



**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: Tuomo Tapio Kostamo**

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**SETTLEMENT AGREEMENT**

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**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 Tuomo Tapio Kostamo (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. Commencing in October 1995, the Respondent has been registered in British Columbia as a dealing representative with PFSL Investments Canada Ltd. (the “Member”), a Member of the MFDA.

7. From January 1997 to April 2020, the Member designated the Respondent as a branch manager.

8. At all material times, the Respondent conducted business in the Prince George, British Columbia area.

#### **Precious Metals Sector Funds**

9. Commencing in or around 2016, the Respondent recommended an investment strategy to 25 clients, including client JG, as set out in further detail below, whereby the clients would purchase an investment portfolio, a significant proportion of which was invested in precious metals sector mutual funds.

10. In the course of making this recommendation to clients, the Respondent presented these clients with several different mutual fund options based on the investment objective selected on their Know-Your Client (“KYC”) forms, one of which included precious metals sector mutual funds.

11. Based on the Respondent's recommendations, approximately 25 clients purchased precious metals sector funds in an amount exceeding 25% of their account holdings at the Member. Most of the 25 clients were invested in a single fund, namely, the AGF Precious Metals Fund. According to the Fund Facts for the AGF Precious Metals Fund, it had a high risk rating and was only suitable for investors with a long time horizon.

12. Approximately 5 of the 25 clients who purchased the precious metals sector funds based on the clients' recommendations were seniors. By virtue of their ages, these were vulnerable clients.

**The Respondent Recommended that Clients Concentrate Account Holdings in Precious Metals Sector Funds in Excess of Concentration Limits Permitted by the Member**

13. Commencing in December 2009, the Member's policies and procedures:

- a) prohibited its Approved Persons from recommending that clients invest in sector mutual funds at all unless the client's documented KYC information reflected that the client had an investment objective of growth or aggressive growth, a long term time horizon, and a risk tolerance that was consistent with the risk rating classification specified in the fund's prospectus;
- b) prohibited Approved Persons from recommending the investment of more than 25% of a client's account holdings in sector mutual funds in all circumstances; and
- c) characterized an investment of more than 25% of a client's account holdings in sector mutual funds as a speculative investment strategy.

14. After December 2009, the Member's policy and procedure stated expressly that:

Sector funds hold equity investments (stocks) in a single sector of the economy. . . Due to their concentration in one area, a portfolio of sector funds takes on a high risk profile, to the extent that it becomes speculative.<sup>1</sup> In our view speculative investing should be used only in exceptional circumstances, where specifically requested by a client, and *should not be a recommended investing strategy* for our clients. [emphasis in original]

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<sup>1</sup>As noted above, the Member's policy considered the investment of more than 25% of assets in an account in sector funds to be speculative.

15. Commencing in 2016, the Respondent recommended to 25 clients that they invest more than 25% of their account holdings in precious metals sector mutual funds, contrary to the Member's policies and procedures.

16. By recommending that the clients concentrate their account holdings in precious metals sector mutual funds to an extent that exceeded the limits set out in the Member's policies and procedures, the Respondent failed to ensure that the recommendations were suitable for the clients.

17. As set out in further detail below, the Respondent was able to facilitate the purchase by the clients of precious metals sector mutual funds at a level that exceeded the 25% limit prescribed by the Member by having clients sign a document entitled "Speculative Investment Acknowledgement Form" prior to processing such purchases. This document inaccurately indicated that the clients were making unsolicited trades and had been told that their account holdings were unsuitable when, in fact, the Respondent had recommended that the clients invest more than 25% of the value of their accounts in precious metals sector mutual funds.

#### **The Respondent Inaccurately Recorded Clients' Purchases of Precious Metals Sector Funds as Unsolicited**

18. Commencing in 2009, the Member's policies and procedures stated that if an "Aggressive Growth" client insists on investing in excess of the 25% cap on investing in sector mutual funds, completion of a Speculative Investment Acknowledgement Form is required. The "Speculative Investment Acknowledgment Form", stated as follows:

- a) This transaction was unsolicited. I understand that [the Member] does not recommend that I (we) invest in a speculative account.
- b) I (we) understand the risks involved, including the possibility of significant and sustained losses in the account.
- c) My (our) representative has performed a suitability review, and I (we) have been advised that this transactions and/or my (our) account holdings are not suitable or appropriate for my (our) needs, however, I (we) have made the decision to proceed with an investment in a speculative account despite advisement.

19. The Member's policies and procedures further directed that the use of the Speculative Investment Acknowledgement Form was restricted to unique situations in which a client specifically directs the Approved Person to invest in a speculative strategy.

20. In the course of recommending to 25 clients that they invest more than 25% of their account holdings in precious metals sector mutual funds, the Respondent states that he had each of the clients sign a Speculative Investment Acknowledgement Form.

