



**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: James Edward Curtis**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and James Edward Curtis (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (“Settlement Agreement”).

2. Staff conducted an investigation of the Respondent’s activities which disclosed 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.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. 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 section 24.1 of MFDA By-law No. 1.

4. 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”.

5. 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**

6. 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**

7. From October 1997 to October 2016, the Respondent was registered in Ontario as a dealing representative (previously referred to as a mutual fund salesperson) with IPC Investment Corporation (“IPC”), a Member of the MFDA.

8. Prior to being registered with IPC, the Respondent was registered from January 1995 to February 1996 as a mutual fund salesperson with PFSL Investments Canada Ltd.

9. At all material times, the Respondent carried on business from a sub-branch located in Waterloo, Ontario.

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

### **Complaint by Client ER**

11. In or about June 2010, the Respondent became the mutual fund salesperson at IPC responsible for servicing the mutual fund accounts of client ER. Client ER's initial investments were comprised of a transfer of her retirement pension savings to IPC and totaled approximately \$200,929.

12. Client ER was retired at the time of the investments and, according to the New Account Application Forms completed at the time of client ER's accounts being opened, lived on a fixed income, had a limited net worth, "novice" investment knowledge, and was seeking diversified risk in her portfolio.

13. On or about November 8, 2010, the Respondent invested 100% of client ER's investments in the Dynamic Strategic Gold Class fund (the "Gold Fund"), a fund that was at the time identified in its prospectus as "moderate risk".

14. On or about November 30, 2010, client ER invested an additional \$50,000 with the Respondent, who invested 100% of the monies in the Gold Fund.

15. In the period subsequent to her initial investments, client ER experienced significant losses in her accounts.

16. In or about June 2013, client ER complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for her.

17. In or about September 2013, IPC paid client ER the amount of \$119,787.

### **Complaint by Clients HM & WM**

18. In or about February 2006, the Respondent became the mutual fund salesperson at IPC responsible for servicing the mutual fund accounts of clients HM and WM, spouses of one another. Clients HM and WM's initial investments were comprised of a transfer of their retirement savings to IPC.

19. In or about June 2010, the Respondent invested 100% of clients HM and WM's investments (approximately \$206,362) in the Gold Fund.

20. At the time the Respondent invested clients HM and WM's investments in the Gold Fund, they were both 83 years old, retired, lived on a fixed income, and had limited investment knowledge.

21. In the period subsequent to investing in the Gold Fund, clients HM and WM experienced significant losses in their accounts.

22. In or about June 2016, clients HM and WM complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for them.

23. In or about October 2016, IPC paid clients HM & WM the amount of \$62,094.

### **Complaint by Client BM**

24. In or about 1997, the Respondent started servicing the mutual fund accounts of client BM. Client BM's initial investments were comprised of a transfer of his retirement savings to IPC.

25. In or about May 2010, the Respondent invested approximately 99% of client BM's investments (approximately \$275,539) in the Gold Fund.

26. At the time the Respondent invested client BM's investments in the Gold Fund, he had limited investment knowledge and experience.

27. In the period subsequent to investing in the Gold Fund, client BM experienced significant losses in his accounts.

28. In or about May 2017, client BM complained to IPC that, among other things, the investments recommended by the Respondent were not suitable for him.

29. In or about September 2017, IPC paid client BM the amount of \$177,567.

#### **IPC's Termination of the Respondent**

30. On November 11, 2013, IPC issued a termination letter to the Respondent, with an effective termination date of January 10, 2014. The termination letter advised that the termination was due to IPC's investigation of the complaint of client ER, the Respondent's extensive use of precious metals investment products within his clients' portfolios, and the Respondent's views not aligning with IPC's as to how best to manage client assets.

#### **Change to Gold Fund Risk Rating**

31. On or about December 5, 2013, Dynamic Funds (the mutual fund manufacturer) changed the risk rating of the Gold Fund from "medium" to "medium-to-high".

### **IPC's Rescission of the Respondent's Termination**

32. In or about early January 2014, the Respondent requested that IPC rescind his termination. After discussions with the Respondent, IPC agreed to rescind the Respondent's termination.

### **The Respondent Fails to Follow IPC's Directives**

33. In or about early January 2014, IPC directed the Respondent to send a letter to 96 of his clients who were heavily concentrated in the Gold Fund ("the Letter"). The Letter was drafted by IPC but identified the Respondent as the author/sender. The Letter advised clients that:

- a) the Gold Fund had changed its risk rating from "medium" to "medium-to-high";
- b) there were concentration issues in the client's accounts; and
- c) the Respondent was seeking a meeting with the client to review and diversify the client's account holdings.

34. IPC directed the Respondent to review each client's account, and where necessary, make recommendations to reduce the client's concentration in the Gold Fund. IPC sought the Respondent's confirmation that he would follow this approach.

