



**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: Rhys William Douglas Martell**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and Rhys William Douglas Martell (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (the “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 By-law No. 1.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between August 2012 and April 2015, the Respondent processed transactions in the accounts of clients, without obtaining client instructions in respect of the amount of the transaction, the mutual fund being purchase or sold, or timing of the transactions, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1; and
- b) between July 23, 2015 and July 25, 2015, the Respondent failed to record and maintain evidence of client trade instructions with respect to transactions in client accounts, contrary to the Member's policies and procedures, and MFDA Rules 1.1.2, 2.5.1., 2.1.1, and 5.1(b).

5. Staff and the Respondent agree and consent 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 Order, pursuant to s.24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$30,000 pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 1;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.5.1., 5.1(b), 2.3.1 and 2.1.1;
- e) the Respondent will attend the Settlement Hearing in person.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule "A".

### **III. AGREED FACTS**

#### **Registration History**

7. The Respondent has been registered in the securities industry since 2008.
  
8. Since August 5, 2015, the Respondent has been registered in British Columbia and Alberta as a mutual fund salesperson (now known as a dealing representative) since August 5, 2015 with Worldsource Financial Management Inc. (“Worldsource”), a Member of the MFDA.
  
9. Between January 22, 2008 and July 28, 2015, the Respondent was registered as a mutual fund salesperson in British Columbia and Alberta with Investors Group Financial Services Inc. (“IG”), a Member of the MFDA.
  
10. At all material times, the Respondent carried on business in the Abbotsford, British Columbia area.

#### **Background**

11. At all material times, it was the Respondent’s practice to have clients invest in IG’s Symphony Portfolios, which are portfolios of IG mutual funds with asset allocations based on clients’ Know-Your-Client information.
  
12. The Respondent would complete a yearly rebalancing of client accounts, which consisted of the Respondent making switches among IG mutual funds represented in the Symphony Portfolios. IG’s Symphony Portfolio software produces a report that shows the switches required to rebalance a client’s asset allocation. Once the IG Approved Person obtains a report, they are required to have a discussion with the client about the rebalancing and obtain instructions before processing the switches required to rebalance a client’s account. As described in more detail below, it was the Respondent’s practice to rebalance client portfolios annually or based on his view of market trends to conduct the rebalance using IG’s Symphony Portfolio software.

13. Prior to the rebalancing, the Respondent sent clients individual emails, informing them that he intended to rebalance their accounts, but he did not provide the details of the proposed rebalancing, including: the amount, the fund selection, and the timing of when each switch would be processed. In his email to clients, the Respondent sought authorization to proceed with rebalancing, and if the clients replied to his email and approved of the rebalancing, the Respondent proceeded to process switches to change the asset allocation in the client's Symphony Portfolio. The Respondent states that he only proceeded when clients responded with their approval, but as mentioned above, he did not provide the clients with the details of the transactions.

## **Discretionary Trading**

### Discretionary Trading in August 2012

14. At all material times, IG had a policy and procedure in place that prohibited its Approved Persons from engaging in discretionary trading.

15. On August 1, 2012, the Respondent sent an email to 18 clients seeking instructions to rebalance their portfolios. The email to the clients did not provide the details of the rebalancing including the amount, fund selection, and timing of when each switch was to occur.

16. The Respondent states that based on client responses to his email, on August 9, 2012, he processed 274 switches in 18 client accounts to rebalance the clients' portfolios.

17. The Respondent exercised his discretion to determine the amount, fund selection and timing when each switch in the clients' accounts was submitted to IG for processing, without discussing these elements of the transactions with the clients in each instance or maintaining record of client authorization.

18. In November 2012, IG conducted a branch audit of the Respondent's client files and identified that the Respondent processed 274 trades in 18 client accounts without any evidence of client authorization.

19. On February 5, 2013, the Respondent's branch manager at IG advised the Respondent that he should not accept email instructions to process transactions, and trades must be processed on the date the orders/confirmations are received or the next day. IG required that the Respondent add a message to the signature of his emails that states:

*"Please note trade instructions received by email, fax, or text may not be processed until I've had the opportunity to review your file and discuss the transaction request. Consequently no pricing is guaranteed by leaving the message."*

20. The Respondent exercised his discretion to determine the amount, fund selection and timing when each switch was submitted to IG for processing, without discussing these elements of the transactions with the clients in each instance or maintaining record of client authorization.

