Re Gable

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Donald Lorne Gable

2024 CIRO 41

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: January 17, 2024 by electronic hearing in Calgary, Alberta
Decision: January 17, 2024
Reasons for Decision: March 22, 2024

Hearing Panel:
Sherri Walsh, Chair
Kathleen Jost, Industry Representative
Richard Sydenham, Industry Representative

Appearances:
Jennifer Galarneau, Senior Enforcement Counsel
Kate Kozowyk, Counsel for the Respondent
Donald Lorne Gable, the Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Hearing issued December 19, 2022, the Canadian Investment Regulatory Organization ("CIRO") commenced discipline proceedings against Donald Lorne Gable (the "Respondent").

¶ 2 On January 11, 2024, the Respondent entered into a Settlement Agreement with CIR0 Staff ("Staff") in which the Respondent agreed to a proposed settlement of matters for which he could be disciplined pursuant to Mutual Fund Dealer Rules 7.3 and 7.4.1[1] (the "Settlement Agreement").

[1] On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada (the "MFDA") were consolidated into a single self-regulatory organization recognized under applicable securities legislation that is called the Canadian Investment Regulatory Organization (referred to herein as "CIRO"). CIRO adopted interim Rules that incorporate the pre-amalgamation regulatory requirements contained in the Rules and policies of IIROC and the by-law, Rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These Rules are largely based on the Rules of IIROC and certain by-laws, Rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the Rules of IIROC and the by-laws, Rules and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-Law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.

¶ 3 A Settlement Hearing was held by video conference on January 17, 2024, which was attended by both the Respondent and his legal counsel.

¶ 4 After hearing submissions from the parties and considering the Settlement Agreement, the Panel accepted the Settlement Agreement and issued an order to that effect that also contained the following provision:

> If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

¶ 5 These are the Reasons for our decision.

II. CONTRAVENTIONS

¶ 6 In the Settlement Agreement, the Respondent admitted to the following contraventions:

a) between September 2017 and November 2017, the Respondent engaged in securities related business that was not carried on for the account of the Dealer Member or conducted through its facilities by recommending, selling, or facilitating the sale of securities to an individual, contrary to the Dealer Member's policies and procedures and MFDA Rules 1.1.1[2], 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)[now Mutual Fund Dealer Rules 1.1.1, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)];

b) between April 2017 and November 2017, the Respondent referred an individual and a Dealer Member client to invest in companies and received compensation for doing so, thereby participating in a referral arrangement to which the Dealer Member was not a party, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.4.2[3], 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1) [now Mutual Fund Dealer Rules 2.4.2, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)]; and

c) between October 2019 and November 2019, the Respondents failed to report to the Dealer Member that he had received a client complaint and paid compensation to the client to settle the complaint without informing the Dealer Member or obtaining its prior written consent, contrary to the policies and procedures of the Dealer Member and MFDA Rules 1.4(b), 2.1.1, 1.1.2 (as it relates to Rule 2.5.1), section 4.1(a) of MFDA Policy No. 6 and sections 9.2 and 10 of MFDA Policy No. 3. [now Mutual Fund Dealer Rules 1.4(b), 2.1.1, 1.1.2, 2.5.1, 600 and 300].

¶ 7 At the Hearing, the Panel discussed with Staff the fact that the allegations which were set out in the Notice of Hearing were not identical to the contraventions which were admitted in the Settlement Agreement.

¶ 8 To the extent that one of those allegations was not the subject of the Settlement Agreement, Staff submitted that that fact should not be an impediment to the Panel accepting the Settlement Agreement. Specifically, Staff submitted that while the Notice of Hearing which commenced these proceedings provided notice to the Respondent of matters for which he could be disciplined, the fact that one of those allegations was no longer at issue based on the terms of the Settlement Agreement, simply meant that the Panel did not

[2] Effective January 21, 2021, MFDA Rule 1.1.1 was amended. As the Respondent engaged in the misconduct alleged in this proceeding prior to January 21, 2021, any references to this Rule in this Notice of Hearing is to the version of the Rule that was in effect prior to the January 21, 2021 amendments.

[3] Effective December 31, 2021, MFDA Rule 2.4.2 was amended. As the Respondent engaged in the misconduct alleged in this proceeding prior to December 31, 2021, any references to this Rule in this Notice of Hearing is to the version of the Rule that was in effect between April 2017 and November 2017.

need to consider it when determining whether to accept the Settlement Agreement.

¶ 9 Similarly, Staff submitted, the fact that the Respondent was admitting to misconduct which had not been the subject of an allegation contained in the Notice of Hearing should not be an impediment to the Panel's determination to accept the Settlement Agreement, given that the Respondent entered into that agreement with the assistance of his legal counsel and with full knowledge and understanding of the contraventions to which he was admitting.

¶ 10 The Panel agrees with Staff's submissions in this regard.

III. TERMS OF SETTLEMENT

¶ 11 In the Settlement Agreement, Staff and the Respondent agreed 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 Dealer Member of CIRO registered as a mutual fund dealer for a period of 10 years, commencing on the date that this settlement agreement is accepted by a Hearing Panel, pursuant to s. 24.1.1(c) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(c));

b) the Respondent shall pay a fine in the amount of $36,000 in instalments in accordance with the schedule set out in sub-paragraph 5(d) below, pursuant to section 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

c) the Respondent shall pay costs in the amount of $7,500, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

d) Payment by the Respondent of the fine referred to in sub-paragraph 5(b) above shall be made to and received by CIRO as follows;

   (i) $7,500 payable in certified funds upon acceptance of the Settlement Agreement;

   (ii) $1,200 on or before the last business day of each of the first six months following the date of the acceptance of the Settlement Agreement;

   (iii) $1,500 on or before the last business day of each of the seventh to twelfth month following the date of acceptance of the Settlement Agreement; and

   (iv) $2,050 on or before the last business day of the thirteenth to eighteenth month following the date of acceptance of the Settlement Agreement such that the full amount of the $36,000 fine referred to in sub-paragraph 5(b) above has been paid within eighteen months of the acceptance of the Settlement Agreement;

e) If the Respondent fails to make any of the payments described above in sub-paragraph 5(d) of this Settlement Agreement, then any unpaid amounts of the total fine of $36,000 shall immediately become due and payable to CIRO;

f) the Respondent shall in the future comply with the policies and procedures of the Dealer Member and Mutual Fund Dealer Rules 1.1.1, 1.4(b), 2.1.1, 1.1.2 (as it relates to Rule 2.5.1), 2.4.2, 600 and 300; and

g) the Respondent shall attend in person by videoconference on the date set for the Settlement Hearing.

