



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: Richard Kenneth Giuliani

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (“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 (“Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and Richard Giuliani (“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 X) 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. From January 2001 to December 2015 the Respondent was registered as a mutual fund salesperson with Quadrus Investment Services Ltd., a member of the MFDA (the “Member”). The Respondent is also registered to sell insurance through Great-West Life.

7. The Respondent was designated as a branch manager from November 28, 2003 to November 11, 2012.

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

Background

9. On February 13, 2006, the Respondent's insurance client LC updated his Last Will and Testament ("Will") to name the Respondent as a co-executor and co-trustee of his estate.
10. The terms of the Will also provided, among other things, that:
 - a) the Respondent, and LC's son KC, were named as co-executors of LC's estate;
 - b) the Respondent and KC were named as co-trustees of LC's estate;
 - c) the Respondent was to receive a \$85,000 bequest in lieu of an executor's fee; and
 - d) LC's estate was, in part, to be divided equally among his six grandchildren by way of trust accounts established in their respective names.
11. LC died on July 18, 2006.

Outside Activity

12. On September 29, 2006, the Respondent and KC were appointed as executors and trustees of the estate of LC.
13. Between 2009 and 2011, the Respondent accepted a bequest of \$85,000 from the estate of LC, in lieu of executor fees, for acting as co-executor and co-trustee of the estate.
14. The Member learned in August 2015 that the Respondent had been named as the co-executor and co-trustee of LC's estate. Those activities had not been disclosed to or approved by the Member. The Respondent also did not disclose to the Member, the bequest that he received from LC's estate.

Acting an Trustee for Client Accounts and Discretionary Trading

15. At all material times, the Member's policies and procedures stated:

Investment representatives must not act as Power of Attorney, executor, or accept an appointment as a trustee for clients where Quadrus financial services may be involved. In all cases these positions grant the appointee a significant degree of access and control. Instances where a client has bestowed such an appointment upon an investment representative allows for a degree of control over the client's assets that may be inconsistent with the role of investment representative.

16. On March 19, 2008, the Respondent opened six trust accounts for LC's grandchildren (the "Trust Accounts"). The Respondent opened the Trust Accounts at the Member by completing six New Account Application Forms ("NAAF"), which he signed as both Applicant and mutual fund salesperson. The Respondent acted as the mutual fund salesperson with respect to the Trust Accounts, and he and KC acted as co-trustees for each of the Trust Accounts.

17. Between March 19, 2008 and April 23, 2010, the Respondent processed approximately 72 trades in the Trust Accounts as follows:

Account	April – Nov. 2008	Sept. – Nov. 2009
Grandchild LC	8 Purchases - \$85,000 each 1 Purchase - \$273,676	3 Switches
Grandchild HC	8 Purchases - \$85,000 each 1 Purchase - \$273,676	3 Switches
Grandchild MC	8 Purchases - \$85,000 each 1 Purchase - \$273,676	3 Switches
Grandchild SC	8 Purchases - \$85,000 each 1 Purchase - \$273,676	3 Switches
Grandchild PH	8 Purchases - \$85,000 each 1 Purchase - \$273,676	2 Redemptions 1 Switch
Grandchild KR	8 Purchases - \$57,250 each 1 Purchase - \$189,802	3 Switches

18. With respect to each of the 72 trades described above, the Respondent determined one or more of the elements of each trade, including the timing of the trade, the amount of the trade, or the securities to be traded.

19. The Respondent resigned as co-trustee of LC's estate and ceased acting as trustee of the Trust Accounts on April 23, 2010.

Failure to Report Notice of Application

20. Section 4.1(e) of MFDA Policy 6 states that an Approved Person must report to the Member when he is named as a defendant in a civil claim, in any jurisdiction, relating to the handling of client accounts or trading or advising in securities.

21. In December 2010, the Respondent was named as a Respondent in a Notice of Application filed by one of LC's daughters and two of LC's granddaughters (the "Complainants") in the Ontario Superior Court of Justice.

22. The Complainants sought to have KC and the Respondent removed as co-executors and co-trustees of LC's estate.

23. The Respondent did not notify the Member that he had been named as a Respondent in the Notice of Application, as required by MFDA Policy 6.

24. The Application was dismissed on the consent of all of the parties as part of a settlement agreement that was finalized in Minutes of Settlement dated March 14, 2017. The Application was settled without costs and without admission or finding of liability by any party, including the Respondent.

25. As part of the same settlement agreement, the Respondent donated \$23,375 of the \$85,000 that he received as part of the bequest in lieu of executor fees to the Hamilton Community Foundation.

Additional Factors

26. The Respondent was born in August 1941 and is currently 76 years old.

27. On December 14, 2015, the Member asked the Respondent to tender his resignation, effective immediately, as a result of the events at issue in this matter. The Respondent tendered his

resignation as requested, and the Member accepted the resignation. The Respondent has not worked in the mutual fund industry since December 14, 2015.

28. The Respondent has no prior disciplinary history with the MFDA.

29. The Respondent states that the misconduct at issue in this settlement agreement was inadvertent, and he did not intentionally breach the MFDA Rules. Rather, the Respondent believed that he was acting on the wishes of LC when he established the Trust Accounts and oversaw them as the mutual fund salesperson responsible for each account.

30. Staff's investigation did not reveal any evidence that the Respondent mishandled any of the monies invested in the Trust Accounts, or otherwise received any additional benefits beyond the bequest he received in lieu of executor's fees.

