



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: David Michael Gordon

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 section 24.4 of By-law No. 1, a hearing panel of the Pacific 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 David Michael Gordon (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 in the securities industry since 1992.

7. From November 9, 2006 to May 13, 2016, when he retired, the Respondent was registered in British Columbia as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

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

9. At all material times, the Respondent had an office in the Campbell River, British Columbia area and served clients throughout British Columbia.

The Gold Strategy

10. Between 2009 and May 2016, the Respondent recommended an investment strategy to at least 6 clients whereby the clients would purchase, among other things, precious metals (predominantly, gold) sector mutual funds (the “Gold Strategy”).

11. In the course of recommending the Gold Strategy to clients, the Respondent represented that, among other things:

- a) the price of gold and other precious metals was poised to increase due to an imminent decline in the stock market; or
- b) investing in gold and precious metals sector funds was a safer alternative to investing in the stock market generally.

The Respondent Failed to Assess Suitability on a Client-by-Client Basis

12. The Respondent failed to adequately consider whether his recommendations to engage in the Gold Strategy were suitable on a client-by-client basis, having regard to the essential KYC factors relevant to each individual client, prior to making the recommendations to at least 6 clients.

13. The Respondent states he discussed various investment options with his clients. However, the Respondent recommended that at least 6 clients concentrate their investment holdings in precious metals sector funds, without regard to each client's KYC information, based upon his views as to how these funds would perform.

14. The Respondent failed adequately consider whether it was suitable for at least 6 clients to hold non-diversified investments in their investment accounts held at FundEX.

The Respondent Failed to Fully Explain the Risks of the Gold Strategy

15. As described above, in the course of recommending the Gold Strategy to at least 6 clients, the Respondent represented that, among other things, the price of gold and other precious metals were poised to increase dramatically, and investing in gold and precious metals sector funds was a relatively low risk investment.

16. The Respondent failed to fully explain to at least 6 clients the risks and benefits of investing in precious metals sector funds, including the risk of holding non-diversified investments and the risk that Gold Strategy would not perform as he represented it would.

17. The Respondent states he explained some of the risks of investing in precious metals sector funds and he states it was his practice to provide clients with the prospectus for each precious metals sector fund he recommended, however he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy to at least 6 clients.

Client A and B

18. Clients A and B were clients of the Respondent since the 1980s. From November 2006 to June 2016, clients A and B were clients of FundEX and the Respondent was the Approved Person responsible for servicing their investment accounts at FundEX.
19. Clients A and B are spouses.
20. Since about 2007, clients A and B made monthly withdrawals from Registered Retirement Income Fund (“RRIF”) accounts they each held at FundEX.
21. Clients A and B also each held a Registered Retirement Savings Plan (“RRSP”) at FundEX.
22. In February 2009, clients A and B implemented the Gold Strategy. Clients A and B sold their existing investments totaling \$103,000 in their RRSP and RRIF accounts, and invested 50% of the monies in the BMG Bullion Fund and 50% of the monies in a money market fund.
23. At the time the Respondent recommended the Gold Strategy, clients A and B:
 - a) were 68 years old;
 - b) Client A had low investment knowledge and was retired;
 - c) Client B had moderate investment knowledge and was a house cleaner;
 - d) had limited net worth (less than \$200,000);
 - e) had limited income (less than \$30,000 per year) and required their investment holdings to pay for living expenses; and
 - f) had limited ability to withstand investment losses.
24. After clients A and B implemented the Gold Strategy, the clients continued making monthly redemptions of the money market mutual fund in order to pay living expenses.
25. By January 2013, clients A and B had depleted their holdings of the money market fund through monthly withdrawals to pay living expenses and held only the BMG Bullion Fund in their accounts at FundEX.

26. After the money market holdings were depleted, clients A and B began making monthly redemptions of the BMG Bullion Fund in order to pay living expenses.

27. Notwithstanding that the Respondent was aware that clients A and B had depleted their holdings of the money market fund and were redeeming their holdings of the BMG Bullion Fund to pay living expenses, he did not recommend that the clients rebalance their accounts at FundEX.

28. Commencing in about May 2013, client B began emailing the Respondent and expressing concerns about the performance of the Gold Strategy. For example, on May 7, 2013, client B sent an e-mail to the Respondent stating:

I was just wondering why my funds went down \$4,245.57 from March 15 to April 15, was there a crash in my funds or something? At this rate I'll be out of money very quickly. Could you please let me know.