IV. AGREED FACTS

¶ 12 The facts which formed the basis for the Settlement Agreement are contained in paragraphs 8 through 47 of that agreement and are reproduced below:

Registration History

8. From March 7, 2008 to February 10, 2021, the Respondent was registered in Alberta as a dealing representative with Quadrus Investment Services Ltd, a Dealer Member of CIRO (the "Dealer Member"), formerly a Member of the Mutual Fund Dealer Association (the "MFDA").

9. On February 10, 2021, the Dealer Member terminated the Respondent as a result of the events described herein, and the Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in the Calgary, Alberta, area.

The Dealer Member's Policies and Procedures

11. At all material times, the Dealer Member's policies and procedures relating to sales practices prohibited its Approved Persons (including the Respondent) from, among other things:

(a) engaging in securities related business outside the Dealer Member; or

(b) entering into referral arrangements with third parties as only the Dealer Member was permitted to enter directly into a referral arrangement.

12. At all material times, the Dealer Member's policies and procedures relating to customer complaints stated that its Approved Persons (including the Respondent), among other things:

a. must refer any written or verbal complaints that they receive to their branch manager or other appropriate supervisory staff for handling.

b. are not permitted to enter into any settlement agreement with (or pay compensation or an adjustment to) a complainant without the prior written consent of the Dealer Member.

13. For the years 2017, 2018 and 2019, the Respondent signed Statements of Acknowledgment indicating that he had received and read, and agreed to abide by the Dealer Member's Code of Business Conduct which includes the Dealer Member's policies and procedures.

Misconduct

Background

14. At all material times, Company A was a company that was registered in Alberta.

15. Company A assisted other companies to raise capital required to start up or finance their operations, including Company B, Company C or Company D, and other related companies.

16. Company A has been struck from the corporate registry of Alberta and no longer operates.

17. Company B described itself as a company that provides human resources and employee staffing services, and raises capital by way of issuing exempt market securities. Company B issued convertible notes (the "Convertible Notes") that were convertible into common shares after 12 months, or earlier if certain specified conditions that were set out in the terms of a subscription agreement were met.

18. Company B continues to operate.

19. Company C described itself as a company that was seeking startup capital in order to develop hearing aid technology. Company C was associated with another entity, Company D, through AK who was the founder of both companies.

20. Neither Company C nor Company D continues to operate.

21. As described in more detail below, in 2017, the Respondent referred client LW and individual RV to make investments in Company A, Company B, Company C or Company D. In total, client LW and individual RV invested $350,000 in these companies.

22. As described in more detail below, in 2017, the Respondent recommended and facilitated the sale of investments in Company B to another individual KH. In total, KH invested $175,000 in Company B.

23. On or about October 3, 2017, the Respondent received compensation from Company B totaling $7,000 in connection with the investments that were made by client LW and by KH and RV. Between June and August 2017, the Respondent received payments totaling $9,000 from Company D to compensate him for referring potential investors to Company D or Company C.

Securities Related Business outside the Dealer Member

24. Between September 2017 and November 2017, the Respondent recommended and facilitated the sale of Convertible Notes issued by Company B to KH, as set out below:

Approx. Date	Amount
2017-09-22	**$100,000**
2017-11-15	**$75,000**

25. The Respondent engaged in the following activities to facilitate the purchase by KH of the Convertible Notes:

(a) informing KH about the opportunity to invest in the Convertible Notes, and facilitated the initial and subsequent purchases of Convertible Notes by KH;

(b) providing details about the investment to KH;

(c) providing KH with information and assurances about the individuals involved in Company B, investment risks associated with the offering, tax implications of investing in Company B, and the anticipated rate of return on investments in the Convertible Notes;

(d) assisting KH to complete the steps necessary to purchase the investment by, among other things, emailing documents to KH, reminding and encouraging KH to submit the documents necessary to make an investment in Company B and discussing with KH ways to send the amounts to be invested to Company B; and

(e) ensuring that KH paid the purchase price of her investments in Company B.

26. Based on the Respondent's recommendation, KH invested $175,000 in the Convertible Notes issued by Company B.

27. Upon the maturation of the Convertible Notes, Company B failed to return the principal amount that KH had invested or pay the interest on the investment that had been promised to KH.

28. KH commenced a civil action against Company B. The Dealer Member and the Respondent were subsequently named as Defendants in the civil action. The civil action was settled and KH recovered $182,500 in compensation, which exceeded the principal amount that she had invested. The Respondent did not personally contribute to the compensation that KH received.

29. The investments by KH in Company B were not approved for sale by the Dealer Member, nor were they carried on for the account of the Dealer Member or conducted through its facilities.

30. The compensation that the Respondent received in connection to the investments by KH was not processed through the account or through the facilities of the Dealer Member.

a) Unapproved Referral Arrangement

31. As described above, in 2017, without the knowledge of the Dealer Member, the Respondent participated in a referral arrangement with Company A, pursuant to which the Respondent referred investors to invest in various companies. Those companies compensated the Respondent by paying him a referral fee for investors referred by the Respondent that invested in the companies.

32. Based upon referrals from the Respondent, client LW and another individual RV, purchased investments in companies, as set out in the chart below:

Approx. Date	Client/ Individual	Entity	Amount
2017-04-25	Individual RV	Company C or Company D	Unknown amount
2017-06-01	Individual RV	Company A	$100,000
2017-09-20	Individual RV	Company B	$200,000
2017-09-27	Client LW	Company B	$50,000

33. As described in paragraph 23 above, the Respondent received compensation from Company B totalling $7,000 in connection with the investments made by KH, RV and client LW in Company B. The Respondent also received compensation in the amount of $9,000 for his role in facilitating investments by RV in Company D or Company C.

34. The Dealer Member was not a party to any referral arrangements concerning the sale of investments in Company A or Company B and investments issued by those companies were not approved for sale by Approved Persons of the Dealer Member. The Respondent did not inform the Dealer Member of any arrangements with those companies and he was not authorized to facilitate the sale of securities issued by Company A or Company B.

35. None of the compensation received by the Respondent was disclosed to the Dealer Member or recorded in the Dealer Member's books and records.

Failure to Report a Complaint and Payment of Compensation

36. In or about October 2019, client LW sent a written complaint to the Respondent about her investment in Company B.

37. Upon receipt of this complaint, the Respondent failed to report the complaint to the Dealer Member. The Respondent took steps to resolve the complaint without the prior knowledge or written consent of the Dealer Member.