35. On or about January 10, 2014, the Respondent advised IPC that he had "many concerns" with the Letter, and that, in opposition to what IPC was directing, he was only willing to meet with his clients to adjust their risk tolerance on KYC forms to reflect the risk rating change in the Gold Fund.

36. On or about January 10, 2014, IPC directed the Respondent to confirm that he would, where necessary, make recommendations to clients to redeem the Gold Fund as part of a rebalancing exercise to reduce the concentration in their accounts.

37. On or about January 10, 2014, in opposition to what IPC was directing, the Respondent advised that if a client had questions or concerns regarding their current portfolio position, he would make recommendations “away from gold”.

38. On or about January 15, 2014, IPC sent the Letter to the Respondent’s clients.

39. In the months that followed, the Respondent met with 82 of the 96 clients who received the Letter, and advised his clients that:

- i. selling the Gold Fund would result in a deemed disposition; and
- ii. in order to maintain their current concentration in the Gold Fund, they would have to complete an updated KYC form increasing their risk tolerance from “medium” to “medium-to-high”.

40. The Respondent failed to present the risks of holding investments concentrated in the Gold Fund in a fair and balanced manner.

41. Rather than reassess the suitability of recommendations to clients to be invested solely in the Gold Fund and, where appropriate, make recommendations to reduce the clients’ concentration in the Gold Fund, the Respondent arranged for at least 75 of the 82 clients he met with to complete updated KYC forms which increased the clients’ risk tolerance from “medium” to “medium-to-high”. The Respondent engaged in this activity to ensure that the clients’ KYC information matched his investment recommendations, without assessing the essential KYC factors relevant to each individual client.

42. Notwithstanding the directive provided by the Member, the Respondent adjusted the investment portfolios for only 3 of the 82 clients he met following the delivery of the Letter.

43. On October 7, 2016, IPC terminated the Respondent.

## **V. THE RESPONDENT'S POSITION**

44. The Respondent resides in Waterloo, Ontario and is 51 years old.
45. The Respondent has been diagnosed with multiple sclerosis and uses a motorized wheelchair. His physical condition is progressively worsening.
46. The Respondent states that he is impecunious, and is receiving disability benefits in the approximate amount of \$800 per month. He had his house sold by the bank, and is living in an apartment he shares with another individual.
47. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
48. The Respondent has cooperated with MFDA Staff throughout the investigation and the disciplinary proceedings.

## **VI. CONTRAVENTIONS**

49. The Respondent admits that:
  - i. between about January and April 2014, the Respondent failed to follow a series of compliance directives from the Member requiring the Respondent to reassess the suitability of his recommendations to clients to hold 100% of their investments in a single precious metal sector fund and, where appropriate, make recommendations to reduce the clients' concentration in the fund, contrary to MFDA Rules 2.2.1 and 2.1.1; and
  - ii. between about January and April 2014, the Respondent arranged for at least 75 clients to complete updated Know-Your-Client forms which increased the clients' risk tolerance, in order to ensure that the clients' Know-Your-Client information



matched his recommendations to hold 100% of their investments in a single precious metal sector fund, contrary to MFDA Rules 2.2.1 and 2.1.1.

## **VII. TERMS OF SETTLEMENT**

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

- i. the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and
- ii. the Respondent shall attend via teleconference on the date scheduled for the MFDA settlement hearing.

## **VIII. STAFF COMMITMENT**

51. 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 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 Parts IV and VII, 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.

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

52. 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 counsel for the Respondent. MFDA settlement hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA 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](http://www.mfda.ca).

53. 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.

54. 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 section 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 MFDA By-law No. 1.

55. 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.

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

56. 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 MFDA 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.

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

57. 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.

58. 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.

## **XII. DISCLOSURE OF AGREEMENT**

59. 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.

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

## **XIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 11<sup>th</sup> day of October, 2017.

“James Edward Curtis”

\_\_\_\_\_  
James Edward Curtis

“ABF”

\_\_\_\_\_  
Witness – Signature

ABF

\_\_\_\_\_  
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. 201687



**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  
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**Re: James Edward Curtis**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada ("MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] ("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** the Hearing Panel is of the opinion that the Respondent:

- a) between about January and April 2014, the Respondent failed to follow a series of compliance directives from the Member requiring the Respondent to reassess the suitability of his recommendations to clients to hold 100% of their investments in a single precious metal sector fund and, where appropriate, make recommendations to

reduce the clients' concentration in the fund, contrary to MFDA Rules 2.2.1 and 2.1.1; and;

- b) between about January and April 2014, the Respondent arranged for at least 75 clients to complete updated Know-Your-Client forms which increased the clients' risk tolerance, in order to ensure that the clients' Know-Your-Client information matched his recommendations to hold 100% of their investments in a single precious metal sector fund, contrary to MFDA Rules 2.2.1 and 2.1.1.

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

1. the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1; and

2. 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]

DM 583800