29. The Respondent replied the same day and stated:

Gold/silver/platinum dropped from April 6 to the April 15, 2013, then it has come back up about 60% of the drop...There is a split in prices between Paper Gold and Real gold. The experts believe it will bounce back to the \$1500+, then work its way up over the year. We moved to the Real Gold because of all the problems in the world, and things are getting worse... Things are going to end badly (just when) and I want to have real assets, (gold/silver/platinum). Things can go real badly at anytime. I want to stay put for now and be patient... It will take a jump, problem is just when? The longer it goes the bigger the jump. We are heading for either major inflation or major financial adjustment. That is why the gold and silver. It is coming. [Emphasis added.]

30. On July 23, 2013, client B sent an e-mail to the Respondent stating:

I just got my Transaction Confirmation and as of from May 15 to June 16th I have gone down \$2,359.13 and [client A] has gone down \$6,021.82 from May 1 to June 28th. At this rate we won't have any money left in 10 months. Is there something we can do or are we still to hold out.

31. The Respondent responded on the same day and stated:

On June 28, 2013 Gold/Silver bottom out and is now climbing. Problem is that it went too far up in 2011 then went too far down this year... The world problem (financially) just keep getting worse and worse. They keep printing money. The question is when will there be a lose (*sic*) in the US Dollar confidence...It is up again today and the Magic Technical point is \$1350. It is \$1342 right now. If it closes over \$1350 the experts say things will take off. We have to stay put, it is happening. [Emphasis added.]

32. On November 22, 2014, client B sent an email to the Respondent stating:

I was just wondering if there is anywhere else I can put my money as it is going down pretty fast...I haven't got a heck of a lot left so it is kind of scary when it goes down so fast.

33. On November 25, 2014, the Respondent responded by email and stated:

World GDP is dropping rapidly and heading for a recession. Which will lead to more money printing... Gold is a Currency... Problem has been the Silver dropped more. I know if you have time, it will come back. Problem is when? [Emphasis added.]

34. In this response e-mail dated November 25, 2014, the Respondent provided options for clients A and B to move their investments into Guaranteed Investment Certificates but advised client B that the “problem is interest rates are low and have not really changed in 5 years.”

35. Notwithstanding that the Respondent was aware of the concerns expressed by the clients with respect to the Gold Strategy, the Respondent did not recommend rebalancing their accounts until November 25, 2014.

36. The Respondent failed to fully explain the risks associated with concentrating clients A and B investment portfolio in precious metals sector funds. The Respondent states he explained some of the risks of investing in precious metals sector funds, but he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

37. In June 2016, clients A and B transferred their accounts out of FundEX.

38. Clients A and B suffered losses as result of having a concentrated position in precious metals sector funds.

39. In January 2017, clients A and B submitted a complaint with FundEX with respect to the Respondent's handling of their accounts.

40. Clients A and B suffered losses as result of having a concentrated position in precious metals sector funds.

41. On December 15, 2017, FundEX compensated clients A and B for these losses.

Client MB

42. From November 2006 to June 2016, client MB was a client of FundEX and the Respondent was the Approved Person responsible for servicing her investment accounts at FundEX.

43. On November 27, 2006, the Respondent recorded the following information on client MB's New Client Application Form:

- a) Occupation: Retired;
- b) Income: \$30,000 to \$50,000;
- c) Net Worth: Over \$200,000;
- d) Investment Knowledge: Fair (Low);
- e) Liquidity: 5+ years;
- f) Investment Objectives: Balanced; and
- g) Portfolio Risk Rating: 50% Low to Moderate and 50% Moderate.

44. In February 2009, the Respondent states he discussed various investment options with client MB but recommended that client MB implement the Gold Strategy. Based upon this advice, client MB switched \$63,303 in CI Global High Dividend Advantage Fund and \$3,476 in CI International Fund to the BMG Bullion Fund.

45. At the time the Respondent recommended the Gold Strategy, client MB:

- a) was 72 years old and retired;
- b) had low investment knowledge;
- c) wanted a low risk investment;
- d) had limited income (between \$30,000-\$50,000 per year) and required her investment holdings to pay for living expenses; and
- e) had limited ability to withstand investment losses.

46. On April 22, 2011, the Respondent updated client MB's KYC information as follows:

- a) Occupation: Retired;
- b) Income: \$50,001 to \$70,000;
- c) Net Worth: Over \$200,001;

- d) Investment Knowledge: Good (Moderate);
- e) Liquidity: 5 years and over
- f) Investment Objectives: Growth; and
- g) Portfolio Risk Rating: 50% Moderate, 30% Moderate to High, 20% High.

