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 because of the Respondent's activities;

(f) the benefits received by the Respondent because 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. CIRO Enforcement counsel submitted that deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets to protect investors;

(j) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and

(k) previous decisions made in similar circumstances.

¶ 33 To the foregoing end and in addition to relying on similar precedents, Ms. Galarneau outlined the following as aggravating factors that the Respondent:

(a) engaged in serious misconduct by carrying out discretionary trading and failing to maintain adequate records; and

(b) has been registered in the securities industry in Alberta as dealing representative since March 28, 2012. He was experienced in the securities industry and ought to have known that his conduct was a clear violation of his regulatory obligations.

¶ 34 Enforcement Counsel also stressed as mitigating factors, the fact that the Respondent:

(a) has not previously been the subject of an MFDA or CIRO disciplinary proceeding;

(b) satisfactorily recognizes the seriousness of his misconduct as he had fully admitted his misconduct and consented to a penalty under the terms of the Settlement Agreement, thereby accepting responsibility and avoiding the time and expense of a fully contested disciplinary hearing;

(c) There is no evidence of client financial loss or lack of authorization for the underlying transactions, and no clients have complained to Enforcement Staff or the Dealer Member;

(d) The Dealer Member imposed close supervision for seven months and required the Respondent to review its policies and procedures and Code of Conduct; and

(e) The Respondent also paid a fee in the amount of $2800 to the Dealer Member in respect of the close supervision.

¶ 35 Ms. Da Costa agreed with the effect of the foregoing factors.

III. Conclusion

¶ 36 We reiterate that it is well established in the CIRO and its predecessor bodies' jurisprudence that a settlement hearing panel is not tasked with deciding whether it would have imposed the same sanctions as those agreed through negotiation by the parties.

¶ 37 Pursuant to Rule 7.4.4.3 of the Mutual Fund Dealer Rules, a hearing panel must decide whether to accept or reject the proposed settlement. In making that determination, it will consider whether the proposed sanction falls within a reasonable range of appropriateness and whether it is consistent with the Guidelines and prior CIRO decisions.

¶ 38 Our Hearing Panel recognized that the proposed sanctions are the product of a process of negotiation and agreement between parties and fall within a reasonable range.

¶ 39 In reaching its decision, the Hearing Panel took into consideration the mitigating factors cited above. The Hearing Panel took note of the dealer member sanctions which had been applied even prior to the hearing and included out-of-pocket expenses to the Respondent.

¶ 40 After serious reflection of the submissions at the hearing, the CIRO Guidelines, the precedents cited, and the factors invoked regarding the conduct of the Respondent, the Hearing Panel was persuaded by the stated mitigation factors and more importantly, concluded that the appropriate test for settlement agreement approval has been met.

¶ 41 The Hearing Panel therefore accepts the Settlement Agreement.

DATED at Calgary, Alberta this 25th day of June, 2024.

"Omolara Oladipo"
Omolara Oladipo, Chair

"Patricia Rigsby"
Patricia Rigsby, Industry Representative

"Birju Shah"
Birju Shah, Industry Representative

Appendix "A"
Settlement Agreement

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Benjamin Thomas Banks

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA ("CIRO") 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 Alberta District Committee (the "Hearing Panel") of CIRO should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO ("Staff") and Benjamin Thomas Banks (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:[1]

(a) Between July 9, 2020 and November 20, 2020, the Respondent engaged in discretionary trading by processing trades without obtaining client instructions with respect to all elements of the trades, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.3.1(b) and Rule 2.1.1. (formerly MFDA Rules 2.3.1(b) and 2.1.1); and

(b) Between January 3, 2020 and May 17, 2021, the Respondent failed to:

i. verify client trade instructions received by email; and

ii. record notes of client trade instructions or authorization,

contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.1, 5.1(b), 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rule 2.1.1, 5.1(b), and 1.1.2 (as it related to Rule 2.5.1)).

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 of $12,500, in instalments in accordance with the schedule set out in sub-paragraph 5(c) below, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b));

[1] At the time of the conduct addressed in this proceeding, MFDA Rules 2.3.1(b), 1.1.2, 2.5.1, 5.1(b), and 2.1.1 were in effect and are now incorporated into Mutual Fund Dealer Rule 2.3.2(b), 1.1.2, 2.5.1, 5.1(b), and 2.1.1 referred to in this proceeding. On July 7, 2022, amendments to MFDA Rule 1.1.2 came into effect. As the conduct addressed in this proceeding pre-dated the amendments to this Rule, the version of MFDA Rule 1.1.2 that was in effect prior to July 7, 2022 is applicable to this proceeding.

(b) the Respondent shall pay $5,000 in costs, in certified funds upon acceptance of the Settlement Agreement, pursuant to pursuant to Mutual Fund Dealer Rule 7.4.2;

(c) Payment by the Respondent of the fine referred to in sub-paragraph 5(a) above shall be made to and received by CIRO as follows;

i. $4,167 on or before the last business day of the first calendar month following the date of the acceptance of the Settlement Agreement,

ii. $4,167 on or before the last business day of the second calendar month following the date of the acceptance of the Settlement Agreement, and

iii. $4,166 on or before the last business day of the third calendar month following the date of the acceptance of the Settlement Agreement.