21. Contrary to the representations on the Speculative Investment Acknowledgement Form, the purchases in precious metals sector mutual funds were not unsolicited, but in fact were based on recommendations of the Respondent.

22. The Respondent relied on the Speculative Investment Acknowledgement Form to inaccurately represent to the Member that the purchases were unsolicited, and thereby failed to ensure that the investments were suitable for each client account.

### **The Respondent Recommended Unsuitable Investments to Client JG**

23. At all material times, client JG was a client of the Member and the Respondent was the Approved Person responsible for servicing client JG's investment accounts at the Member. Client JG held two Registered Retirement Savings Plan accounts ("RRSPs"), one of which was held outside the Member.

24. Commencing in August 2016, when client JG was 70 years old, client JG opened a Registered Retirement Income Fund account ("RRIF") and a Tax Free Savings Account ("TFSA") with the Member for the purpose of transferring monthly RRIF payments into the TFSA.

25. On August 8, 2016, the Respondent states that he recorded the following information on client JG's New Client Application Forms for the RRIF and TFSA:

- a) Occupation: Retired
- b) Gross Annual Income: less than \$25,000
- c) Net Worth: \$50,000 - \$100,000
- d) Monthly Disposable Income: \$100
- e) Investment Knowledge: High
- f) Time Horizon: Long – Term – more than 7 years
- g) Investment Objectives: Aggressive Growth
- h) Risk Tolerance: High Risk
- i) Account Purpose: Legacy / Inheritance

26. At the time that client JG opened the RRIF and TFSA accounts, it should have been apparent to the Respondent that client JG could not tolerate a high risk portfolio as she:
- a) was 70 years old and retired;
  - b) had little to no investment knowledge; and
  - c) had limited income and net worth.
27. By virtue of the factors described above, client JG was a vulnerable investor.
28. In or around July 2016, the Respondent presented client JG with five mutual fund recommendations that he considered to be suitable holdings for client JG's RRIF and TFSA accounts, including the AGF Precious Metals Fund. Based on the Respondent's discussion with client JG about how the Respondent anticipated that these five mutual funds would perform, client JG invested in the AGF Precious Metals Fund. The Respondent had client JG sign a Speculative Investment Acknowledgement Form described above at paragraph 18 which stated that the recommendation was unsolicited, despite the fact that JG invested in the AGF Precious Metals Fund on the basis of the recommendation of the Respondent.
29. In August 2016, based on the Respondent's recommendation, client JG signed two transfer authorization forms transferring her assets held in cash in the two RRSPs to the RRIF, and made two purchases of the AGF Precious Metals Fund in the RRIF in the amounts of approximately \$9,400 and \$29,500, respectively. Thereafter, between August 2016 and November 2018, client JG continued to make periodic investments in precious metals sector mutual funds.
30. The initial purchases of AGF Precious Metals Fund in client JG's RRIF resulted in at least 39% of client JG's net worth being concentrated in a precious metals sector mutual fund. As noted above, the Respondent advised client JG to make subsequent additional investments in the AGF Precious Metals Fund.
31. Between August 2016 and November 2018, client JG suffered a loss of approximately \$18,806.
32. The Respondent failed to ensure that the investment recommendation that he made to client JG to invest in precious metals sector mutual funds was suitable having regard to the client's relevant KYC factors including her age, investment knowledge, employment status, income, net worth, and her ability to afford significant losses in her investment account.

33. The Respondent did not adequately explain to client JG the risks associated with investing in a single precious metals sector mutual fund, and in particular, the concentration risk of investing more than 25% of her account assets in a single precious metals sector mutual fund.

34. In October 2018, client JG complained to the Member that the precious metals sector mutual funds that the Respondent recommended that she purchase were unsuitable for her and had caused her to sustain significant investment losses.

35. In November 2018, the servicing of client JG's investment accounts was re-assigned to another Approved Person at the Member, and her account was rebalanced to hold a low-medium risk balanced mutual fund.

36. In or around March 2019, the Member compensated client JG with respect to investment losses that she incurred in her accounts between August 2016 and November 2018.

### **The Member's Investigation**

37. In April 2018, the Member updated its sector fund concentration policy, and required the Respondent and his daughter, another Approved Person who also serviced the accounts serviced by the Respondent, to contact the 24 clients (other than JG) whose investment holdings in precious metals sector mutual funds exceeded the Member's concentration limits. The Member required the Respondent and his daughter to update the clients' KYC information, complete an updated speculative account review worksheet, and re-balance the clients' investment holdings as necessary in order to ensure the suitability of the clients' investments held at the Member.

