



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: Michelle Morgan Poirier

SETTLEMENT AGREEMENT

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 section 24.4 of By-law No. 1, a hearing panel of the Prairie 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 Michelle Poirier (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 IX) 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. Since April 27, 2010, the Respondent has been registered in Alberta as a mutual fund dealing representative with Sun Life Financial Investment Services (Canada) Inc. a Member of the MFDA (the “Member”).

7. The Respondent is currently registered in the securities industry as a mutual fund dealing representative with the Member.

8. At all material times, the Respondent operated out of the Member’s branch located in Edmonton, Alberta.

Discretionary Trading

9. The Respondent first met with client MC on April 11, 2013, when the client was 33 years old, in order for client MC to open an account with Sun Life and invest the proceeds of a pension transfer in the amount of \$91,762.83. During this meeting, client MC signed a Transfer Authorization for Registered Investments Form transferring the proceeds of her pension to the Member and authorizing the investment of all of the pension proceeds into the Sun Life Money Market Fund (the “Money Market Fund”).

10. During the April 11, 2013 meeting, the Respondent and client MC discussed transferring the funds invested in the Money Market Fund to other mutual funds at some point in the future. Client MC and the Respondent agreed to a plan to evenly split the funds residing in the Money Market Fund between two Sun Life funds: the Managed Granite Balanced Fund (the “Balanced Fund”) and the Global Investments Managed Enhanced Income Fund (the “Income Fund”).

11. Client MC did not sign any additional transfer documents (apart from the Transfer Authorization for Registered Investments Form described in paragraph 9) or trade forms during the meeting on April 11, 2013.

12. Following client MC’s investment in the Money Market Fund, the Respondent discussed her recommendation to move the client’s monies into the Balanced Fund and the Income Fund with the Regional Wealth Sales Director at the Member. Following that discussion and her further review, the Respondent felt that a reallocation of the funds designated for the Income Fund to two alternate funds, the Dynamic Strategic Yield Fund (the “Yield Fund”) and the MFS Global Total Return Fund (the “Total Return Fund”), would be to client MC’s benefit.

13. On August 15, 2013, the Respondent emailed client MC and recommended the revised asset allocation for her investments. Specifically, the Respondent recommended that client MC redeem her investment in the Money Market Fund and allocate the monies as follows:

- a) 50% of the monies would be invested in the Balanced Fund (as previously discussed with client MC);

- b) 30% of the monies would be invested in the Yield Fund; and
- c) 20% of the monies would be invested in the Total Return Fund.

14. On August 30, 2013, prior to receiving a response to her email from client MC, the Respondent set up one Automatic Financial Exchange (“AFE”) in client MC’s account in order to implement her recommendations. The Respondent set up the AFE to automatically redeem \$7,650 from the Money Market Fund, once a month for a period of twelve months, and invest the monies in accordance with the Respondent’s recommendations described in paragraph 13 above. The Respondent set up the AFE as a dollar-cost averaging strategy and the intended result was to fully switch client MC out of the Money Market Fund within a year.

15. Pursuant to the AFE, on August 30, September 30, October 30, and December 2, 2013, funds were switched from the Money Market Fund into the Balanced Fund, the Dynamic Fund, and the Total Return Fund in the proportions described in paragraph 13 above.

16. Under the section of the AFE labelled “Client Authorization”, the Respondent wrote that the AFE had been set up and processed pursuant to a Limited Trading Authorization (“LTA”). Client MC did have a LTA on file with the Member, but client MC had not responded to the Respondent’s trade recommendations described in paragraph 13 above.

17. Between August 30, 2013 and December 2, 2013, \$30,600 was transferred from the Money Market Fund into the aforementioned funds as follows:

- a) \$15,300 was invested in the Balanced Fund;
- b) \$9,180 was invested in the Dynamic Fund; and
- c) \$6,120 was invested in the Total Return Fund.

Member’s Response

18. On December 10, 2013, client MC submitted a complaint about the Respondent’s conduct to the Sun Life Financial Ombudsman.

19. The Member sent audit letters to twenty of the Respondent's clients, enclosing each client's annual statements for 2013 and 2014. The clients were asked to contact the Member if any discrepancies or concerns were identified. No clients contacted the Member with any concerns.

20. The Member issued the Respondent a warning letter, notifying her that she would be placed on Market Conduct Watch and Close Supervision for six months, and requiring her to review the MFDA Rules, and amend her business practices to prevent further compliance issues. No concerns arose as a result of the Member's Market Conduct Watch, Close Supervision or subsequent supervision of the Respondent.

Additional Considerations

21. The Respondent has never been the subject of a disciplinary proceeding by the MFDA.

22. The Respondent has acknowledged her misconduct and has expressed remorse.

23. The Respondent was relatively inexperienced in the mutual fund industry at the time of the misconduct. The Respondent had only been registered for three and a half years at the time of the misconduct.

24. There is no evidence of client loss in this matter. The Respondent states that, between August 30, 2013 and December 2, 2013, the Dynamic Fund and Global Return Fund generated returns of 6.02% and 6.91% respectively, while the Income Fund generated a return of 5.76%.

25. The Respondent has cooperated with Staff during its investigation into her conduct. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expense associated with conducting a full hearing of the allegations.

V. CONTRAVENTION

26. The Respondent admits that between August 15, 2013 and December 10, 2013, the Respondent engaged in discretionary trading in client MC's account by processing four trades totaling approximately \$30,600, contrary to MFDA Rules 2.3.1 and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) The Respondent shall pay a fine in the amount of \$7,500 pursuant to section 24.1.1(b) of By-law No. 1, payable as follows:
 - i) The Respondent shall pay \$2,500 upon acceptance of this Settlement Agreement;
and
 - ii) The Respondent shall pay \$5,000, within 30 days, following the acceptance of this Settlement Agreement;
- b) The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
- c) The Respondent will attend in person, on the date set for the Settlement Hearing; and
- d) The Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1.

VII. STAFF COMMITMENT

28. 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 IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, 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

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

30. 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 her 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.

31. 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.

32. 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

33. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent 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

34. 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.

35. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that she 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

36. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 18th day of July, 2016.

“Michelle Poirier”

Michelle Poirier

“RT”

Witness – Signature

RT

Witness – Print Name

“Shaun Devlin”

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



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**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: Michelle Morgan Poirier

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Michelle Morgan Poirier (the "Respondent");

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

AND WHEREAS the Hearing Panel is of the opinion that between August 15, 2013 and December 10, 2013, the Respondent engaged in discretionary trading in client MC's account by processing four trades totaling approximately \$30,600, contrary to MFDA Rules 2.3.1 and 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 \$7,500 pursuant to section 24.1.1(b) of By-law No. 1, payable as follows:

- a) The Respondent shall pay \$2,500 upon acceptance of this Settlement Agreement; and
- b) The Respondent shall pay \$5,000, within 30 days of the acceptance of this Settlement Agreement;

2. The Respondent shall pay costs in the amount of \$2,500 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;

3. The Respondent shall in the future comply with MFDA Rules 2.3.1 and 2.1.1; and

4. 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]