38. Between October 3, 2019 and November 15, 2019, the Respondent sent 20 email transfers to client LW totaling $50,000 in order to compensate client LW for the full principal amount of the investment that client LW made in Company B.

Dealer Member's Investigation

39. The Dealer Member became aware of the conduct that is described in this Settlement Agreement as the result of the Dealer Member receiving a copy of a Statement of Claim in 2020 and related information from KH, who had filed a lawsuit against Company B.

40. KH provided the Dealer Member with information, including correspondence and text messages between KH and the Respondent relating to her investment in Company B.

41. The Dealer Member commenced an investigation into the Respondent's conduct as a result of the information received. Between November 2020 and January 2021, the Dealer Member sent a letter to all clients whose accounts were serviced by the Respondent to determine if any clients were referred by the Respondent to companies other than the Dealer Member to purchase investments.

42. In January 2021, RV responded to the Dealer Member's letter and provided information about his investments in Company A, B, and Company D or C as described above.

43. In or around February 10, 2021, the Dealer Member terminated the Respondent's registration.

Additional Factors

44. The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

45. As noted above, KH and client LW have received compensation totaling at least the full amount of their principal investments in Company B.

46. The Respondent states that due to the Respondent's personal and financial circumstances, including that he has been diagnosed with long COVID, the Respondent requires that the payment of the fine to be made in instalments as set out above in the Settlement Agreement.

47. By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources, and expenses associated with conducting a contested hearing with respect to the allegations of misconduct.

V. ANALYSIS

The Law Relating to the Respondent's Misconduct

¶ 13 The relevant legal principles were comprehensively set out by Staff in their written submission and the Panel has relied closely upon that submission in setting out our reasons for accepting the Agreement.

Contravention #1 Securities Related Business

Rule 1.1.1

¶ 14 MFDA Rule 1.1.1(a) requires that all securities related business be carried on for the account of the Dealer Member and through the facilities of the Dealer Member.

¶ 15 Securities Related Business was defined in MFDA By-law No. 1 as follows:

> "**securities related business**" means any business or activity (whether or not carried on for gain) engaged in, directly or indirectly, which constitutes trading or advising in securities for the purposes of applicable securities legislation in any jurisdiction in Canada, including for greater certainty, securities sold pursuant to exemptions under applicable securities legislation.

¶ 16 MFDA Rule 1.1.1 was designed to ensure that Dealer Members can implement effective oversight of any products about which their Approved Persons are providing advice and selling to clients. By directing all securities related business through the Member, clients are protected by the Member's oversight, due diligence, and risk appraisals. Transactions are also subject to trade review by the Dealer Member to ensure that each recommendation made and order accepted is suitable for the client.

¶ 17 MFDA Hearing Panels have frequently stressed the importance of MFDA Rule 1.1.1 in ensuring that Approved Persons do not go "off book" so that Dealer Members can properly supervise the securities related business which they conduct. In *Caicco (Re)*, the Hearing Panel, citing an earlier 2010 decision - *Laverdière (Re)*, commented on some of the principles underlying the Rule:

> MFDA Rule 1.1.1(a) is fundamental to the regulatory mandate of the MFDA. An Approved Person must not trade in securities other than through the firm employing him/her, and the firm must have knowledge and consent to those business dealings. The Rule enhances investor protection and strengthens public confidence in the Canadian Mutual Fund Industry, as it creates a regime whereby an approved person (*sic*) is only permitted to sell investment products that have first been approved for sale by the Member, and which are sold through the facilities of the Member, thus ensuring the trading activity is subject to appropriate review and supervision.[4]

¶ 18 In this matter, the Respondent traded in an exempt market product by facilitating the purchase by KH of two convertible notes in Company B for $175,000. The Dealer Member was not aware of this trade nor was the trade carried on for the account of the Dealer Member or through its facilities.

¶ 19 The Respondent has admitted that this conduct constituted securities related business that was not carried on for the account of the Dealer Member or conducted through its facilities.

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[4] *Caicco (Re),* 2015 LNCMFDA 104 at para. 23; See also: *Wemple (Re),* 2017 LNCMFDA 138 at paras. 13-15; *Breckenridge (Re),* 2007 LNCMFDA 38 at paras. 63-65

Standard of Conduct

¶ 20 MFDA Rule 2.1.1 prescribes the standard of conduct applicable to registrants in the mutual fund industry. The Rule requires that each Dealer Member and Approved Person: deal fairly, honestly, and in good faith with clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 21 The Rule is central to the MFDA's (now CIRO) mandate of enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry.[5]

¶ 22 Hearing Panels have held that conducting securities related business outside the Dealer Member is conduct that is contrary to MFDA Rule 2.1.1.[6]

Policies and Procedures (Rules 2.5.1 and 1.1.2)

¶ 23 MFDA Rule 2.5.1 requires Dealer Members to establish, implement, and maintain policies and procedures for dealing with clients and ensuring compliance with the By-laws, Rules, and Policies of the MFDA and applicable securities legislation. Approved Persons who participate in any securities related business in respect of a Dealer Member have a corresponding obligation to comply with those policies and procedures, pursuant to MFDA Rule 1.1.2. As stated by the Hearing Panel in *Franco (Re)*:

> The obligation of Approved Persons to comply with the policies and procedures of the Member that they are registered with is a cornerstone of the self-regulatory system. When Approved Persons disregard those obligations, the Member's ability to supervise the conduct of such Approved Persons and protect the interests of clients and the public is undermined.[7]

¶ 24 Accordingly, MFDA Rule 1.1.2 should be read in conjunction with MFDA Rule 2.5.1. As the Hearing Panel in *Frank (Re)* held, the requirements in Rule 2.5.1 that Dealer Members establish policies and procedures:

> ...are meaningless and cannot achieve their intended objectives if Approved Persons are not required to comply with them. MFDA Rule 1.1.2 is clear that Approved Persons share the responsibility of ensuring that obligations set out in the MFDA Rules are followed and must do their part to support the Member's obligations to be compliant with its regulatory obligations.
>
> In the context of policies and procedures of a Member, and especially policies designed to facilitate regulatory supervision by the Member, the failure of an Approved Person to comply with the Member's policies constitutes a regulatory violation.[8] [Emphasis added]

¶ 25 At all material times, the Dealer Member's policies and procedures in this matter, required that its Approved Persons conduct all securities related business on behalf of and through its facilities.

