



**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: Orville Keith Carruthers**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to s. 24.4 of By-law No. 1 (“By-law No. 1”), a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Orville Keith Carruthers (the “Respondent”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent has been registered in the mutual fund industry since March 19, 1996.

7. Since April 14, 2000, the Respondent has been registered in Ontario as a mutual fund salesperson with FundEX Investments Inc., a Member of the MFDA (the “Member”).

8. The Respondent has no previous disciplinary history with the MFDA.

#### **Pre-Signed Forms and Photocopied Signatures**

9. In June 2012, Sales Compliance Staff of the MFDA conducted a sales compliance review of the Member. During this review, Sales Compliance Staff observed trade forms submitted by

the Respondent which contained photocopied client signatures. Sales Compliance Staff advised the Member of its findings with respect to the Respondent's use of photocopied client signatures.

10. As a result of the information received from Sales Compliance Staff, the Member conducted a branch audit of the Respondent's office located in Aurora, Ontario in July 2012. The conduct described in this Settlement Agreement was identified during the branch audit conducted by the Member.

11. During the branch audit, the auditor identified approximately 170 account forms in 60 client accounts serviced by the Respondent where the account forms:

- (a) had been signed by the clients when the account forms were blank or only partially complete; or
- (b) contained a photocopy of the client's signature.

12. The account forms described in paragraph 11 above included order entry forms, trade tickets, systematic instruction forms, Deregistration / Withdrawal Requests, and fund company client application forms.

13. Approximately 166 of the 170 account forms described in paragraph 11 above had been used to process trades and conduct business on behalf of the Member. Four of the 170 accounts forms were not used to process trades or conduct business on behalf of the Member, but were maintained in client files and were available to the Respondent for use in the future.

14. When the Member questioned the Respondent about the events described above, the Respondent stated that he usually discussed trades and other Member business with clients either:

- (a) at face-to-face meetings with clients, during which the Respondent would arrange for clients to sign blank account forms that were subsequently completed by his administrative staff; or
- (b) in telephone conversations with clients, during which the Respondent would arrange for blank accounts forms to be faxed or emailed to the clients for signature, and then

returned to the Respondent's office for completion by his administrative staff.

15. In response to inquiries from the Member, the Respondent's office produced notes and correspondence pertaining to 157 of the 166 account forms which had been used to process trades and conduct Member business, which supports the Respondent's statement that the account forms were used with the knowledge and authorization of the clients.

16. The Member's investigation did not reveal any information from the Respondent or from clients that indicated that discretionary or unauthorized trades were processed on behalf of clients or that KYC information was recorded for clients using pre-signed or photocopied forms without client knowledge or authorization.

### **The Member's Response**

17. On June 20, 2012, the Member sent letters to all of the clients serviced by the Respondent, which included a 3 year account transaction history that clients were asked to review to identify any inaccuracies or trading activity that they were unaware of. No concerns were communicated to the Member by clients in response to the Member's letters.

18. On August 20, 2012, the Member obtained an undertaking from the Respondent confirming that he would discontinue the practice of obtaining or using blank or partially complete pre-signed account forms or photocopied account forms to process trades or conduct Member business.

19. The Respondent was also subjected to 90 days of strict supervision commencing August 13, 2012 and a fine was deducted from the Respondent's monthly commission income in the amount of \$500 per month during the period when the Respondent was subject to strict supervision.

20. There is no evidence that:

- a) the Respondent received any financial benefit from engaging in the misconduct beyond the commissions or fees to which he would have been ordinarily entitled had

- the transactions in the clients' accounts been carried out in the proper manner;
- b) the Respondent processed any trades or changes to client information without the knowledge or authorization of his clients;
  - c) clients suffered any financial harm as a result of the maintenance or use of blank pre-signed forms by the Respondent; and
  - d) any clients have complained about the Respondent's conduct.

## **V. CONTRAVENTIONS**

21. The Respondent admits that, between June 26, 2008 and August 20, 2012, he obtained, maintained and/or used approximately 170 account forms in 60 client accounts which were signed by clients when the account forms were blank or only partially complete, or contained photocopies of client signatures, contrary to MFDA Rule 2.1.1.

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$5,000, pursuant to section 24.1.1(b) of By-law No. 1;
- (b) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- (c) the Respondent shall attend the Settlement Hearing in person; and
- (d) in the future, the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rule 2.1.1.

## **VII. STAFF COMMITMENT**

23. 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 in respect of the facts set out in Part IV and the contraventions described in Part V 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 shall relieve the Respondent from fulfilling any continuing regulatory obligations.

#### **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

24. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

25. 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 his right 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.

26. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

27. 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 him.

#### **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

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 section 24.3 of By-law No. 1 against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

## **X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

29. 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.

30. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

## **XI. DISCLOSURE OF AGREEMENT**

31. 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.

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

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated this 27<sup>th</sup> day of September, 2013.

“Jennifer Walker”  
\_\_\_\_\_  
Witness – Signature

Jennifer Walker  
\_\_\_\_\_  
Witness – Print name

“Orville Keith Carruthers”  
\_\_\_\_\_  
Orville Keith Carruthers

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement



**Schedule "A"**

**Order**

**File No. 201345**



**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: Orville Keith Carruthers**

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**ORDER**

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**WHEREAS** on \_\_\_\_\_ [Date] \_\_\_\_\_, the Mutual Fund Dealers Association of Canada (the "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 Orville Keith Carruthers ("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** on the Hearing Panel is of the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that, between June 26, 2008 and August 20, 2012, the Respondent obtained, maintained and/or used approximately 170 account forms in 60 client accounts which were signed by clients when the account forms were blank or only partially complete, or contained photocopies of client signatures, contrary to MFDA Rule 2.1.1.

**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 \$5,000, pursuant to s. 24.1.1(b) of By-law No. 1; and
2. The Respondent shall pay costs in the amount of \$2,500, pursuant to s. 24.2 of By-law No. 1.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

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