



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: Kenneth George Russell

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to section 24.4 of MFDA 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, Kenneth George Russell.

2. Staff and the Respondent, consent and agree to the terms of this Settlement Agreement.

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

II. CONTRAVENTIONS

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

- a) Between approximately June 2016 and May 2019, the Respondent misrepresented or failed to adequately and accurately explain to two clients who were spouses the tax liability consequences associated with a mutual fund investment that he

recommended that the clients purchase in the clients' joint account, thereby failing to ensure that the investment was suitable for the clients and was in keeping with their investment objectives, contrary to MFDA Rules 2.2.1¹ and 2.1.1;

- b) Between approximately May 2017 and December 2019, the Respondent failed to report to the Member that he received complaints from the two clients who alleged that he had failed to accurately explain the tax liability associated with a mutual fund investment that he had recommended, and directly paid compensation to the complainants in respect of the tax liability without the knowledge or written consent of the Member, contrary to the Member's policies and procedures, MFDA Rules 2.1.4², 2.1.1, 1.4(b), 1.1.2 and 2.5.1, and MFDA Policy No. 3 and MFDA Policy No. 6; and
- c) In June 2016, the Respondent completed a Know-Your-Client form on behalf of a client using information obtained from the client's spouse without communicating with the client, thereby failing to use due diligence to:
 - i) learn and accurately record the essential facts relative to the client;
 - ii) ensure that orders accepted in respect of the account were within the bounds of good business practice; and
 - iii) ensure that each order accepted for the account was suitable, prior to making investment recommendations and accepting investment orders for the client's account, contrary to MFDA Rule 2.2.1 and 2.1.1.

III. TERMS OF SETTLEMENT

5. Staff and the Respondent agree and consent to the following terms of settlement:

- a) the Respondent shall pay a fine in the amount of \$26,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;

¹ On December 31, 2021, amendments to MFDA Rule 2.2.1 came into effect. As the conduct addressed in this proceeding pre-dated the amendment to the Rule, all contraventions of MFDA Rule 2.2.1 that are addressed in this Settlement Agreement are of the version of MFDA Rule 2.2.1 that was in effect between December 5, 2013 and December 31, 2021.

² On June 30, 2021, amendments to MFDA Rule 2.1.4 came into effect. As the conduct addressed in this proceeding, pre-dated the amendment to the Rule, the contravention of MFDA Rule 2.1.4 that is addressed in this Settlement Agreement is of the version of MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

- c) the payment by the Respondent of the fine and costs shall be made and received by MFDA Staff in certified funds as follows:
 - i) \$10,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii) \$5,000 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - iii) \$5,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;
 - iv) \$5,000 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement; and
 - v) \$5,000 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement.
- d) the Respondent shall complete an ethics or professional conduct course or another course acceptable to Staff prior to becoming an Approved Person of a Member of the MFDA, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- e) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.1.1, 1.4(b), 2.1.4, 1.1.2, 2.5.1 as well as MFDA Policies No. 3 and No. 6; and
- f) the Respondent shall attend in person or by videoconference on the date set for the Settlement Hearing.

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

IV. AGREED FACTS

Registration History

7. From August 2010 to February 2020 in Ontario, and between January 2020 and February 2020 in Alberta, the Respondent was registered as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Member"), a Member of the MFDA.

8. On February 10, 2020, the Member terminated the Respondent after discovering the conduct described in this Settlement Agreement. The Respondent is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the London, Ontario area.

Misrepresenting the Tax Consequences With Respect to a Purchase of a Mutual Fund

10. At all material times, clients FM and MM (spouses) were clients of the Member whose investment accounts were serviced by the Respondent. Clients FM and MM had limited investment experience and no previous investment experience with mutual funds.

11. In June 2016, clients FM and MM were 65 and 63 years of age respectively, and, by virtue of their age, were vulnerable clients.

12. In or about June 2016, client FM met with the Respondent about investing in mutual funds. Client FM advised the Respondent that he and his wife, client MM, wished to:

- a) obtain a higher rate of return than investments they held previously;
- b) preserve the principal of their investment; and
- c) obtain returns which would be tax deferred into the future.