¶ 26 Accordingly, by engaging in securities related business outside the Dealer Member the Respondent also contravened the Dealer Member's policies and procedures and MFDA Rule 1.1.2 as it relates to Rule 2.5.1.

¶ 27 Hearing Panels have held that an Approved Person's failure to comply with the Dealer Member's policies and procedures is conduct which is contrary to both MFDA Rules 2.5.1, 1.1.2 and Rule 2.1.1.[9]

Contravention #2 Unapproved Referral Arrangements

Rule 2.4.2

¶ 28 MFDA Rule 2.4.2 requires that all referral arrangements be conducted through and with the approval of the Dealer Member, and that the Dealer Member record all referral fees in its books and records. As described by the Hearing Panel in *Monforton (Re)*, MFDA Rule 2.4.2 plays an important role in ensuring "that Members

[5] *Breckenridge (Re), supra,* at para. 71
[6] *Chang (Re),* 2015 LNCMFDA 188 paras. 92-94
[7] *Franco (Re),* 2011 LNCMFDA 55 at para. 38
[8] *Frank (Re),* 2015 LNCMFDA 75, at paras. 57-58
[9] *Chang (Re)*, *supra*, at paras. 92-94

can effectively oversee any products that their Approved Persons refer to clients through oversight, due diligence and risk appraisals."[10]

¶ 29 The Respondent participated in a referral arrangement with Company A pursuant to which he referred both LW and RV who invested at least $350,000 in exempt market products, with Companies A, B and Company C or D. This referral arrangement was not approved by the Dealer Member nor was the Dealer Member a party to the referral arrangement.

¶ 30 The Respondent has admitted that his conduct constituted a referral arrangement to which the Dealer Member was not a party and that he received compensation for doing so that was not recorded in the Dealer Member's books and records, contrary to Rule 2.4.2.

¶ 31 The Respondent received a total of $16,000 in compensation for his referral of LW and RV and for the facilitation of the trade with KH, none of which was recorded in the Dealer Member's books and records.

Standard of Conduct

¶ 32 As described above, MFDA Rule 2.4.2 exists to enhance investor protection and maintain confidence in the mutual fund industry. By entering into a referral arrangement to earn compensation that the Dealer Member was not a party to, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and engaged in business conduct that is unbecoming and detrimental to the public interest.

¶ 33 Hearing Panels have found that misconduct similar to that engaged in by the Respondent falls well below the standard expected of Approved Persons in the securities industry, contrary to MFDA Rule 2.1.1.[11]

Policies and Procedures (Rules 2.5.1 and 1.1.2)

¶ 34 At all material times, the Dealer Member's Policies and Procedures relating to sales practices prohibited its Approved Persons from entering into referral arrangements with third parties as only the Dealer Member was permitted to enter directly into a referral arrangement

¶ 35 The Respondent has admitted to participating in a referral arrangement to which the Dealer Member was not a party and to receiving compensation for doing so. Accordingly, the Respondent's conduct violated the Dealer Member's policies and procedures.

¶ 36 As outlined above, MFDA Hearing Panels have held that an Approved Person's failure to comply with the Dealer Member's policies and procedures is conduct that is contrary to MFDA Rules 2.5.1 and 1.1.2 and 2.1.1.

Contravention #3 Failure to Report Complaint and Payment of Compensation

Rule 1.4

¶ 37 MFDA Rule 1.4(b) requires that every Approved Person report complaints to the Dealer Member in a manner and within such a period of time as may be prescribed by the Corporation (formerly the MFDA).

¶ 38 MFDA Policy No. 6 requires that an Approved Person shall report to their Dealer Member within 2 business days when they are the subject of a client complaint, in writing.

¶ 39 MFDA Policy No. 3 addresses "Complaint Handling, Supervisory Investigations and Internal Discipline." The definition of "complaint" is broadly defined to include "any written or verbal statement of grievance, including electronic communications from a client [or] former client".

¶ 40 Part I, Section 9 of MFDA Policy No. 3 requires that:

> All client complaints and supervisory obligations must be handled by qualified sales supervisors/compliance staff. An individual who is the subject of a complaint must not handle the

[10] *Monforton (Re)*, 2017 LNCMFDA 23, at para. 9

[11] *Bautista (Re),* 2012 LNCMFDA 55 at paras. 14-15; *Robichaud (Re),* 2019 LNCMFDA 10 at para. 13

> complaint unless the Member has no other supervisory staff who are qualified to handle such complaints.

and Section 10 of that Policy stipulates that:

> No Approved Person shall, without the prior written consent of the Member, enter into any settlement agreement with, pay any compensation to or make any restitution to a client.

¶ 41 By resolving a client complaint without the Member's knowledge or prior consent, the Respondent's actions undermined the Member's ability to comply with its own reporting, supervisory, and complaint handling obligations. In *Qi and Huang (Re)*, the Hearing Panel stated the following about complaint reporting obligations:

> The requirement that Approved Persons inform their Member of client complaints ensures that the Member is able to fulfill its duty to engage in an adequate and reasonable assessment of all complaints. When an Approved Person fails to inform their Member, or when an Approved Person enters into private settlement agreement without advising or obtaining the prior written consent of the Member, the Member's ability to assess the complaint as well as its ability to determine if there are further issues with the Approved Person is subverted ...[12]

Policies and Procedures (Rules 2.5.1 and 1.1.2)

¶ 42 At all material times, the Dealer Member's policies and procedures relating to customer complaints stated that its Approved Persons, among other things:

a) must refer any written or verbal complaints that they receive to their branch manager or other appropriate supervisory staff for handling, and

b) are not permitted to enter into any settlement agreement with (or pay compensation or an adjustment to) a complainant without the prior written consent of the Dealer Member.

¶ 43 As outlined above, Hearing Panels have held that an Approved Person's failure to comply with the Dealer Member's policies and procedures is conduct which is contrary to MFDA Rules 1.1.2 (as it relates to MFDA Rule 2.5.1) and 2.1.1.

¶ 44 The Respondent has admitted to failing to report LW's written complaint to the Dealer and to resolving the complaint by paying LW the full amount of her principal investment, without the Member's knowledge or consent. In doing so, the Respondent acted contrary to MFDA Rule 1.4(b), MFDA Policy No 3 and MFDA Policy No. 6, to the Policies and Procedures of the Member and to MFDA Rules 1.1.2 (as it relates to Rule 2.5.1), and 2.1.1.

Role of the Panel in deciding whether to accept the Settlement Agreement

¶ 45 The role a Hearing Panel performs at a settlement hearing is fundamentally different from the role it performs at a contested hearing.

