



**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: Jonathan Robert MacPherson**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By way of news release, 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 the Respondent, Jonathan Robert MacPherson.

**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 XI) 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. From December 14, 2009 to February 19, 2014, the Respondent was registered in Alberta and British Columbia as a mutual fund dealing representative with Investors Group Financial Services Inc. (“IG”), a Member of the MFDA.

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

8. The Respondent is not currently registered in the securities industry in any capacity.

9. The Respondent has not previously been the subject of disciplinary proceedings.

## **Background – IG Policies**

10. At all material times, the policies and procedures maintained by IG prohibited Approved Persons from falsifying client signatures and client meeting notes.

11. At all material times, the policies and procedures maintained by IG prohibited Approved Persons from obtaining and possessing blank or partially complete pre-signed account forms.

## **Clients MM and KM**

12. On or about March 24, 2011, the Respondent met with clients MM and KM to discuss the transfer of a number of the clients' accounts from other financial institutions to IG. Included among the transferred accounts were a spousal RSP of KM, a Locked-In Retirement Account ("LIRA") of MM, and two joint RESP accounts for the two children of MM and KM.

13. During the March 24, 2011 meeting, the Respondent failed to inform clients MM and KM that the investments that he recommended they purchase in their registered accounts at IG would be purchased subject to deferred sales charges ("DSC") that would be payable upon redemption of units of any of those funds prior to the expiry of applicable DSC schedules.

14. Sometime after March 24, 2011, the Respondent became aware that he had missed client KM's signature on a transfer authorization form pertaining to the spousal RSP that was held in client KM's name, as well as the signatures of clients MM and KM on a transfer authorization form pertaining to the RESPs for their children. The Respondent falsified client KM's signature on the spousal RSP transfer authorization form, which was dated March 24, 2011. The Respondent also falsified the signatures of both clients MM and KM on the RESP transfer authorization form which was also dated March 24, 2011. The Respondent submitted both transfer authorization forms to process the transfers.

15. Between March 24, 2011 and May 11, 2011, the transfer of the RESP was rejected. The Respondent completed two new RESP transfer authorization forms and falsified the signatures of

clients MM and KM on each form. The forms were dated May 11, 2011 and were submitted by the Respondent to process the transfer of the RESPs to IG.

16. On or about August 7, 2013, client MM inquired about DSC fees that were applicable to his various registered and non-registered accounts. The Respondent subsequently falsified client MM's signature on a Withdrawal Fees Information Form that provides disclosure to IG clients about the declining sales charges that are payable upon redemption of fund units during the seven year DSC schedule. The Respondent dated the form as having been signed by client MM on March 24, 2011. The Respondent falsified the form in order to give the appearance that he had discussed the DSC fees with client MM when, in fact, he had not.

17. On or about August 7, 2013, the Respondent also altered his client meeting notes in relation to his March 24, 2011 meeting with clients MM and KM. The Respondent falsified part of the March 24, 2011 entry to indicate that client MM had reviewed and signed the Withdrawal Fees Information Form that the Respondent had falsified. By falsifying the client's signature on the Withdrawal Fees Information Form, the Respondent misrepresented to a reader of the document that he had discussed the DSC fees with client MM when he had not and that client MM had acknowledged that the discussion had occurred when he had not.

#### **Client JT**

18. On or about September 17, 2013, the Respondent met with client JT to open a LIRA at IG. Thereafter, the Respondent realized that he had failed to secure client JT's signature on three forms.

19. On or about October 10, 2013 the Respondent falsified client JT's signature on:

- a) a Prescribed Locked-In Retirement Account Addendum Form;
- b) an Alberta declaration of Spousal Status Form; and
- c) a Transfer Account Form.

20. The Respondent submitted the forms to IG to process the LIRA transfer.

21. On or about October 10, 2013, the Respondent also altered his September 17, 2013 client meeting notes in relation to client JT by falsely representing in the notes that client JT had signed the three above noted forms when she had not.

### **Clients NC and AD**

22. The Respondent met with clients NC and AD on December 12, 2013 in order to facilitate the transfer of their registered accounts from the clients' previous financial institutions to IG, and to complete an application for an investment loan of \$100,000 as part of a leverage strategy.

23. During the December 12, 2013 meeting, clients NC and AD applied for an investment loan through Solutions Banking ("Solutions"). Clients NC and AD also signed a blank Loan Investment Instruction Form during this meeting.

24. On December 24, 2013, the Respondent emailed client AD to advise him that the investment loan had been approved and that the funds would be available from the lender on December 30, 2013.

25. At approximately 11:00 a.m. on December 27, 2013, the Respondent was informed by a representative at Solutions that Solutions would release the funds associated with the loan as soon as Solutions received a copy of the investment loan application containing initials of the clients to acknowledge changes that had been made to the original application form to accurately record client NC's passport and social insurance numbers and the interest rate that applicable to the loan which had been reduced from 3.75% to 3.5%

26. The Respondent informed the Solutions representative that one of the clients would be coming in to initial the forms later that day and asked Solutions to release the borrowed money on December 27, 2013.

27. At approximately 12:30 p.m. on December 27, 2013, the Respondent re-submitted the investment loan application form to Solutions with falsified initials of client AD purporting to acknowledge the changes to client NC's passport and social insurance numbers and the change in the interest rate of the investment loan.

28. The Respondent had not met with client AD on December 27, 2013 and client AD had not initialed the investment loan application form. The Respondent falsified the initials and submitted the investment loan application to Solutions in order to facilitate the immediate release of the borrowed money on December 27, 2013.