13. Based upon his discussion with client FM, the Respondent recommended that clients FM and MM invest in the CI Investments G5/20i mutual fund (the “Fund”).

14. During discussions with client FM, the Respondent represented that:

- a) investing in the Fund would preserve 100 percent of the principal investment of clients FM and MM;
- b) the Fund had a distribution phase of 20 years;
- c) clients FM and MM would receive a minimum of 5% of the principal amount invested per year over the 20 year distribution phase of the Fund in addition to any returns generated by the Fund greater than 5% on a yearly basis; and
- d) any taxes payable by clients FM and MM on distributions received from the Fund would be deferred until after the 20 year distribution phase of the Fund.

15. However, contrary to what the Respondent told client FM, any portion of distributions received by investors in a year that exceeds the 5% yearly return of capital is taxable in the year in which such amounts are received, rather than deferred until after the 20 year distribution phase, when held in a non-registered account.

16. On June 29, 2016, the Respondent completed a New Account Application Form (“NAAF”) to open Tax-Free Savings Accounts (“TFSA”) for each of clients FM and MM, and a joint non-registered account. Without communicating with client MM, the Respondent completed the NAAF relating to client MM’s TFSA and the joint non-registered account based on information provided to him about client MM by client FM.

17. Based on the Respondent’s recommendation to purchase the Fund and his explanation that taxes would be deferred for 20 years, clients FM and MM invested a total of \$600,000 in the Fund, which they held in their individual TFSAs and the joint non-registered account.

Failure to Report a Complaint to the Member and Paying Compensation to Clients

18. At all material times, the Member’s policies and procedures required Approved Persons to immediately report any client complaint, verbal or written, to their manager no later than 2 days after being informed about the complaint.

19. At all material times, the Member’s policies and procedures stated that all monetary and non-monetary benefits provided to clients must flow through the Member and further stated that Approved Persons were not permitted to write cheques directly to clients.

20. In or about May or June 2017, client FM received a tax slip informing him that some of the distributions that he had received from the Fund in 2016 were taxable. Client FM contacted the Respondent and complained that he had incurred a tax liability in 2016 with respect to returns that he had earned from the Fund contrary to the Respondent’s explanation which had informed him that no tax would be payable on distributions from the Fund during the 20 year distribution phase.

21. In response to the complaint from client FM, the Respondent stated that he would look into the matter.

22. The Respondent did not report the 2017 complaint from client FM to the Member at that time.

23. As a result of the Respondent’s failure to report the complaint to the Member, the Member was not able to fulfill its obligations to handle the complaint promptly and fairly and to supervise the Respondent’s conduct including his dealings with clients FM and MM.

24. In 2017, client FM did not receive distributions from the Fund that were taxable.
25. In or about May or June 2019, client FM received a tax slip informing him that some of the distributions that he had received from the Fund in 2018 were taxable. Client FM contacted the Respondent and complained that he had incurred a tax liability totaling approximately \$1,900 associated with returns that he had received from the Fund. Client FM informed the Respondent that he was considering commencing a lawsuit against the Respondent and the Member to seek compensation for the tax liability described above.
26. The Respondent did not report the 2019 complaint from client FM to the Member within 2 days.
27. On December 30, 2019, the Respondent informed the Member of client FM's complaint.
28. In 2016, when he recommended that clients FM and MM invest in the Fund, the Respondent had misrepresented or had failed to adequately and accurately explain to clients FM and MM the potential tax liability consequences associated with distributions from the Fund which the Respondent had advised the clients to purchase, thereby failing to ensure that the investment was suitable for the clients and in keeping with their investment objectives.
29. The Respondent did not inform the Member about the complaints received from client FM in 2017 or in 2019 within 2 business days of receiving the complaints, contrary to the Member's policies and procedures and MFDA Rules.
30. In June 2019, without the knowledge or prior written consent of the Member, the Respondent directly compensated clients MM and FM by directly paying them approximately \$1,900 to reimburse them for the tax liability that they had incurred in connection with distributions that clients FM and MM had received from the Fund in 2018.