¶ 46 When considering a settlement agreement, a Hearing Panel has only two options: either to accept or reject the agreement.[13]

¶ 47 As stated by the Hearing Panel in *Sterling Mutuals Inc. (Re)* citing the I.D.A. Ontario District Council in *Milewski (Re)*:

> ...while in a contested hearing the Panel attempts to determine the correct penalty, in a settlement hearing the Panel "will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a

[12] *Qi and Huang (Re),* 2013 LNCMFDA 87, at para. 14
[13] Mutual Fund Dealer Rule 7.4.4.3

> settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness." (In re Milewski, [1999] I.D.A.C.D. No. 17)[14]

¶ 48 Hearing Panels have acknowledged that one of the reasons that settlement agreements which have been worked out by the parties should be respected is because Panels do not know what led to the settlement, or what was given up by the parties during the course of their negotiations.[15]

¶ 49 The rationale for respecting settlements of the nature found in the Settlement Agreement in this case, was further articulated by the British Columbia Court of Appeal:

> Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation. Enforcement is rarely a concern because the settlement is voluntary. A person who is the subject of an investigation retains the option of refusing to settle and proceeding to a hearing. Settlements are also efficient. Both parties can forego the time and expense of a hearing. Or, they can settle some matters, and direct their resources to the matters that are in dispute, and therefore to be resolved by way of a hearing.[16]

¶ 50 Although the *Seifert* decision dealt with an agreement that was before the British Columbia Securities Commission, the case has frequently been cited by Hearing Panels in MFDA Settlement Hearings.

Factors Concerning Acceptance of a Settlement Agreement

¶ 51 Hearing Panels have repeatedly expressed the view that generally settlement agreements should be accepted, bearing in mind the following criteria:

a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;

b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;

c) That the agreement addresses the issues of both specific and general deterrence;

d) That the agreement is likely to prevent the type of conduct set out in the facts;

e) That the agreement will foster confidence in the integrity of the Canadian capital markets;

f) That the agreement will foster confidence in the integrity of the MFDA; and

g) That the agreement will foster confidence in the regulatory process itself.[17]

Factors Concerning the Appropriateness of the Proposed Penalty

¶ 52 The primary goal of all securities regulation is investor protection.[18]

¶ 53 In addition to investor protection, the goals of securities regulation include fostering public confidence in the capital markets and in the securities industry, as a whole.[19]

¶ 54 In determining the appropriateness of a proposed penalty, Hearing Panels also frequently cite the

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[14] *Sterling Mutuals Inc. (Re),* MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated September 3, 2008, at para. 37

[15] *Fike (Re),* MFDA File No. 2017102, Hearing Panel of the Central Regional Council, Decision and Reasons dated December 7, 2017, at paras. 22 and 23

[16] *British Columbia (Securities Commission) v Seifert*, 2007 BCCA 484, at para. 31

[17] *Sterling Mutuals Inc. (Re), supra,* at para. 36

[18] *Pezim v British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at para. 68

[19] *Pezim, supra*, at paras. 59 & 68

decision in *Breckenridge (Re)*, where the Panel stated that sanctions "... should be preventative, protective and prospective in nature ..." taking into account the following considerations:

a. the protection of the investing public;

b. the integrity of the securities markets;

c. specific and general deterrence;

d. the protection of the MFDA's membership; and

e. protection of the integrity of the MFDA's enforcement processes.[20]

¶ 55 The Panel in *Breckenridge (Re)* set out the following additional factors which a Hearing Panel should consider, having regard to the specific circumstances of the case:

(a) the seriousness of the allegations proved against the respondent;

(b) the respondent's experience in the capital markets;

(c) the level of the respondent's activity in the capital markets;

(d) the harm suffered by investors as a result of the respondent's activities;

(e) the benefits received by the respondent as a result of the improper activity;

(f) the risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;

(g) the damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;

(h) the need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;

(i) the need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and

(j) previous decisions made in similar circumstances.[21]

¶ 56 On November 15, 2018, the MFDA issued Sanction Guidelines (the "Guidelines") to assist Staff and respondents in conducting disciplinary proceedings and negotiating settlement agreements and to assist Hearing Panels in determining the fair and efficient disposition of settled and contested disciplinary proceedings. While those guidelines are not mandatory or binding on a Panel, they provide a summary of the key factors upon which a Panel can exercise its discretion in a consistent and fair manner.

Application of the above Factors in this Case

Seriousness of the Misconduct

¶ 57 We find that the misconduct in which the Respondent engaged was very serious. Conducting securities related business outside the Dealer Member undermines the regulatory regime, exposes clients to potential harm, and can bring the mutual fund industry into disrepute. The seriousness of such misconduct was described by the Hearing Panel in *Qi and Huang (Re)*:

> Conducting securities related business or outside business activity without the approval or knowledge of the Member is serious misconduct. The Member loses its ability to supervise the transactions and to assess the suitability of the transactions for the investors. The misconduct can have dire consequences for the investors involved as the off-book investments may not be suitable for the investors or even

[20] *Breckenridge (Re), supra,* at paras. 75 & 76
[21] *Breckenridge (Re), supra,* at para. 77

> legitimate investments. The misconduct may bring the Member or the mutual fund industry into disrepute.[22]

¶ 58 The act of engaging in an unapproved referral arrangement raises similarly serious concerns.

¶ 59 As the Hearing Panel in *Wemple (Re)* found, by engaging in a referral arrangement outside the Dealer Member, an Approved Person undermines the Dealer Member's ability to ensure that clients are given sufficient information regarding conflicts of interest, that any recommendations made to clients are appropriate and that Approved Persons are not acting outside their registration.[23]

¶ 60 By not allowing the Dealer Member to perform its regulatory obligation to protect the public, the Respondent's conduct in this matter placed the integrity of the industry at risk.

¶ 61 Finally, the Panel agrees with Staff's submission that because complaint handling is an important function for the Dealer Member to perform, circumventing the Dealer's role in complaint handling also amounts to serious misconduct.

Respondent's experience in the capital markets

¶ 62 The Respondent had been registered in the securities industry in Alberta as a mutual fund salesperson (now a Dealing Representative) since March 7, 2008. He was, therefore, experienced in the securities industry and ought to have known that the conduct which is the subject of these proceedings amounted to a clear violation of his regulatory obligations.

Respondent's Past Conduct

¶ 63 The Respondent has not previously been the subject of an MFDA or CIRO disciplinary proceeding.

