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: Charles James White

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 s. 24.4 of MFDA By-law No. 1, a hearing panel of the Atlantic Regional Council of the MFDA (the "Hearing Panel") should accept the settlement agreement entered into between Staff of the MFDA ("Staff") and the Respondent, Charles James White, ("Respondent") (the "Settlement Agreement").

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 MFDA 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. Since March 2007, the Respondent has been registered in Alberta, British Columbia, New Brunswick, and Nova Scotia, as a mutual fund salesperson (now known as a dealing representative) with Keybase Financial Group Inc. ("Keybase"), a Member of the MFDA.

7. Prior to being registered with Keybase, the Respondent was registered as a mutual fund salesperson as follows:

(a) from September 1993 to May 1998 with Investors Group Financial Services, a Member of the MFDA;

(b) from May 1998 to March 2005 with Dundee Private Investors Inc. (or Member firms it acquired), a Member of the MFDA; and

(c) from March 2005 to March 2007 with Global Maxfin Investments Inc., a Member of the MFDA.

8. At all material times, the Respondent carried on business from a sub-branch located in Truro, Nova Scotia.

9. At all material times, the Respondent was also licensed to sell insurance.

The Leverage Investment Strategy

10. The Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, and clients RG and AG, whereby the clients would borrow monies and invest the proceeds in return of capital mutual funds ("ROC mutual funds").

11. The leverage investment strategy was based on the premise that the investments purchased by the clients using the investment loans would generate sufficient returns to pay the clients' borrowing costs, as well as provide them with the ability to pay down their mortgages faster and/or generate excess discretionary income, such that the clients would not have to incur any out-of-pocket expenses to sustain the leveraged investment strategy.[1]

12. Clients FL and SM are former spouses. On or about September 27, 2007, clients FL and SM borrowed $120,000 from B2B Trust in order to implement the leverage investment strategy based upon the Respondent's recommendation. The investment loan was structured as a 2-for-1 loan whereby clients FL and SM invested $64,000 to secure the investment loan and B2B Trust loaned them $120,000. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount

[1] When dealing with clients, the Respondent referred to the leverage investment strategy as the "Smith Manoeuvre".

of $121,000. The Respondent believed that the clients were carrying too much debt at the time that he recommended the investment loan, but proceeded to recommended and implement the leverage investment strategy anyway.

13. Clients RG and AG are spouses. On December 31, 2007, clients RG and AG applied for a $150,000 investment loan from AGF Trust in order to implement the leverage investment strategy recommended by the Respondent. On January 31, 2008, clients RG and AG were approved for a $121,000 investment loan.

14. The clients used the proceeds from the investment loans to purchase ROC mutual funds as recommended by the Respondent. The Respondent arranged for the distributions paid by the mutual funds to be deposited in the clients' bank account and advised the clients to use the distributions to make the monthly payments on the loans.

15. In the course of recommending the leverage investment strategy, the Respondent did not adequately explain to clients RG and AG the risks inherent in using borrowed monies to invest generally, or the risks specific to the leveraged investment strategy he recommended.

16. In the case of clients FL and SM, the leveraged investment strategy was unsuitable for the clients having regard to their personal and financial circumstances, including the clients' low investment risk tolerance, limited investment knowledge, and inability to make the payments on their investment loans without using their own monies in the event the leveraged investment strategy did not perform as the Respondent represented it would.

17. By late 2008 or early 2009, the unit values of the mutual funds purchased by the clients had declined and the distributions paid by the mutual funds to investors were reduced. The clients' portfolios declined significantly in value. This jeopardized the clients' financial security and caused them financial hardship.

Failure to Explain Leveraged Investment Strategy

18. From about September to December 2007, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks, benefits, material assumptions, features and costs of the leveraged investment strategy and its underlying investments that he recommended and implemented in the accounts of clients RG and AG.