47. Client MB told the Respondent she wanted low risk investments and she had low investment knowledge. In the April 22, 2011 KYC update, the Respondent failed to accurately record client MB's investment knowledge and portfolio risk rating (i.e., risk tolerance). The Respondent recorded client MB's investment knowledge as "Good", and her portfolio risk rating as "50% Moderate, 30% Moderate to High and 20% High".

48. On September 8, 2011, at the Respondent's recommendation, client MB switched \$50,000 from the CI Money Market Fund to the CI Signature Gold Fund.

49. On September 11 and 19, 2012, at the Respondent's recommendation, client MB switched a total of \$50,000 from the CI Money Market Fund to the CI Signature Gold Fund. As a result, as of December 31, 2012, client MB held approximately 50% of her portfolio in precious metal sector funds.

50. Between 2009 and 2012, client MB's holding in precious metals sector funds in her portfolio increased from approximately 28% to 50%. The Respondent did not recommend that client MB rebalance her account to decrease the level of concentration.

51. The Respondent failed to ensure that an investment recommendation he made to client MB to invest in precious metal sector funds was suitable having regard to the clients' relevant Know-Your-Client factors including age, employment status, risk tolerance and ability to withstand investment losses.

52. The Respondent failed to fully explain the risks associated with concentrating client MB's investment portfolio in precious metals sector funds. The Respondent states he explained some of the risks of investing in precious metals sector funds and he states it was his practice to provide clients with the prospectus for each precious metals sector fund he recommended, when he recommended the Gold Strategy, but he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

53. In June 2016, client MB transferred her account out of FundEX.
54. Client MB suffered losses as result of having a concentrated position in precious metals sector funds.
55. On March 27, 2019, FundEX compensated client MB for these losses.

Client SG

56. From January 2012 to June 2016, client SG was a client of FundEX and the Respondent was the Approved Person responsible for servicing her investment accounts at FundEX.
57. In February 2012, the Respondent states he discussed various investment options with client SG and recommended that client SG implement the Gold Strategy.
58. On March 2, 2012, based upon the Respondent's recommendation, client SG redeemed \$35,000 of the CI Money Market Fund and invested \$35,000 in the BMG Bullion Fund.
59. On April 2, 2012, based on the Respondent's recommendation, client SG invested an additional \$20,000 in BMG Bullion Fund.
60. At the time the Respondent recommended the Gold Strategy, client SG:
 - a) was 55 years old;
 - b) had low investment knowledge;
 - c) wanted low risk mutual funds;
 - d) had limited net worth (under \$200,000);
 - e) had limited income (less than \$30,000 per year); and
 - f) had limited ability to withstand investment losses.
61. Client SG told the Respondent she wanted low risk investments. The Respondent recorded her Portfolio Risk Rating as 30% Moderate, 30% Moderate to High and 40% High. As a result the Respondent failed to accurately record client SG's KYC information.
62. As at December 31, 2012, approximately 59% of client SG's portfolio at FundEX was invested in the BMG Bullion Fund.

63. As at December 31, 2014, as a result of a redemption in the BMG Bullion Fund, approximately 39% of client SG's portfolio at FundEX was invested in the BMG Bullion Fund and that level was maintained until client SG transferred her accounts out of FundEX in June 2016.

64. The Respondent failed to ensure that an investment recommendation he made to client SG to invest in precious metals sector funds was suitable having regard to the clients' relevant Know-Your-Client factors including risk tolerance, investment objectives and ability to withstand investment losses.

65. The Respondent failed to fully explain the risks associated with concentrating client SG's investment portfolio in precious metals sector funds. The Respondent states he explained some of the risks of investing in precious metals sector funds and he states it was his practice to provide clients with the prospectus for each precious metals sector fund he recommended, when he recommended the Gold Strategy, but he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

66. Client SG suffered losses as result of having a concentrated position in precious metals sector funds.

67. On May 22, 2018, FundEX compensated client SG for these losses.

Client TF

68. From 2007 to June 2016, client TF was a client of FundEX and the Respondent was the Approved Person responsible for servicing her investment accounts at FundEX.

69. On March 8, 2007, client TF's New Client Application Form recorded her KYC information as:

- a) Occupation: Self Employed
- b) Income: Less than \$30,000
- c) Net Worth: Over \$200,000
- d) Investment Knowledge: Fair (Low)
- e) Liquidity: 5+ years
- f) Investment Objectives: Growth

- g) Portfolio Risk Rating: 20% Low, 20% Low to Moderate, 20% Moderate, 20% Moderate to High and 20% high

70. In March 2009, the Respondent states he discussed various investment options with client TF and recommended that client TF implement the Gold Strategy.

