



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: Bradley John Gascho

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 MFDA By-law No. 1, a hearing panel of the Central Regional Council (“Hearing Panel”) of the MFDA should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and the Respondent, Bradley John Gascho (“Settlement Agreement”).

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 section 24.1 of MFDA 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 mutual fund industry since 1993.

7. From February 5, 2002 to March 18, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with FundEX Investments Inc. (“FundEX”), a Member of the MFDA.

8. On March 19, 2016, FundEX terminated the Respondent as a result of the conduct described below.

9. The Respondent is not currently registered in the securities industry in any capacity.
10. At all material times the Respondent conducted business in Kitchener, Ontario.

Concentration in of Gold and Precious Metals Sector Funds

11. While registered with FundEX, the Respondent serviced approximately 282 clients with assets under administration totaling approximately \$25,000,000 as of April 2, 2015.
12. As of April 2, 2015, 73 clients held over 25% of their investment holdings in gold and/or precious metals sector funds based upon the Respondent's recommendations (the "Clients"). Thirty-nine of the Clients were age 60 and over.
13. The majority of the gold and/or precious metals sector funds consisted of two BMG funds which were rated as moderate risk at the time of investing. In or around, November 2017 these BMG funds were re-rated from moderate to high risk.
14. Almost all of the other gold and/or precious metals sector funds recommended by the Respondent were rated as high risk.
15. The Respondent discussed investing in gold and precious metals sector funds with all of his clients. He engaged in the practice of recommending gold and/or precious metals sector funds to most of his clients, based upon his views as to how these funds would perform.
16. The Respondent did not adequately assess the suitability of his recommendations to purchase gold and precious metals sector funds for the Clients, having regard to the essential Know-Your-Client ("KYC") factors relevant to each individual client.
17. Despite the Clients holding over 25% of their investment holdings in gold and/or precious metals sector funds, the Respondent did not recommend that the Clients reduce their concentration in gold and/or precious metals sector funds.

18. The Respondent failed to properly assess whether gold and precious metals sector funds were suitable for the Clients.

19. When the value of gold and precious metals sector funds started to decline, the Respondent failed to recommend to the Clients that they reduce their concentration in gold and/or precious metals sector funds.

The Respondent Misrepresented the Risks of Gold and Precious Metals Sector Funds to Client WA

20. From about 2002 to June 2016, client WA was a client of FundEX and the Respondent was the mutual fund salesperson responsible for servicing her accounts at FundEX.

21. In the course of recommending that client WA invest in gold and precious metals sector funds, the Respondent advised client WA that industry professionals believed that the price of gold would increase.

22. Between September 2007 and November 2014, the Respondent misrepresented, or failed to fully and adequately explain, the risks and benefits of investing in gold and precious metals sector funds, including the risk of holding non-diversified investments and the risk that gold and precious metals funds would not perform as he represented they would to a senior client, WA.

23. To the extent that the Respondent explained some of the risks of investing in gold and precious metals sector funds, he failed to provide a balanced presentation of the risks and minimized the risks to client WA.

24. By virtue of the foregoing, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in gold and precious metals sector funds to client WA, thereby failing to ensure that his recommendations were suitable for client WA.

The Respondent Recorded KYC Information to Match his Recommendations to Client EJ

25. In July 2015, client EJ held \$15,283 in her RRIF which was invested in a single high risk precious metals fund, which she had held since 2002. Client EJ had previously held other mutual funds in the account but had redeemed those investments.

26. The Respondent submitted a KYC update form to FundEX to increase client EJ's risk tolerance from "40% Moderate to High; 60% High" to "100% High". At the time, client EJ was 66 years old.

27. FundEX asked the Respondent to explain the increased risk tolerance. On July 21, 2015, the Respondent provided the following response:

"Because [E] Dynamic Precious Metals Fund is the only fund that now remains from what was originally rrif-ed in 2009, a kyc risk increase was required. Although it's a high risk fund, she is willing to only hold this fund to see if it will bounce back closer to its original rrif value before making any changes." [Emphasis added.]

28. The Respondent increased the risk tolerance of client EJ, without determining whether client EJ genuinely had an increased risk tolerance. The Respondent did this to ensure client EJ's KYC information would match the risk profile of his investment recommendations to concentrate client EJ's investment holdings in gold and precious metals sector funds.

Suitability of the Respondent's Investment Recommendations to Client WA

29. In or around July 2002, based on the Respondent's recommendations, client WA and her husband RA, started investing in precious metals sector funds. At the time, client WA was 64 years old and client RA was 65 years old.

30. As of September 11, 2007, client WA and her husband, RA, were retired and collectively received an annual income of between \$30,001 and \$50,000.

31. Given her age and level of income, client WA did not want to lose money and wanted safe investments.

32. In or around November 2010, the Respondent recommended that clients WA and RA invest an additional \$60,000, from their non-registered savings account at Manulife Bank, in the BMG Gold Bullion Fund, which was rated moderate risk.

33. The Respondent states that in or around July 2011, client WA and her daughter met with the Respondent. When client WA's daughter questioned the Respondent's recommendation, the Respondent failed to provide client WA and her daughter with a fair and balanced explanation of the risks associated with gold and failed to recommend that client WA diversify her mutual fund portfolio.