19. In particular, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain:

(a) the nature of the distributions that the ROC mutual funds paid to investors such that the clients were not aware that a substantial portion of the distributions paid to investors may consist of a return of the investors' own capital;

(b) the risk that the ROC mutual funds might decline in value over time, particularly since the recommendation was that the clients would use the distributions paid to them by the ROC mutual funds to pay their investment loans or for discretionary expenses;

(c) the risk that if the ROC mutual funds declined in value, the clients may not be able to redeem the ROC mutual funds to pay back the entirety of their investment loans or cover investment losses; and

(d) the risk that the ROC mutual funds might reduce, suspend or cancel altogether the distributions paid to investors due to declining market conditions, poor investment performance or other factors, such that the clients would be forced to incur out-of-pocket expenses to make the payments on their investment loans and sustain the leveraged investment strategy.

20. During his discussions with clients RG and AG, the Respondent focused on the positive aspects of the leveraged investment strategy and did not disclose or discuss all of the attendant risks and potentially negative outcomes. The Respondent either did not disclose and discuss the likelihood of any risks materializing, or if he did discuss such risks and the likelihood of the risks

materializing, he did so in a manner that downplayed the likelihood of the risks arising and the potential consequences for the clients if the risks did materialize.

21. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent presented and relied on documents which showed only positive financial outcomes, and contained no substantial information regarding possible risks or downsides of the leveraged investment strategy, such as investment losses or the possibility that the clients might be paid distributions by the ROC mutual funds that would be insufficient to cover the costs of servicing their investment loans.

22. During the course of recommending the leveraged investment strategy to clients RG and AG, the Respondent also prepared and relied on personalized spreadsheets ("Spreadsheets") for the clients that showed only positive financial outcomes, and did not contain information regarding possible risks or downsides of the leveraged investment strategy.

23. Specifically, the Spreadsheets used illustrations and calculations which:

(a) assumed the ROC mutual fund would pay investors a monthly distribution of $0.08 per unit without alerting the client of the potential risk (and negative impact) of the distributions being reduced or cancelled altogether; and

(b) did not take into account any decreases in the value of the units of the ROC mutual funds which would reasonably be expected to occur as a result of high or unsustainable distribution payments to investors.

24. The Respondent did not present the leveraged investment strategy in the Spreadsheets he provided to clients RG and AG in a fair and balanced manner. The Respondent failed to include performance projections based on more conservative rates of return or declining market conditions, including a negative rate of return (i.e., investment losses), which would have demonstrated to the clients the potential range of outcomes that might arise if they chose to implement the leveraged investment strategy and in particular, the consequences if the leveraged

investment strategy did not generate distributions sufficient to cover the clients' costs of servicing their investment loans.

25. Based on the Respondent's misrepresentations and omissions, the clients believed that:

(a) the leveraged investments they purchased would increase in value significantly while also generating a continuous monthly cash flow;
(b) the leveraged investment strategy was low risk and their investments were secure; and
(c) they would not have to incur out-of-pocket expenses in order to implement and sustain the leveraged investment strategy in their accounts.

26. By misrepresenting, failing to fully and adequately explain, or omitting to explain the risks, benefits, material assumptions, features and costs of the leveraged investment strategy to two clients as described above, the Respondent failed to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Unsuitable Leveraging Recommendations

27. In September 2007, the Respondent recommended and implemented a leveraged investment strategy in the accounts of clients FL and SM, that was not suitable for the clients having regard to the clients' KYC information and financial circumstances including:

(a) the clients' low risk tolerance;
(b) the clients' limited or total lack of investment knowledge;
(c) the ability of the clients to afford the costs associated with the investment loans, regardless of the performance of the investments and without relying on anticipated income or gains from the investments;

(d) the ability of the clients to withstand investment losses without jeopardizing their financial security if the leverage investment strategy did not perform as the Respondent represented it would.

28. As stated above, based upon the Respondent's recommendation, clients FL and SM borrowed $120,000 in order to implement the leverage investment strategy. At the time clients FL and SM borrowed these monies, the Respondent knew or ought to have known that the clients had another investment loan in place in the amount of $121,000. At the time he recommended the investment loan to clients FL and SM, the Respondent believed that the clients were carrying too much debt. The Respondent nonetheless proceeded to recommended the investment loan and implement the leverage investment strategy anyway.