(d) If the Respondent fails to make any of the payments described above in sub-paragraph 5(c) of this Settlement Agreement, then any unpaid amounts of the total fine of $12,500 shall immediately become due and payable to CIRO;

(e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.3.1(b), 1.1.2, 5.1(b) and 2.1.1; and

(f) the Respondent shall attend by videoconference on the date set for the Settlement Hearing.

¶ 6 The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

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 CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

¶ 7 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement.

IV. AGREED FACTS

Registration History

¶ 8 The Respondent has been registered in the securities industry since January 2000.

¶ 9 Since March 28, 2012, the Respondent has been registered in Alberta as a dealing representative with Sun Life Financial Investment Services (Canada) Inc., a dealer member ("Dealer Member") of CIRO (formerly a Member of the MFDA).[2]

¶ 10 At all material times, the Respondent conducted business in the Calgary, Alberta area.

Discretionary Trading

¶ 11 At all material times, the Dealer Member's policies and procedures prohibited discretionary trading. It required its Approved Persons to obtain specific instructions concerning all elements of the trade prior to the execution of the trade including the investment to be purchased or sold, the amount of investment, and the timing of the trade.

¶ 12 Between July 9, 2020 and November 20, 2020, the Respondent processed 11 switches (22 mutual fund transactions) for three clients without obtaining instructions from the clients with respect to the timing of the trades in the clients' accounts.

[2] The Respondent has also been registered with the Dealer Member in British Columbia since September of 2017.

¶ 13 The Respondent processed the transactions in the clients' accounts in order to implement a dollar cost averaging strategy whereby a client invested a certain amount at intervals in order to diversify the purchase price for a unit of a given mutual fund.

¶ 14 The Respondent had initial discussions with and obtained instructions from the clients about this strategy, and the clients agreed to have their monies invested in mutual funds over the course of a number of weeks rather than in one lump sum.

¶ 15 However, the Respondent did not obtain from the clients instructions regarding the specific date for the trades prior to processing the trades, and used his discretion in respect of this element the trades.

¶ 16 There was no material change in the mutual fund unit price between the dates of the initial discussions that the Respondent had with each of the Clients and the dates that the trades were placed in the Clients accounts.

Failure to Verify Client Instructions Received By Email or to Maintain Adequate Records of Client Instructions

¶ 17 At all material times, the Dealer Member's policies and procedures provided the following:

> *"...Advisors must document all client conversations related to trade instructions and keep in the client file.*
>
> *For nominee name accounts, Trade Authorization (TA) is part of the account structure. A client signature is not necessary to process trades, however, detailed client notes, evidencing the client's authorization is required for each trade before the trade can take place.*
>
> *For more information on maintaining client notes, refer to Chapter 6 – Books, Records & Reporting.*
>
> *Advisors are not permitted to act on instructions received from clients by email, text or other electronic means. Upon receipt of any electronic instruction from a client, advisors must verbally authenticate that the electronic instructions were sent by the client prior to making any changes to their account or submission of* trade instructions"

¶ 18 Between January 3, 2020 and May 17, 2021, for 18 transactions relating to three clients, the Respondent failed to call or meet with the three clients to verify instructions that the client's provided to the Respondent by email, or in instances where the Respondents had conversations with clients, the Respondent failed to record notes of the client conversation evidencing the instructions or authorization he received from the clients.

Additional Facts

¶ 19 In order to determine whether the trades in their accounts were authorized, the Dealer Member sent letters to the clients in respect of whom the Respondent engaged in discretionary trading and failed to record adequate notes as described above. No clients complained to the Dealer Member about a lack of authorization in respect of the trades in their accounts.

¶ 20 The Dealer Member imposed close supervision for 7 months and required the Respondent to review it policies and procedures and Code of Conduct. The Respondent was also charged a fee by the Dealer Member in respect of the close supervision in the amount of $2800, which amount was paid to the Dealer Member by the Respondent.

¶ 21 There is no evidence of any client loss.

¶ 22 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

¶ 23 By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources, and expenses associated with conducting a contested hearing with respect to the allegations of misconduct.

V. ADDITIONAL TERMS OF SETTLEMENT

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

¶ 25 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 Mutual Fund Dealer 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.

¶ 26 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.

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

(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 Mutual Fund Dealer 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 CIRO 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 contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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 (Approved Persons) 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.

¶ 28 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.

¶ 29 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.

¶ 30 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 will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 31 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 9th day of February, 2024.

"Benjamin Banks"
Benjamin Banks

"Witness"
Witness - Signature

"Witness"
Witness - Print name

"Jennifer Galarneau"
Staff of CIRO
Per: Jennifer Galarneau
Enforcement Counsel

[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 called the Canadian Investment Regulatory Organization (referred to herein as "CIRO") and is recognized under applicable securities legislation. CIRO 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 CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.