38. Commencing in March 2019, the Member conducted a follow up review of clients whose investment holdings in precious metals sector funds still exceeded the Member's concentration limits. In May 2019, the Member sent letters to the clients in order to discuss options to rebalance their accounts and reduce their concentration in precious metals sector mutual funds. In October 2019, the Member sent follow up letters to the clients. The Member did not receive any response from the clients to either letter.

39. Out of the 24 clients who were contacted by the Respondent and his daughter with respect to their investment holdings in precious metals sector funds:

- a) 15 clients elected to maintain their investments with the Member without any rebalancing of their investment portfolios;

- b) 2 clients rebalanced their investment portfolios with the Member;
- c) 2 clients transferred their investment accounts out of the Member;
- d) 1 client redeemed their investment accounts at the Member; and
- e) 4 clients either declined to respond to the Respondent, his daughter, or the Member regarding rebalancing of their accounts.

40. In or around February 13, 2020, the Member issued a warning letter to the Respondent with respect to the conduct that is the subject matter of this Settlement Agreement.

#### **Additional Factors**

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

42. There is no evidence that any clients other than JG have submitted complaints to the Member or to the MFDA concerning the conduct described in this Settlement Agreement.

43. The Respondent has cooperated fully with Staff during the course of the investigation, and by agreeing to this settlement, has avoided the need for a contested hearing on the merits.

#### **V. CONTRAVENTIONS**

44. The Respondent admits that:

- a) commencing in 2016, he recommended that approximately 25 clients concentrate all, or a substantial portion, of their account holdings in precious metals sector mutual funds at a level of concentration that exceeded concentration limits permitted by the Member, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1, and 1.1.2;
- b) commencing in 2016, he inaccurately recorded purchases by clients of precious metals sector mutual funds as unsolicited when, in fact, the Respondent had recommended the purchases to the clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1 and 1.1.2; and
- c) between August 2016 and November 2018, he recommended that client JG invest a substantial portion of client JG's investable assets in precious metals sector mutual funds without using due diligence to ensure that:
  - i. investment recommendations that he made to client JG were suitable having regard to the client's essential Know-Your-Client information; and



- ii. he adequately informed client JG about the risks of holding investments concentrated in precious metals sector mutual funds;  
  
contrary to the policies and procedures of the Member and MFDA Rules 2.2.1, 2.1.1, 2.5.1 and 1.1.2.

## **VI. TERMS OF SETTLEMENT**

45. 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 a period of 5 years pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount of \$15,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) 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;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.2, 2.1.1, 2.2.1, and 2.5.1; and
- e) the Respondent will attend the Settlement Hearing in person or via videoconference.

## **VII. STAFF COMMITMENT**

46. 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**

47. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie 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](http://www.mfda.ca).

48. 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.

49. 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.

50. 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**

51. 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**

52. 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.

53. 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**

54. 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.

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

#### **XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 7<sup>th</sup> day of July, 2021.

“Tuomo Tapio Kostamo”

\_\_\_\_\_  
Tuomo Tapio Kostamo

“MW”

\_\_\_\_\_  
Witness – Signature

MW

\_\_\_\_\_  
Witness – Print Name

“Charles Toth”

\_\_\_\_\_  
Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



**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: Tuomo Tapio Kostamo**

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**ORDER**

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**WHEREAS** on December 15, 2020, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Tuomo Tapio Kostamo (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated July 7, 2021 (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) commencing in 2016, the Respondent recommended that approximately 25 clients concentrate all, or a substantial portion, of their account holdings in precious metals sector mutual funds at a level of concentration that exceeded concentration limits permitted by the Member, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1, and 1.1.2;
- b) commencing in 2016, the Respondent inaccurately recorded purchases by clients of precious metals sector mutual funds as unsolicited when, in fact, the Respondent

had recommended the purchases to the clients, contrary to the policies and procedures of the Member and MFDA Rules 2.1.1, 2.2.1, 2.5.1 and 1.1.2; and

c) between August 2016 and November 2018, the Respondent recommended that client JG invest a substantial portion of client JG's investable assets in precious metals sector mutual funds without using due diligence to ensure that:

- i. investment recommendations that he made to client JG were suitable having regard to the client's essential Know-Your-Client information; and
- ii. he adequately informed client JG about the risks of holding investments concentrated in precious metals sector mutual funds;

contrary to the policies and procedures of the Member and MFDA Rules 2.2.1, 2.1.1, 2.5.1 and 1.1.2;

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

1. The Respondent is prohibited from conducting securities related business in any capacity while in the employ or associated with an MFDA Member for a period of 5 years pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall immediately pay a fine of \$15,000 in certified funds, pursuant to Section 24.1.1(b) of MFDA By-law No. 1;
3. The Respondent shall immediately pay costs in the amount of \$5,000 in certified funds, pursuant to section 24.2 of MFDA By-law No. 1; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

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