



**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: Robert Stephen Mitchell**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By 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 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, Robert Stephen Mitchell (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. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA, in Ontario since September 1997, Alberta since November 2001, and British Columbia since July 2008.

7. At all material times, the Respondent conducted business in the Thunder Bay, Ontario area.

## **Background**

8. In March 2009, Quadrus compliance staff conducted a review of the Respondent's branch office (the "2009 Branch Review"). During this review, Quadrus compliance staff detected that the Respondent had, or may have, among other things, engaged in discretionary trading with clients and personal financial dealings with a client by reimbursing or offering to reimburse a deferred sales charge ("DSC") fee incurred by a client.

9. Following the conclusion of the 2009 Branch Review, the Respondent confirmed, in writing, that he would rectify the deficiencies identified in the 2009 Branch Review.

10. In September 2010, Quadrus compliance staff conducted a review of the Respondent's branch office (the "2010 Branch Review"). During this review, Quadrus compliance staff detected that the Respondent had, or may have, among other things, engaged in discretionary trading with clients, engaged in personal financial dealings with clients by reimbursing or offering to reimburse DSC and short term trading ("STT") fees incurred by clients, and used pre-signed account forms.

11. In April 2011, the Respondent signed an "Action Plan" confirming that he would rectify the deficiencies identified in the 2010 Branch Review.

12. In September 2014, Quadrus compliance staff conducted a review of the Respondent's branch office (the "2014 Branch Review"). During this review, Quadrus compliance staff detected that the Respondent had obtained, possessed or used to process transactions, 12 pre-signed account forms.

13. In November 2014, Quadrus issued a disciplinary letter to the Respondent advising the Respondent that he was prohibited from possessing or using pre-signed account forms (the "Disciplinary Letter").

14. In March 2015, as a result of the conduct detected during the branch reviews, Quadrus compliance staff reviewed all of the client files maintained by the Respondent (the “File Review”).

15. The misconduct described in this Notice of Hearing was detected during the 2009 Branch Review, 2010 Branch Review and 2014 Branch Review, and File Review described above.

### **Discretionary Trading**

16. At all material times, Quadrus’ policies and procedures prohibited its Approved Persons from engaging in discretionary trading.

17. Between September 2014 and March 2015, the Respondent processed approximately 28 trades (the “Trades”) in respect of 10 clients where he determined the specific elements of the Trades, including the mutual fund that was traded, the amount of the trade and/or the timing of the trade.

18. The clients provided the Respondent or his assistant with a general authorization to process the Trades without specifying the specific elements of the Trades, or the Respondent contacted the clients after he processed the Trades and informed the clients that he had “rebalanced” their accounts.

19. The Respondent engaged in the conduct described above after:

- i) the Respondent confirmed, in response to the 2009 Branch Review, that he would not engage in discretionary trading; and
- ii) the Respondent signed the Action Plan following the 2010 Branch Review which required him to, among other things, “always contact his client by phone or email before rebalancing any accounts”.

20. By virtue of the foregoing, the Respondent engaged in discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1.

### **Personal Financial Dealings**

21. At all material times, Quadrus' policies and procedures prohibited its Approved Persons from directly reimbursing commission payments to clients.

22. Since at least April 2008, Quadrus' policies and procedures prohibited its Approved Persons from engaging in personal financial dealings with clients "which might affect or appear to affect decisions or actions taken with regard to Quadrus", or from making "contributions to a client's account or paying for adjustments to a client's investments without Quadrus' knowledge and approval".

23. Between March 2005 and January 2015, the Respondent directly reimbursed 4 clients for DSC fees and STT fees incurred by the clients. The reimbursements are summarized in the table below:

<b>Client</b>	<b>Date of Reimbursement</b>	<b>Type of Reimbursement</b>	<b>Amount Reimbursed</b>
WB	March 29, 2005	DSC	\$881.73
### Inc.	April 30, 2008	DSC	\$225.93
MH Ltd.	May 14, 2009	STT	\$500.00
HC	January 20, 2015	DSC	\$49.36

24. The Respondent directly reimbursed client HC for a DSC fee after:

- i) the Respondent confirmed, in response to the 2009 Branch Review, that he would not engage in personal financial dealings with clients; and
- ii) the Respondent signed the Action Plan following the 2010 Branch Review which required him to cease this activity.

25. By virtue of the foregoing, the Respondent engaged in personal financial dealings with clients, which gave rise to a conflict or potential conflict of interest between the Respondent and the clients that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

### **Pre-Signed Account Forms**

26. At all material times, Quadrus' policies and procedures prohibited its Approved Persons from using pre-signed account forms.