Recognition by the Respondent of the Seriousness of the Misconduct

¶ 64 The Panel is satisfied that the Respondent recognizes the seriousness of his actions. By entering into the Settlement Agreement, he has fully admitted his misconduct and has consented to a penalty, thereby accepting responsibility for his action, and avoiding the time and expense of a fully contested disciplinary hearing.

Harm Suffered by Investors and Benefits Received by the Respondent

¶ 65 As Staff submitted, while the full extent of the losses suffered by the individuals and client in this matter are unknown, the Respondent recommended and facilitated the sale of investments that he was not qualified to deal in and which were not carried by the Dealer Member. This conduct placed the individuals and the client at significant risk and resulted in the necessity of one individual resorting to civil litigation to recover some of their losses.

¶ 66 The Respondent received a benefit of $16,000 in connection with his misconduct.

¶ 67 As the Sanction Guidelines indicate, as a general principle: "...wrongdoers should not benefit from their wrongdoing".

¶ 68 The amount of the penalty which is proposed in the Settlement Agreement reflects disgorgement of the benefit the Respondent received as the result of his misconduct, together with an additional sum.

¶ 69 The Ontario Securities Commission stated in *Rojas Diaz (Re)*:

> Disgorgement is an important tool to advance the remedial and protective aims of securities regulation and to ensure that specific and general deterrence of misconduct is achieved. The disgorgement remedy is intended to deprive a wrongdoer of gains obtained through misconduct and thereby remove the incentive to engage in similar future non-compliance with securities regulation.

[22] *Qi and Huang (Re), supra,* at para. 11
[23] *Wemple (Re), supra,* at para. 18

> In addition, disgorgement serves the important public interest of maintaining public confidence in the capital markets and securities regulation, by making it clear that contravening securities regulations does not pay."[24]

¶ 70 The Panel agrees that imposing a sanction which represents disgorgement of any benefits the Respondent received as the result of his misconduct and adds a reasonable premium, is necessary in order to achieve deterrence.

Deterrence

¶ 71 Deterrence is intended to capture both specific deterrence of the wrongdoer as well as general deterrence of other participants in the capital markets. As stated by the Supreme Court of Canada in *Cartaway Resources Corp. (Re)*:

> The Oxford English Dictionary (2nd ed. 1989), vol. XII, defines "preventive" as "[t]hat anticipates in order to ward against; precautionary; that keeps from coming or taking place; that acts as a hindrance or obstacle". A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventative. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 162. The respective importance of general deterrence as a factor will vary according to the breach of the Act and the circumstances of the person charged with breaching the Act.[25]

¶ 72 To achieve deterrence, sanctions must inevitably impose a burden on those who contravene CIRO's regulations. Sanctions imposed by a Hearing Panel should be protective and preventative so as to prevent likely future harm to the markets. This aim, however, does not render a sanction that has the effect of punishing a respondent, inappropriate. An administrative sanction that is too low would not only fail to achieve deterrence but could erode public confidence in the disciplinary process. As stated by the Hearing Panel in *Kowalsky (Re)*:

> ...While the primary objective of sanctions is to prevent future misconduct by the Respondent and other industry participants, and not to punish the Respondent, some element of punishment of the Respondent is the inevitable result of any sanctions. But the fact that some punishment of the Respondent may occur, should not inhibit the Panel from imposing sanctions, so long as the primary goal of those sanctions is the prevention of future misconduct.[26] [Underlining in original.]

Previous Decisions Made in Similar Circumstances

¶ 73 Staff submitted that the penalty proposed in the Settlement Agreement was consistent with the penalties imposed by Hearing Panels in previous cases with similar circumstances: (*Kowalsky* (*Re*), *supra*; *Chiaravalloti* (*Re*), 2022 LNCMFDA 92; *Gomes* (*Re*), 2020 LNCMFDA 33; Uy (Re), 2018 LNCMFDA 87; *Chang* (*Re*), *supra*; *Rempel* (*Re*), 2015 LNCMFDA 154; *Qi and Huang (Re)*, *supra*;

¶ 74 Staff took the time during the Hearing to review the circumstances and findings of each of those decisions, for the Panel's benefit.

¶ 75 Based on Staff's submissions, the Panel was satisfied that the proposed penalty falls within a reasonable range, having regard to the circumstances of this case.

VI. CONCLUSION

¶ 76 Having reviewed the Settlement Agreement and having considered Staff's submissions, both written and oral, the Panel finds that the proposed penalty set out in the Settlement Agreement is in keeping with CIRO's mandate to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct on the part of Approved Persons.

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[24] MFDA *(Rojas Diaz)(Re),* 2021 ONSC 24 at paras. 30-31
[25] *Cartaway Resources Corp. (Re),* 2004 SCC 26 at para. 61
[26] *Kowalsky (Re),* 2022 LNCMFDA 31, para. 11

¶ 77 The penalty is reasonable and proportionate. It will deter the Respondent and other Approved Persons from engaging in similar misconduct in the future and conveys to the industry the importance of complying with the regulatory requirements that were breached by the Respondent in this matter.

¶ 78 For all of the above reasons, the Panel, therefore, accepts the Settlement Agreement.

Dated at Toronto, Ontario this 22nd day of March 2024.

"Sherri Walsh"

Sherri Walsh, Chair

"Kathleen Jost"

Kathleen Jost, Industry Representative

"Richard Sydenham"

Richard Sydenham, Industry Representative

Appendix "A"
Settlement Agreement
File No. 202257

IN THE MATTER OF:

The Mutual Fund Dealer Rules[i]

and

Donald Lorne Gable

SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA ("CIRO") 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 (now Mutual Fund Dealer Rule 7.4.4), a hearing panel of the Alberta District Committee (the "Hearing Panel") should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of CIRO ("Staff") and Donald Lorne Gable (the "Respondent").

¶ 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 September 2017 and November 2017, the Respondent engaged in securities related business that was not carried on for the account of the Dealer Member or conducted through its facilities by recommending, selling, or facilitating the sale of securities to an individual, contrary to the Dealer Member's policies and procedures and MFDA Rules 1.1.1[1], 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)[now Mutual Fund Dealer Rules 1.1.1, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)];

(b) between April 2017 and November 2017, the Respondent referred an individual and a Dealer Member client to invest in companies and received compensation for doing so, thereby participating in a referral arrangement to which the Dealer Member was not a party, contrary to the Dealer Member's policies and procedures and MFDA Rules 2.4.2[2], 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1) [now Mutual Fund Dealer Rules 2.4.2, 2.1.1, and 1.1.2 (as it relates to Rule 2.5.1)]; and

(c) between October 2019 and November 2019, the Respondents failed to report to the Dealer Member that he had received a client complaint and paid compensation to the client to settle the complaint without informing the Dealer Member or obtaining its prior written consent, contrary to the policies and procedures of the Dealer Member and MFDA Rules

[1] Effective January 21, 2021, MFDA Rule 1.1.1 was amended. As the Respondent engaged in the misconduct alleged in this proceeding prior to January 21, 2021, any references to this Rule in this Notice of Hearing is to the version of the Rule that was in effect prior to the January 21, 2021 amendments.