31. 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

32. The Respondent admits that:

- (a) between September 29, 2006 and December 14, 2015, he had and continued in a dual occupation by acting as co-executor and co-trustee of LC's estate, which dual occupation was not disclosed to the Member until November 2015 and was not approved by the Member, contrary to MFDA Rule 1.2.1(c) (now MFDA Rule 1.3.2) and 2.1.1;
- (b) between March 19, 2008 and April 23, 2010, while acting as a co-trustee, he opened six trust accounts at the Member for the benefit LC's grandchildren and processed trades in the accounts where he determined one or more of the elements of each trade, thereby accepting or acting upon a general power of attorney or similar authorization in favour of the Respondent, and engaging in authorized discretionary trading, contrary to MFDA Rules 2.3.1, 2.1.4 and 2.1.1; and

- (c) in December 2010, he failed to notify the Member, within two business days that he was named as a Respondent in a Notice of Application, contrary to MFDA Policy No. 6.

VI. TERMS OF SETTLEMENT

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

- a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for one year, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$20,000 pursuant to section 24.1.1(b) of By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;
- d) the payment by the Respondent of the fine and costs described above in subparagraphs (b) and (c) shall be made to and received by MFDA Staff in certified funds as follows:
 - i. \$5,000 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - ii. \$1,666.67 (fine) shall be paid on or before the last business day of the month of the acceptance of the Settlement Agreement by the Hearing Panel;
 - iii. \$1,666.67 (fine) shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - iv. \$1,666.67 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - v. \$1,666.67 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;

- vi. \$1,666.67 (fine) shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - vii. \$1,666.67 (fine) shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - viii. \$1,666.67 (fine) shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - ix. \$1,666.67 (fine) shall be paid on or before the last business day of the seventh month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - x. \$1,666.67 (fine) shall be paid on or before the last business day of the eighth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - xi. \$1,666.67 (fine) shall be paid on or before the last business day of the ninth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - xii. \$1,666.67 (fine) shall be paid on or before the last business day of the tenth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - xiii. \$1,666.67 (fine) shall be paid on or before the last business day of the eleventh month following the acceptance of the Settlement Agreement by the Hearing Panel;
- e) if the Respondent fails to make any of the payments described above in subparagraph (d) then:
- i. any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and
 - ii. the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs

owed by the Respondent is paid to the MFDA, pursuant to section 24.3.13(c) of MFDA By-law No. 1; and

f) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

34. 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 X 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

35. 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.

36. 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.

37. 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.

38. 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

39. 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

40. 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.

41. 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

42. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 3rd day of May, 2018.

“Richard Giuliani”

Richard Giuliani

“SH”

Witness – Signature

SH

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – 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: Richard Kenneth Giuliani

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 Richard Giuliani (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 September 29, 2006 and December 14, 2015, he had and continued in a dual occupation by acting as co-executor of LC's estate, which dual occupation was not disclosed to the Member until November 2015 and was not approved by the Member, contrary to MFDA Rule 1.3.2 (formerly MFDA Rule 1.2.1(d)) and 2.1.1.
- b) Between March 19, 2008 and April 23, 2010, while acting as a co-trustee, he opened six (6) trust accounts at the Member for the benefit LC's grandchildren and

processed trades in the accounts where he determined one or more of the elements of each trade, thereby accepting or acting upon a general power of attorney or similar authorization in favour of the Respondent, and engaging in authorized discretionary trading, contrary to MFDA Rules 2.3.1, 2.1.4 and 2.1.1; and

- c) In December 2010, he failed to notify the Member, within two (2) business days that he was named as a Respondent in a Notice of Application, contrary to MFDA Policy No. 6.

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

1. 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*.

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

3. The Respondent shall pay a fine in the amount of \$20,000 pursuant to section 24.1.1(b) of By-law No. 1;

4. The Respondent shall pay costs in the amount of \$5,000 pursuant to section 24.2 of By-law No. 1 upon acceptance of this Settlement Agreement;

5. the payment by the Respondent of the costs described above in paragraph 3 shall be made to and received by MFDA Staff in certified funds as follows:

- a) \$5,000 (costs) shall be paid upon acceptance of the Settlement Agreement by the Hearing Panel;
 - b) \$1,666.67 (fine) shall be paid on or before the last business day of the month of the acceptance of the Settlement Agreement by the Hearing Panel;
 - c) \$1,666.67 (fine) shall be paid on or before the last business day of the first month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - d) \$1,666.67 (fine) shall be paid on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - e) \$1,666.67 (fine) shall be paid on or before the last business day of the third month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - f) \$1,666.67 (fine) shall be paid on or before the last business day of the fourth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - g) \$1,666.67 (fine) shall be paid on or before the last business day of the fifth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - h) \$1,666.67 (fine) shall be paid on or before the last business day of the sixth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - i) \$1,666.67 (fine) shall be paid on or before the last business day of the seventh month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - j) \$1,666.67 (fine) shall be paid on or before the last business day of the eighth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - k) \$1,666.67 (fine) shall be paid on or before the last business day of the ninth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - l) \$1,666.67 (fine) shall be paid on or before the last business day of the tenth month following the acceptance of the Settlement Agreement by the Hearing Panel;
 - m) \$1,666.67 (fine) shall be paid on or before the last business day of the eleventh month following the acceptance of the Settlement Agreement by the Hearing Panel;
6. If the Respondent fails to make any of the payments described above in paragraph 5 then:
- a) any outstanding balance of the fine and costs owed by the Respondent shall immediately become due and payable to the MFDA; and

- b) the Respondent shall continue to be prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA until such time as the total amount outstanding of the fine and costs owed by the Respondent is paid to the MFDA, pursuant to section 24.3.13(c) of MFDA By-law No. 1; and.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 614493