#### Discretionary Trading in March 2015

21. On March 20, 2015, the Respondent sent an email as described above at paragraph 13, to 86 clients advising them that he intended to rebalance their portfolios, and requested their authorization to do so. The email to the clients did not provide the details of the rebalancing including the amount, fund selection, and timing of when each switch was to occur.

22. In April 2015, the Respondent received from clients emailed instructions in response to his emails to clients, and processed switches in 78 of the 86 client accounts for clients who authorized him to proceed.

23. The Respondent exercised his discretion to determine the amount, fund selection and timing when each switch was submitted to IG for processing, without discussing these elements of the transactions with the clients in each instance or maintaining record of client authorization.

#### Close Supervision

24. On April 9, 2015, IG conducted a branch audit and identified the conduct described above at paragraphs 21 to 23.

25. On May 1, 2015, IG placed the Respondent under close supervision for a 6 month period, as it investigated the discretionary trading.

Failure to Maintain Adequate Records of Client Discussions

26. At all material times, IG had a policy and procedure that required its Approved Persons to maintain documentation or electronic notes in a client file when accepting trading instructions from a client. Approved Persons are required to include in their written record or electronic notes the following:

- a) documenting the client's verbal instructions;
- b) the date and time of the discussion;
- c) the details of any trade instructions;
- d) whether it was solicited or unsolicited; and
- e) evidence that a discussion about no-load vs. DSC took place.

27. Between July 23, 2015 and July 25, 2015, while the Respondent was under close supervision, the Respondent processed changes to the Pre-Authorized Contributions ("PAC") in 20 client accounts from DSC to a No Load fee structure, without maintaining written record of the clients' instructions.

28. The Respondent states that he processed the changes to the clients' PACs who expressed they intended to transfer their accounts to Worldsource, because the Respondent intended to transfer his registration to Worldsource in August 2015.

29. On July 28, 2015, the Respondent resigned from IG, and on August 5, 2015, the Respondent became registered with Worldsource.

## **IG's Investigation**

30. On May 1, 2015, IG issued a warning letter the Respondent placing him on close supervision while IG investigated the conduct described above at paragraphs 21 to 23.

31. In August 14, 2015, IG sent letters to the clients that were affected by the discretionary trading, IG did not receive any client complaints about the Respondent.

## **IV. ADDITIONAL TERMS OF SETTLEMENT**

32. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

33. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. 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).

34. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

35. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent waives any 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. 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. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) 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; and
- e) 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 the Respondent.

36. If, for any reason, this Settlement Agreement is not accepted 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 the Settlement Agreement or the settlement negotiations.

37. Staff and the Respondent agree that the terms of the 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.



38. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 31<sup>st</sup> day of October, 2017.

“Rhys William Douglas Martell”  
Rhys William Douglas Martell

“SR”  
Witness – Signature

SR  
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. 201782**



**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: Rhys William Douglas Martell**

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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 Rhys William Douglas Martell (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:

- a) between August 2012 and April 2015, the Respondent processed at least 352 transactions in the accounts of at least 78 clients, without obtaining client instructions in respect of the amount of the transaction, the mutual fund being purchase or sold, or timing of the transactions, thereby engaging in discretionary trading, contrary to MFDA Rules 2.3.1 and 2.1.1; and

- b) between July 23, 2015 and July 25, 2015, the Respondent failed to record and maintain evidence of client trade instructions with respect to at least 20 transactions in 20 client accounts, contrary to the Member's policies and procedures, and MFDA Rules 1.1.2, 2.5.1., 2.1.1, and 5.1(b).

**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 months, commencing from the date of the Hearing Panel's Order, pursuant to s.24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall pay a fine in the amount of \$30,000 pursuant to section 24.1.1(b) of By-law No. 1;
3. the Respondent shall pay costs in the amount of \$2,500, pursuant to section 24.2 of By-law No. 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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