71. On March 20, 2009, based on the Respondent's recommendation, client TF invested \$30,000 in the BMG Bullion Fund.

72. The Respondent presented the BMG Bullion Fund to client TF as a low risk investment and failed to explain the risks associated with investing in precious metals sector funds. The Respondent states that he explained some of the risks of investing in precious metals sector funds when he recommended the Gold Strategy, he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

73. As a result of the March 20, 2009 purchase, client TF's holdings were not suitable having regard to her KYC information. FundEX compliance staff emailed the Respondent to query the suitability of the trade.

74. On March 25, 2009, in response to the above noted query, the Respondent emailed client TF and stated:

"because we started an new account with BMG (Gold/Silver/Platinum) I forgot we needed a new Know Your Client form signed. I am mailing down to you today with a return envelope to be done. There is several spots to initial and sign. I have Highlighted and put arrows everywhere."

75. The Respondent did not discuss the suitability of his investment recommendation or determine whether it was appropriate to change client TF's KYC information.

76. On November 2, 2010, based on the Respondent's recommendation, client TF invested an additional \$15,000 in the BMG Bullion Fund.

77. On November 3, 2010, FundEX compliance staff emailed the Respondent to query the suitability of the trade.

78. On November 17, 2010, the Respondent provided FundEX with a KYC Update Form that recorded client TF's risk tolerance as 50% Moderate and 50% Moderate to High.

79. At the time the Respondent recommended the Gold Strategy, client TF:

- a) was 53 years old;
- b) had low investment knowledge;
- c) wanted low risk mutual funds;
- d) had limited income (less than \$30,000 per year); and
- e) had limited ability to withstand investment losses.

80. In June 2016 when client TF transferred her accounts out of FundEX, approximately 48% of her money was invested in the BMG Bullion Fund.

81. The Respondent failed to ensure that the investment recommendation he made to client TF to invest in precious metals sector funds was suitable having regard to the client's relevant Know-Your-Client factors including investment knowledge, ability to withstand investment losses and risk tolerance.

82. The Respondent failed to fully explain the risks associated with concentrating client TF's investment portfolio in precious metals sector funds. The Respondent states he explained some of the risks of investing in precious metals sector funds and he states it was his practice to provide clients with the prospectus for each precious metals sector fund he recommended, when he recommended the Gold Strategy, but he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

83. Client TF suffered losses as result of having a concentrated position in precious metals sector funds.

84. In May 2018, FundEX compensated client TF for these losses.

Client GJ

85. From November 2006 to June 2016, client GJ was a client of FundEX and the Respondent was the Approved Person responsible for servicing his investment accounts at FundEX.

86. In November 2006, client GJ opened an RRSP account with FundEX.
87. On November 27, 2006, the Respondent recorded client GJ's Portfolio Risk Rating as 20% Low, 30% Low to Moderate, 30% Moderate, and 20% Moderate to High on client GJ's New Account Application Form.
88. In February 2009, the Respondent states he discussed various investment options with client GJ and recommended that client GJ implement the Gold Strategy.
89. On February 10, 2009, based on the Respondent's recommendation, client GJ invested \$4,600 in the BMG Bullion Fund and redeemed his holdings in the fund on February 26, 2010.
90. On January 4, 2011, the Respondent recorded client GJ Portfolio Risk Rating as, 40% moderate, 30% Moderate to High, and 30% High on a KYC Update Form.
91. In February 2011, based on the Respondent's recommendation, client GJ purchased \$50,000 in the BMG Bullion Fund.
92. At the time the Respondent recommended the Gold Strategy, client GJ:
- a) was 57 years old;
 - b) had low investment knowledge; and
 - c) wanted low risk mutual funds.
93. In June 2016 when client GJ transferred his accounts out of FundEX, approximately 28% of his money was invested in the BMG Bullion Fund.
94. The Respondent failed accurately record KYC information and failed to ensure that an investment recommendation he made to client GJ to invest in precious metals sector funds was suitable having regard to the client's relevant Know-Your-Client factors including investment knowledge and risk tolerance.
95. The Respondent failed to fully explain the risks associated with concentrating client GJ's investment portfolio in precious metals sector funds. The Respondent states he explained some of the risks of investing in precious metals sector funds and he states it was his practice to provide

clients with the prospectus for each precious metals sector fund he recommended, when he recommended the Gold Strategy, but he failed to provide a balanced presentation of the risks and minimized the risks when he described the Gold Strategy.