[2] Effective December 31, 2021, MFDA Rule 2.4.2 was amended. As the Respondent engaged in the misconduct alleged in this proceeding prior to December 31, 2021, any references to this Rule in this Notice of Hearing is to the version of the Rule that was in effect between April 2017 and November 2017.

1.4(b), 2.1.1, 1.1.2 (as it relates to Rule 2.5.1), section 4.1(a) of MFDA Policy No. 6 and sections 9.2 and 10 of MFDA Policy No. 3. [now Mutual Fund Dealer Rules 1.4(b), 2.1.1, 1.1.2, 2.5.1, 600 and 300].

III. TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent 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 Dealer Member of CIRO registered as a mutual fund dealer for a period of 10 years, commencing on the date that this settlement agreement is accepted by a Hearing Panel, pursuant to s. 24.1.1(c) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(c));

(b) the Respondent shall pay a fine in the amount of $36,000 in instalments in accordance with the schedule set out in sub-paragraph 5(d) below, pursuant to section 24.1.1(b) of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.1.1(b));

(c) the Respondent shall pay costs in the amount of $7,500, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-Law No. 1 (now Mutual Fund Dealer Rule 7.4.2);

(d) Payment by the Respondent of the fine referred to in sub-paragraph 5(b) above shall be made to and received by CIRO as follows;

(i) $7,500 payable in certified funds upon acceptance of the Settlement Agreement;

(ii) $1,200 on or before the last business day of each of the first six months following the date of the acceptance of the Settlement Agreement;

(iii) $1,500 on or before the last business day of each of the seventh to twelfth month following the date of acceptance of the Settlement Agreement; and

(iv) $2,050 on or before the last business day of the thirteenth to eighteenth month following the date of acceptance of the Settlement Agreement such that the full amount of the $36,000 fine referred to in sub-paragraph 5(b) above has been paid within eighteen months of the acceptance of the Settlement Agreement;

(e) If the Respondent fails to make any of the payments described above in sub-paragraph 5(d) of this Settlement Agreement, then any unpaid amounts of the total fine of $36,000 shall immediately become due and payable to CIRO;

(f) the Respondent shall in the future comply with the policies and procedures of the Dealer Member and Mutual Fund Dealer Rules 1.1.1, 1.4(b), 2.1.1, 1.1.2 (as it relates to Rule 2.5.1), 2.4.2, 600 and 300; and

(g) the Respondent shall attend in person by videoconference on the date set for the Settlement Hearing.

¶ 6 The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO's Privacy Policy, then the Corporate Secretary's Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

¶ 7 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement

Agreement herein.

IV. AGREED FACTS

Registration History

¶ 8 From March 7, 2008 to February 10, 2021, the Respondent was registered in Alberta as a dealing representative with Quadrus Investment Services Ltd, a Dealer Member of CIRO (the "Dealer Member"), formerly a Member of the Mutual Fund Dealer Association (the "MFDA").

¶ 9 On February 10, 2021, the Dealer Member terminated the Respondent as a result of the events described herein, and the Respondent is not currently registered in the securities industry in any capacity.

¶ 10 At all material times, the Respondent conducted business in the Calgary, Alberta, area.

The Dealer Member's Policies and Procedures

¶ 11 At all material times, the Dealer Member's policies and procedures relating to sales practices prohibited its Approved Persons (including the Respondent) from, among other things:

(a) engaging in securities related business outside the Dealer Member; or

(b) entering into referral arrangements with third parties as only the Dealer Member was permitted to enter directly into a referral arrangement.

¶ 12 At all material times, the Dealer Member's policies and procedures relating to customer complaints stated that its Approved Persons (including the Respondent), among other things:

(a) must refer any written or verbal complaints that they receive to their branch manager or other appropriate supervisory staff for handling.

(b) are not permitted to enter into any settlement agreement with (or pay compensation or an adjustment to) a complainant without the prior written consent of the Dealer Member.

¶ 13 For the years 2017, 2018 and 2019, the Respondent signed Statements of Acknowledgment indicating that he had received and read, and agreed to abide by the Dealer Member's Code of Business Conduct which includes the Dealer Member's policies and procedures.

Misconduct

<u>Background</u>

¶ 14 At all material times, Company A was a company that was registered in Alberta.

¶ 15 Company A assisted other companies to raise capital required to start up or finance their operations, including Company B, Company C or Company D, and other related companies.

¶ 16 Company A has been struck from the corporate registry of Alberta and no longer operates.

¶ 17 Company B described itself as a company that provides human resources and employee staffing services, and raises capital by way of issuing exempt market securities. Company B issued convertible notes (the "Convertible Notes") that were convertible into common shares after 12 months, or earlier if certain specified conditions that were set out in the terms of a subscription agreement were met.

¶ 18 Company B continues to operate.

¶ 19 Company C described itself as a company that was seeking startup capital in order to develop hearing aid technology. Company C was associated with another entity, Company D, through AK who was the founder of both companies.

¶ 20 Neither Company C nor Company D continues to operate.

¶ 21 As described in more detail below, in 2017, the Respondent referred client LW and individual RV to make investments in Company A, Company B, Company C or Company D. In total, client LW and individual RV

invested $350,000 in these companies.

¶ 22 As described in more detail below, in 2017, the Respondent recommended and facilitated the sale of investments in Company B to another individual KH. In total, KH invested $175,000 in Company B.

¶ 23 On or about October 3, 2017, the Respondent received compensation from Company B totaling $7,000 in connection with the investments that were made by client LW and by KH and RV. Between June and August 2017, the Respondent received payments totaling $9,000 from Company D to compensate him for referring potential investors to Company D or Company C.