Completing a Know-Your-Client Form without Communicating with the Client

31. As described in paragraph 16 above, in June 2016, the Respondent completed NAAFs to open client FM's TFSA, client MM's TFSA, and a non-registered account that was opened in the joint names of clients FM and MM.

32. The Respondent completed the KYC information on the NAAF pertaining to client MM's TFSA and the joint non-registered account using information provided by client FM, without communicating with client MM.

33. The Respondent provided client FM with the NAAF in order to obtain client MM's signature on the NAAF.

34. By completing the NAAFs without communicating with client MM, the Respondent failed to use due diligence to:

- a) learn and accurately record the essential facts relative to client MM;
- b) ensure that orders accepted in client MM's TFSA were within the bounds of good business practice; and
- c) ensure that each order accepted for the account of client MM was suitable, prior to accepting orders for investments held in client MM's TFSA.

Additional Factors

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

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

V. ADDITIONAL TERMS OF SETTLEMENT

37. 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.

38. The Settlement Agreement is subject to acceptance by the Hearing Panel. 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.

39. 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.

40. 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 at the settlement hearing, subject to rule 15.3 of the MFDA Rules of Procedure;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal 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) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, 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, 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;
- d) 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 section 24.5 of MFDA 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.

41. 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 this 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.

42. 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 MFDA By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

43. 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. The terms of the Settlement Agreement, including the attached Schedule "A", will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

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

DATED this 9th day of March, 2022.

"Kenneth George Russell"

Kenneth George Russell

"GS"

Witness – Signature

GS

Witness – Print Name

"Charles Toth"

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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**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: Kenneth George Russell

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") provided notice to the public of a Settlement Hearing in respect of Kenneth George Russell (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 MFDA By-law No. 1;

AND WHEREAS based upon the admissions of the Respondent, the Hearing Panel is of the opinion that:

- a) Between approximately June 2016 and May 2019, the Respondent misrepresented or failed to adequately and accurately explain to two clients the tax liability consequences associated with a mutual fund investment that he recommended that the clients purchase, thereby failing to ensure that the investment was suitable for the clients and was in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1;

- b) Between approximately May 2017 and December 2019, the Respondent failed to report to the Member that he received complaints from the two clients who alleged that he had failed to accurately explain the tax liability associated with a mutual fund investment that he had recommended, and directly paid compensation to the complainants in respect of the tax liability without the knowledge or written consent of the Member, contrary to the Member's policies and procedures, MFDA Rules 2.1.4, 2.1.1, 1.4(b), 1.1.2 and 2.5.1, and MFDA Policy No. 3 and MFDA Policy No. 6; and
- c) In June 2016, the Respondent completed a Know-Your-Client form on behalf of a client using information obtained from the client's spouse without communicating with the client, thereby failing to use due diligence to:
 - i. learn and accurately record the essential facts relative to the client;
 - ii. ensure that orders accepted in respect of the account were within the bounds of good business practice; and
 - iii. ensure that each order accepted for the account was suitable,prior to making investment recommendations and accepting investment orders for the client's account, contrary to MFDA Rule 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 pay a fine in the amount of \$26,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
3. The payment by the Respondent of the fine and costs shall be made and received by MFDA Staff in certified funds as follows:
 - a) \$10,500 (Fine) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$5,000 (Costs) upon acceptance of the Settlement Agreement by the Hearing Panel;
 - c) \$5,500 (Fine) on or before the last business day of the first month following the date of the Settlement Agreement;

- d) \$5,000 (Fine) on or before the last business day of the second month following the date of the Settlement Agreement; and
- e) \$5,000 (Fine) on or before the last business day of the third month following the date of the Settlement Agreement.

4. The Respondent shall complete an ethics or professional conduct course or another course acceptable to Staff prior to becoming re-registered as an Approved Person, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;

5. The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.1.1, 1.4(b), 2.1.4, 1.1.2, 2.5.1 as well as MFDA Policies No. 3 and No. 6; and

6. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 881010