96. Client GJ suffered losses as result of having a concentrated position in precious metals sector funds.

97. On June 15, 2018, FundEX compensated client GJ for these losses.

Contravention #1 – The Respondent Recommended Unsuitable Investments to At Least 6 Clients

98. As described above, the Respondent recommended that at least 6 clients hold investments which were concentrated in precious metals sector funds.

99. The Respondent failed to ensure that his investment recommendation was suitable having regard to at least 6 clients' relevant Know-Your-Client factors including their age, employment status (i.e., retired), investment objectives, investment knowledge, risk tolerance, and time horizon.

100. The Respondent also failed to ensure that his investment recommendation was suitable for at least 6 clients having regard to the risks associated with holding non-diversified investments.

Contravention #2 – The Respondent Failed to Fully Explain the Risks of the Gold Strategy to At Least 6 Clients

101. As described above, on the course of recommending the Gold Strategy to at least 6 clients, the Respondent represented that, among other things, the price of gold and other precious metals was poised to increase due to an imminent stock market correction, and investing in gold and precious metals sector funds was a safer alternative to investing in the stock market generally.

102. The Respondent failed to fully and adequately explain, or omitted to explain, the risks and benefits of investing in precious metals sector funds to at least 6 clients, including the risk of holding non-diversified investments and the risk that the precious metal sector funds would not perform as he represented they would.

103. When providing this advice to clients to maintain their investments, the Respondent failed to fully and adequately explain, or omitted to explain, the risks and benefits of maintaining their investments. While the Respondent explained some of the risks of maintaining their investments, he failed to provide a balanced presentation of the risks and minimized the risks.

Additional Factors

104. The clients described in this Settlement Agreement suffered total losses of at least \$73,585 as a result of having concentrated positions in precious metals sector funds. As stated above, FundEX compensated the clients for these losses.

105. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

106. 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.

V. CONTRAVENTIONS

107. The Respondent admits that:

- a) between 2009 and May 2016, the Respondent failed to ensure that an investment recommendation he made to at least 6 clients to invest in precious metals sector funds was suitable having regard to the clients' relevant Know-Your-Client factors including their age, employment status, investment objectives, investment knowledge, risk tolerance, and time horizon, and the risks associated with concentrating their investment portfolio in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1; and
- b) between 2009 and May 2016, the Respondent failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in precious metals sector funds to at least 6 clients, thereby failing to ensure that his recommendations were suitable for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ or associated with an MFDA Member beginning from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw No. 1 (Fine);
- c) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of Bylaw No. 1 (Cost);
- d) the payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$15,000 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$5,000 (Fine) on or before the last business day of the sixth month following the date of Settlement Agreement;
 - iv. \$5,000 (Fine) on or before the last business day of the twelfth month following the date of Settlement Agreement;
- e) the Respondent will attend the Settlement Hearing in person.

VII. STAFF COMMITMENT

109. 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 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 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

110. Acceptance of this Settlement Agreement shall be sought at a hearing of the Pacific 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.

111. 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.

112. 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.

113. 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 her.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

114. 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

115. 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.

116. 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

117. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 31st day of July, 2019.

“David Michael Gordon”

David Michael Gordon

“JG”

Witness – Signature

JG

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. 201849



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: David Michael Gordon

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 David Michael Gordon (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 2009 and May 2016, the Respondent failed to ensure that an investment recommendation he made to at least 6 clients to invest in precious metals sector funds was suitable having regard to the clients’ relevant Know-Your-Client factors including their age, employment status, investment objectives, investment knowledge, risk tolerance, and time horizon, and the risks associated with

concentrating their investment portfolio in precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1; and

- b) between 2009 and May 2016, the Respondent failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in precious metals sector funds to at least 6 clients, thereby failing to ensure that his recommendations were suitable for the clients and in keeping with their investment objectives, 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 or associated with an MFDA Member from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to Section 24.1.1(b) of MFDA Bylaw No. 1 (Fine);
3. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of Bylaw No. 1 (Cost);
4. The payment by the Respondent of the Fine and Costs shall be made to and received by MFDA Staff in certified funds as follows:
 - i) \$15,000 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$2,500 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$5,000 (Fine) on or before [insert date]; and
 - iv) \$5,000 (Fine) on or before [insert date].
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 691919