Securities Related Business outside the Dealer Member

¶ 24 Between September 2017 and November 2017, the Respondent recommended and facilitated the sale of Convertible Notes issued by Company B to KH, as set out below:

Approx. Date	Amount
2017-09-22	**$100,000**
2017-11-15	**$75,000**

¶ 25 The Respondent engaged in the following activities to facilitate the purchase by KH of the Convertible Notes:

(a) informing KH about the opportunity to invest in the Convertible Notes, and facilitated the initial and subsequent purchases of Convertible Notes by KH;

(b) providing details about the investment to KH;

(c) providing KH with information and assurances about the individuals involved in Company B, investment risks associated with the offering, tax implications of investing in Company B, and the anticipated rate of return on investments in the Convertible Notes;

(d) assisting KH to complete the steps necessary to purchase the investment by, among other things, emailing documents to KH, reminding and encouraging KH to submit the documents necessary to make an investment in Company B and discussing with KH ways to send the amounts to be invested to Company B; and

(e) ensuring that KH paid the purchase price of her investments in Company B.

¶ 26 Based on the Respondent's recommendation, KH invested $175,000 in the Convertible Notes issued by Company B.

¶ 27 Upon the maturation of the Convertible Notes, Company B failed to return the principal amount that KH had invested or pay the interest on the investment that had been promised to KH.

¶ 28 KH commenced a civil action against Company B. The Dealer Member and the Respondent were subsequently named as Defendants in the civil action. The civil action was settled and KH recovered $182,500 in compensation, which exceeded the principal amount that she had invested. The Respondent did not personally contribute to the compensation that KH received.

¶ 29 The investments by KH in Company B were not approved for sale by the Dealer Member, nor were they carried on for the account of the Dealer Member or conducted through its facilities.

¶ 30 The compensation that the Respondent received in connection to the investments by KH was not processed through the account or through the facilities of the Dealer Member.

Unapproved Referral Arrangement

¶ 31 As described above, in 2017, without the knowledge of the Dealer Member, the Respondent participated in a referral arrangement with Company A, pursuant to which the Respondent referred investors to invest in various companies. Those companies compensated the Respondent by paying him a referral fee for investors referred by the Respondent that invested in the companies.

¶ 32 Based upon referrals from the Respondent, client LW and another individual RV, purchased investments in companies, as set out in the chart below:

¶ 33 As described in paragraph 23 above, the Respondent received compensation from Company B totaling $7,000 in connection with the investments made by KH, RV and client LW in Company B. The Respondent also received compensation in the amount of $9,000 for his role in facilitating investments by RV in Company D or Company C.

Approx. Date	Client/ Individual	Entity	Amount	Type of Investment
2017-04-25	Individual RV	Company C or Company D	Unknown amount	Loan Agreement
2017-06-01	Individual RV	Company A	$100,000	Loan Agreement
2017-09-20	Individual RV	Company B	$200,000	Convertible Notes
2017-09-27	Client LW	Company B	$50,000	Convertible Notes

¶ 34 The Dealer Member was not a party to any referral arrangements concerning the sale of investments in Company A or Company B and investments issued by those companies were not approved for sale by Approved Persons of the Dealer Member. The Respondent did not inform the Dealer Member of any arrangements with those companies and he was not authorized to facilitate the sale of securities issued by Company A or Company B.

¶ 35 None of the compensation received by the Respondent was disclosed to the Dealer Member or recorded in the Dealer Member's books and records.

Failure to Report a Complaint and Payment of Compensation

¶ 36 In or about October 2019, client LW sent a written complaint to the Respondent about her investment in Company B.

¶ 37 Upon receipt of this complaint, the Respondent failed to report the complaint to the Dealer Member. The Respondent took steps to resolve the complaint without the prior knowledge or written consent of the Dealer Member.

¶ 38 Between October 3, 2019 and November 15, 2019, the Respondent sent 20 email transfers to client LW totaling $50,000 in order to compensate client LW for the full principal amount of the investment that client LW made in Company B.

Dealer Member's Investigation

¶ 39 The Dealer Member became aware of the conduct that is described in this Settlement Agreement as the result of the Dealer Member receiving a copy of a Statement of Claim in 2020 and related information from KH, who had filed a lawsuit against Company B.

¶ 40 KH provided the Dealer Member with information, including correspondence and text messages between KH and the Respondent relating to her investment in Company B.

¶ 41 The Dealer Member commenced an investigation into the Respondent's conduct as a result of the information received. Between November 2020 and January 2021, the Dealer Member sent a letter to all clients whose accounts were serviced by the Respondent to determine if any clients were referred by the Respondent to companies other than the Dealer Member to purchase investments.

¶ 42 In January 2021, RV responded to the Dealer Member's letter and provided information about his

investments in Company A, B, and Company D or C as described above.

¶ 43 In or around February 10, 2021, the Dealer Member terminated the Respondent's registration.

Additional Factors

¶ 44 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

¶ 45 As noted above, KH and client LW have received compensation totaling at least the full amount of their principal investments in Company B.

¶ 46 The Respondent states that due to the Respondent's personal and financial circumstances, including that he has been diagnosed with long COVID, the Respondent requires that the payment of the fine to be made in instalments as set out above in the Settlement Agreement.

¶ 47 By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources, and expenses associated with conducting a contested hearing with respect to the allegations of misconduct.

V. ADDITIONAL TERMS OF SETTLEMENT

¶ 48 This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.4) and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

¶ 49 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. Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.3.5) and Rule 15.2(2) of the Mutual Fund Dealer 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.

¶ 50 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.

¶ 51 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 Mutual Fund Dealer 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 CIRO 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 Mutual Fund Dealer Rules 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 (now Mutual Fund Dealer Rule 7.4.1.1 (Approved Persons) for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1 (now Mutual Fund Dealer Rule 7.4.5); 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.

¶ 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 Mutual Fund Dealer Rule 7.4.3 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.

¶ 53 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 (now Mutual Fund Dealer Rules 7.3 and 7.4), unaffected by the Settlement Agreement or the settlement negotiations.

¶ 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. The terms of the Settlement Agreement will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 55 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 11 day of January, 2024.

"Donald Lorne Gable"
Donald Lorne Gable

"Witness"
Witness - Signature

"Witness"
Witness - Print name

"Charles Corlett"
Staff of CIRO
Per: Charles Corlett
Canadian Investment Regulatory Organization, Vice-President, Enforcement

[i] On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("IIROC") and the Mutual Fund Dealers Association of Canada (the "MFDA") were consolidated into a single self-regulatory organization that is called the Canadian Investment Regulatory Organization (referred to herein as "CIRO") and is recognized under applicable securities legislation. CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO. Pursuant to Mutual Fund Dealer Rule 1A, MFDA By-law No. 1 continues to be applicable to this proceeding.