27. Between about March 2010 and August 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 25 pre-signed account forms in respect of 12 clients.

28. The pre-signed account forms included Switch Forms, Redemption Forms, Subsequent Investment Forms, an RESP Education Assistance Payment Form, and a Transfer Form.

29. The Respondent obtained, possessed or used to process transactions, 12 of the 25 pre-signed account forms described above after the Respondent signed the Action Plan in April 2011 which required him to cease using pre-signed account forms.

30. The Respondent obtained, possessed or used to process transactions, 8 of the 25 pre-signed account forms described above after Quadrus had issued the Disciplinary Letter to him prohibiting him from possessing or using pre-signed account forms.

31. By virtue of the foregoing, the Respondent obtained, possessed and, in some instances, used to process transactions, 25 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.

## **Action Taken by the Member**

32. In November 2014 and May 2015, Quadrus sent letters to all of the Respondent's clients to determine whether the Respondent had engaged in any unauthorized trading activity in the clients' accounts. None of the clients reported any concerns.

33. In February 2015, Quadrus placed the Respondent on close supervision whereby, among other things, the Respondent's branch manager was required to:

- i) review all trade documentation related to trades processed by the Respondent on corporate client accounts during the period of close supervision to verify that evidence of client authorization was present for each trade; and
- ii) review two of the Respondent's client files per month to test for instances of discretionary trading, personal financial dealings with clients, and the use of pre-signed forms.

34. On July 20, 2015, Quadrus expanded the terms of the close supervision to require the Respondent's branch manager to review all trades processed by the Respondent on individual as well as corporate client accounts to verify that evidence of client authorization was present for each trade. No further concerns have arisen since July 20, 2015. The Respondent remains under close supervision.

35. In October 2015, Quadrus compliance staff conducted a further review of 25 of the Respondent's client files. During the review, Quadrus did not identify any further instances where the Respondent had engaged in discretionary trading, engaged in personal financial dealings with clients, or used pre-signed account forms.

## **Additional Factors**

36. There is no evidence of client harm with respect to the misconduct described in this Settlement Agreement and there have been no client complaints.

37. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond the commissions and fees that he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.

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

39. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

## **V. CONTRAVENTIONS**

40. The Respondent admits that:

- (a) between September 2014 and March 2015, the Respondent processed approximately 28 trades in respect of 10 clients where he determined the specific elements of the trades, including the mutual fund that was traded, the amount of the trade and/or the timing of the trade, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1;
- (b) between March 2005 and January 2015, the Respondent directly reimbursed 4 clients for deferred sales charge fees and short term trading fees incurred by the clients, thereby engaging in personal financial dealings with the clients which gave rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1; and
- (c) between about March 2010 and August 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 25 pre-signed account forms in respect of 12 clients, contrary to MFDA Rule 2.1.1.



## **VI. TERMS OF SETTLEMENT**

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

- a) 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 one month commencing from the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$30,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No 1;
- d) the Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4 and 2.3.1; and
- e) the Respondent will attend in person on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

42. 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 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 contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part 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

43. 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. 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).

44. 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.

45. 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 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.

46. 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**

47. 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**

48. 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.

49. 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**

50. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 5<sup>th</sup> day of April, 2017.

“Robert Stephen Mitchell”  
\_\_\_\_\_  
Robert Stephen Mitchell

“MC”  
\_\_\_\_\_  
Witness – Signature

MC  
\_\_\_\_\_  
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. 201689**



**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: Robert Stephen Mitchell**

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**ORDER**

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**WHEREAS** on November 15, 2016, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Hearing pursuant to ss. 20 and 24 of By-law No. 1 in respect of Robert Stephen Mitchell (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:

- a) between September 2014 and March 2015, the Respondent processed approximately 28 trades in respect of 10 clients where he determined the specific elements of the trades, including the mutual fund that was traded, the amount of the trade and/or the timing of the trade, thereby engaging in discretionary trading,

contrary to MFDA Rules 2.3.1 and 2.1.1;

- b) between March 2005 and January 2015, the Respondent directly reimbursed 4 clients for deferred sales charge fees and short term trading fees incurred by the clients, thereby engaging in personal financial dealings with the clients which gave rise to a conflict or potential conflict of interest that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1; and
- c) between about March 2010 and August 2014, the Respondent obtained, possessed and, in some instances, used to process transactions, 25 pre-signed account forms in respect of 12 clients, 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 suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of one month commencing from the date of this Order, pursuant to s. 24.1.1(c) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$30,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1, 2.1.4 and 2.3.1; and
5. 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 529222 v1