34. As the price of gold went down, client WA raised concerns with the Respondent about investing in gold and precious metals sector funds.

35. Client WA's husband had a defined benefit pension plan. After her husband's death in 2014, client WA assumed the monthly spousal survival benefit of the plan.

36. As of April 2, 2015, client WA had about \$165,000 invested in gold and precious metals sector funds, which comprised 43% of her portfolio.

37. As of February 2016, client WA had incurred a loss of \$10,819.33 from her investments in gold and precious metals sector funds.

38. In July 2016, client WA submitted a complaint to FundEX alleging that the investment recommendations that she had received from the Respondent were unsuitable. At the time, client WA was 78 years old.

39. On or about November 28, 2016, FundEX paid client WA \$20,486.90 for her investment losses, including her investments in gold and precious metals sector funds.

40. By virtue of the foregoing, the Respondent failed to ensure that the recommendation that he made was suitable for client WA.

V. CONTRAVENTIONS

41. The Respondent admits that between 2002 and March 18 2016, the Respondent recommended to at least 73 clients that the clients concentrate at least 25% of their investment holdings in gold and/or precious metals sector funds, without conducting adequate due diligence to assess the suitability of his investment recommendations, having regard to the essential KYC factors relevant to each individual client, including the client's age, risk tolerance, ability to withstand investment losses, and investment knowledge and experience, contrary to MFDA Rules 2.2.1 and 2.1.1.

42. The Respondent admits that between September 2007 and November 2014, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in gold or precious metals sector funds to a senior client, WA, thereby failing to ensure his recommendations were suitable for client WA, contrary to MFDA Rules 2.2.1 and 2.1.1.

43. The Respondent admits that in July 2015, the Respondent increased the risk tolerance of a senior client, EJ, on her account forms in order to ensure that the KYC information for client EJ matched his investment recommendations to concentrate a substantial portion of client EJ's investment holdings in gold or precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1.

44. The Respondent admits that between September 2007 and November 2014, the Respondent failed to use due diligence to learn and accurately record the essential KYC factors relative to a senior client, WA, prior to making investment recommendations, contrary to MFDA Rules 2.2.1 and 2.1.1.

45. The Respondent admits that between September 2007 and November 2014, the Respondent failed to use due diligence to ensure that each recommendation made to a senior client, WA, was suitable for client WA, when he recommended that client WA concentrate her investment holdings in gold and precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of three months from the date of the order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$35,000, payable in six monthly instalments of \$5,833.33 each, commencing one month from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$5,000, payable on or before the date of the settlement hearing, pursuant to section 24.2 of MFDA By-law No. 1;
- d) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulation made thereunder, including MFDA Rules 2.1.1 and 2.2.1; and
- e) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

47. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating

proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

48. 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.

49. 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.

50. 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 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.

51. 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

52. 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 SETTLEMEN AGREEMENT

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

54. 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

55. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 22nd day of June, 2018.

“Bradley John Gascho”

Bradley John Gascho

“JR”

Witness – Signature

JR

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: Bradley John Gascho

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 MFDA By-law No. 1 in respect of Bradley John Gascho (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 sections 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- a) Between 2002 and March 18 2016, the Respondent recommended to at least 73 clients that the clients concentrate at least 25% of their investment holdings in gold and/or precious metals sector funds, without conducting adequate due diligence to assess the suitability of his investment recommendations, having regard to the essential KYC factors relevant to each individual client, including the client's age,

risk tolerance, ability to withstand investment losses, and investment knowledge and experience, contrary to MFDA Rules 2.2.1 and 2.1.1;

- b) Between September 2007 and November 2014, the Respondent misrepresented, failed to fully and adequately explain, or omitted to explain the risks and benefits of investing in gold or precious metals sector funds to a senior client, WA, thereby failing to ensure his recommendations were suitable for client WA, contrary to MFDA Rules 2.2.1 and 2.1.1;
- c) In July 2015, the Respondent increased the risk tolerance of a senior client, EJ, on her account forms in order to ensure that the KYC information for client EJ matched his investment recommendations to concentrate a substantial portion of client EJ's investment holdings in gold or precious metals sector funds, contrary to MFDA Rules 2.2.1 and 2.1.1;
- d) Between September 2007 and November 2014, the Respondent failed to use due diligence to learn and accurately record the essential KYC factors relative to a senior client, WA, prior to making investment recommendations, contrary to MFDA Rules 2.2.1 and 2.1.1; and
- e) Between September 2007 and November 2014, the Respondent failed to use due diligence to ensure that each recommendation made to a senior client, WA, was suitable for client WA, when he recommended that client WA concentrate her investment holdings in gold and precious metals sector funds, 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's authority to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member shall be prohibited for a period of 3 months from the date of the order, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay a fine in the amount of \$35,000, payable in six monthly instalments of \$5,833.33 each, commencing one month from the date the Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

3. The Respondent shall pay costs in the amount of \$5,000, payable on or before the date of the settlement hearing, pursuant to section 24.2 of MFDA By-law No. 1;

4. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulation made thereunder, including MFDA Rules 2.1.1 and 2.2.1; and

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

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]