29. The Respondent's leverage recommendations resulted in the clients having loan-to-net-worth ratio of approximately 153%.

30. The Respondent's leverage recommendation was unsuitable for clients FL an SM having regard to the resulting debt servicing obligations that would be imposed on the clients and the potential for the clients' obligation to repay the investment loans to erode a substantial portion, and potentially all, of the clients' net worth in the event the leveraged investment strategy did not perform as the Respondent represented it would.

31. In implementing the leveraged investment strategy, FL and SM were relying entirely upon the distributions generated by the ROC mutual funds to pay all of the costs of servicing their investment loans. They did not have the means to cover the costs of servicing the investment loans in the event the leveraged investment strategy did not perform as the Respondent represented it would.

32. Clients FL and SM had limited or no investment knowledge, notwithstanding that the Respondent recorded them as having a risk tolerance of "medium high", such that they did not understand and appreciate the potential risks of the leveraged investment strategy before agreeing to implement it in their accounts. The Respondent's conduct exacerbated the effect of

client FL and SM's limited investment knowledge by leading the clients to believe, through his representations and omissions, that the leveraged investment strategy was low risk and secure.

33. As a result of implementing the leveraged investment strategy, clients FL and SM incurred significant investment losses attributable to both a decline in the value of the investments they purchased and the distributions paid by these investments (which required the clients to draw on other sources of assets or income to sustain the leveraged investment strategy).

34. By engaging in the conduct described above, the Respondent failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.2.1 and 2.1.1.

V. CONTRAVENTIONS

35. The Respondent admits that:

i) between September and December 2007, he misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, costs and features of a leveraged investment strategy that he recommended and implemented in the accounts of two clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.1.1 and 2.2.1.

ii) in about September 2007, he failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford

the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.1.1 and 2.2.1.

VI. TERMS OF SETTLEMENT

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

i) the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

ii) the Respondent shall be permanently prohibited from engaging in any leveraging activities with clients, including recommending or applying for investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

iii) the Respondent shall pay a fine in the amount of $5,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

iv) the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1;

v) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.2.1; and

vi) the Respondent will attend in person on the date scheduled for the MFDA settlement hearing.

VII. STAFF COMMITMENT

37. 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 contraventions described in Part VII of this Settlement Agreement, subject to the provisions of Part XI 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

38. 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 Staff and the Respondent.

39. 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.

40. 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 of MFDA 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.

41. 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

42. 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

43. 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.

44. 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

45. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 5th day of December, 2016.

"Charles James White"
Charles James White

"JC"
Witness – Signature

JC
Witness – Print Name

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

Schedule "A"

Order

File No. 201625

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: Charles James White

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 [Respondent] (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:

i) between September and December 2007, misrepresented, failed to fully and adequately explain, or omitted to explain, the risks, benefits, material assumptions, costs and features of a leveraged investment strategy that he

recommended and implemented in the accounts of two clients, thereby failing to ensure that the leveraged investment strategy was suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.1.1 and 2.2.1;

ii) in about September 2007, failed to ensure that the leveraged investment strategy he recommended and implemented in the accounts of two clients were suitable for the clients and in keeping with their investment objectives, having regard to the clients' KYC information and financial circumstances including, but not limited to, the clients' risk tolerance, investment knowledge, ability to afford the costs associated with the investment loans, and ability to withstand investment losses, contrary to MFDA Rules 2.1.1 and 2.2.1;

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two months commencing from the date of the final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;

2. the Respondent shall be permanently prohibited from engaging in any leveraging activities with clients, including recommending or applying for investment loans for clients, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

3. the Respondent shall pay a fine in the amount of $5,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

4. the Respondent shall pay costs in the amount of $5,000, pursuant to s. 24.2 of MFDA By-law No. 1;

5. the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.2.1; and

6. 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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