29. On December 31, 2013, the Respondent invested the proceeds of the loan as follows:

<b>Holdings</b>	<b>Value at December 31, 2013</b>
Investors Fixed Income Flex Portfolio	\$10,000
Investors Real Property	\$10,000
Investors Dividend	\$15,000
Investors Canadian Small Cap Growth	\$10,000
Investors U.S. Opportunities	\$15,000
IG Franklin Bissett Canadian Equity	\$15,000
Investors International Small Cap	\$15,000
IG Mackenzie Ivy Foreign Equity	\$10,000
<b>TOTAL</b>	<b>\$100,000</b>

30. The Respondent determined:

- a) which funds should be purchased;
- b) the amount of each fund that should be purchased; and
- c) the timing of each purchase transaction,

without discussing any of these elements of the trades with the clients NC and AD.

31. Without the knowledge or approval of clients NC and AD, the Respondent completed the blank pre-signed Loan Investment Instruction Form that clients NC and AD had signed during the December 12, 2013 meeting. The Respondent used the form to facilitate the processing of unauthorized discretionary trades in the accounts of clients NC and AD in order to implement the leveraged investment strategy.

32. Seven of the eight mutual funds that the Respondent purchased on behalf of AD and NC were purchased subject to DSC fees. The Respondent did not explain to clients NC and AD that they might be required to pay a DSC fee on the subsequent sale of the units of the funds, prior to the expiration of the DSC fee schedule. The Respondent also did not identify the fee schedule that would apply to the DSC funds being purchased as part of the leveraging strategy and he did not warn them of the risk that DSC fees might be applicable in the event that they decided to unwind the leveraging strategy before the expiry of the applicable DSC schedules.

33. On December 31, 2013, client AD was surprised when he was informed by the Respondent that the proceeds from the investment loan had been received by the Respondent and invested without any prior discussion with AD and NC about which mutual funds were being purchased in connection with the implementation of the leveraged investment strategy.

34. On February 4, 2014, client AD emailed the Respondent regarding the transfer of the self-directed RSP that had not yet been transferred to IG from client AD's previous financial institution. The Respondent informed client AD that he could process the transfer using a blank pre-signed transfer form that the Respondent had obtained from client AD during their meeting on December 12, 2013. The Respondent completed the pre-signed transfer form between February 4 and 12, 2014. Client AD passed away on February 12, 2014. Client AD's self-directed RSP had not yet been transferred to IG.

### **Additional Factors**

35. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the necessity of a full hearing on the merits.

36. The Respondent has expressed remorse for his misconduct.

## **V. CONTRAVENTIONS**

37. The Respondent admits that:

a) between March 24, 2011 and October 10, 2013, he falsified:

- i. The signatures of clients KM and MM on five documents, which were used to process the authorized transfer of spousal RSP and RESP investments to IG;
- ii. client JT's signature on three LIRA account documents;
- iii. client NC and AD's initials on an investment loan application;
- iv. the March 24, 2011 note entry in client KM and MM's client file; and
- v. the October 10, 2013 note entry in client JT's client file,

all of which, was contrary to MFDA Rule 2.1.1;

b) between March 24, 2011 and February 12, 2014, he failed to advise clients KM, MM, NC and AD that they might be required to pay a deferred sales charge on the subsequent sale of certain fund units, and the fee schedule that would apply to the deferred sales charge, thereby failing to deal fairly, honestly and in good faith with his clients, contrary to MFDA Rule 2.1.1;

c) between December 19, 2013 and December 31, 2013, he engaged in unauthorized discretionary trading in the account of clients NC and AD, contrary to MFDA Rules 2.3.1 and 2.1.1; and

d) between December 12, 2013 and February 12, 2014, he obtained, possessed and/or used at least two pre-signed client account forms, contrary to MFDA Rule 2.1.1.



## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of five years pursuant to s. 24.1.1(e) of MFDA 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 will attend in person, on the date set for the Settlement Hearing; and
- (d) The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.3.1.

## **VII. STAFF COMMITMENT**

39. 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 VII 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**

40. 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.

41. 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 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.

42. 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. 24.1.1 and/or 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.

43. 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**

44. 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**

45. 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.

46. 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**

47. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 13<sup>th</sup> day of January, 2017.

“Jonathan Robert MacPherson”  
Jonathan Robert MacPherson

“AM”  
Witness – Signature

AM  
Witness – Print Name

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



**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: Jonathan Robert MacPherson**

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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 section 24.4 of By-law No. 1 in respect of Jonathan Robert MacPherson (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 the Respondent:

1. between March 24, 2011 and October 10, 2013, falsified:
  - a) the signatures of clients KM and MM on five documents, which were used to process the authorized transfer of spousal RSP and RESP investments to IG;

- b) client JT's signature on three LIRA account documents;
- c) client NC and AD's initials on an investment loan application;
- d) the March 24, 2011 note entry in client KM and MM's client file; and
- e) the October 10, 2013 note entry in client JT's client file,

all of which, was contrary to MFDA Rule 2.1.1;

2. between March 24, 2011 and February 12, 2014, failed to advise clients KM, MM, NC and AD that they might be required to pay a deferred sales charge on the subsequent sale of certain fund units, and the fee schedule that would apply to the deferred sales charge, thereby failing to deal fairly, honestly and in good faith with his clients, contrary to MFDA Rule 2.1.1;

3. between December 19, 2013 and December 31, 2013, engaged in unauthorized discretionary trading in the account of clients NC and AD, contrary to MFDA Rules 2.3.1 and 2.1.1; and

4. between December 12, 2013 and February 12, 2014, obtained, possessed and/or used at least two pre-signed client account forms, 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 be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of five years pursuant to s. 24.1.1(e) of MFDA By-Law No. 1;

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

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

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