

Re Hetherington

IN THE MATTER OF

The Mutual Fund Dealer Rules

and

Kelly June Hetherington

2025 CIRO 26

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: January 29, 2025 in Toronto, Ontario (by videoconference)

Decision: January 29, 2025

Reasons for Decision: May 8, 2025

Hearing Panel

Frederick W. Chenoweth, Chair
Shaine Pollock, Industry Representative
Robert Christianson, Industry Representative

Appearances:

Paul Blasiak, Senior Enforcement Counsel
Tyler G.B. Beazer, Enforcement Counsel
Catherine Patterson, Counsel for Kelly June Hetherington
Kelly June Hetherington, Respondent (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

Background

[1] By Notice of Settlement Hearing dated the 8th day of November 2024 (the “Notice of Settlement Hearing”) a hearing panel of the Ontario District hearing committee (the “Panel”) of the Canadian Investment Regulatory Organization (“CIRO”) was convened to consider, whether pursuant to Mutual Fund Dealer Rule 7.4.4 (formerly Section 24.4 of Bylaw #1 of the MFDA), the Hearing Panel should accept the settlement agreement (the “Settlement Agreement”) entered into by Enforcement Staff of CIRO and Kelly June Hetherington, (the Respondent).

[2] At the outset of the proceeding, the Panel considered a joint motion by Enforcement Staff and the Respondent to move the proceedings “in camera”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law, which should guide the Panel in determining whether or not to accept or reject the Settlement Agreement. The Panel unanimously accepted the Settlement Agreement and issued an Order accordingly. These are the Panel’s reasons for doing so.

The Contravention

[3] In the Settlement Agreement, the Respondent admits that:

- a) During January 2022, the Respondent failed to ensure that a leveraged investment strategy that she implemented in the joint account of two clients (spouses) was suitable for them contra Mutual Fund Dealer Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1);
- b) Between November 2021 and July 2022, the Respondent signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

The Facts

[4] In the Settlement Agreement, Enforcement Staff of CIRO and the Respondent agreed to the existence of a series of facts, which are set out in Part IV of the Settlement Agreement. The Settlement Agreement is attached as Appendix “A” to these Reasons.

[5] As set out in the Settlement Agreement, the Respondent was registered in the securities industry since 2010.

Discussion

[6] The Panel was aware that prior to accepting a settlement agreement, a hearing panel must be satisfied that:

- a) The facts admitted by the Respondent constitute misconduct in contravention of the By-law, Mutual Fund Dealer Rules or policies, or provincial securities legislation; and
- b) The penalties contemplated in the Settlement Agreement fall within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all the circumstances.

[7] The Panel accepted that the role of a hearing panel at a settlement hearing was fundamentally different than its role at a contested hearing. As stated by the MFDA Hearing Panel in *Sterling Mutuals Inc. (Re)*¹, citing the I.D.A. Ontario District Council in *Milewski (Re)*²:

We also note that 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 settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.” [Emphasis added].

[8] The Panel also considered the principle that a hearing panel will not reject a settlement agreement unless the proposed penalty clearly falls outside the reasonable range of appropriateness. Settlements are necessary to assist CIRO to fulfill its regulatory objective of protecting the public. Settlements advance this regulatory objective by prescribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent³.

Suitability of Determination

[9] Mutual Fund Dealer (“MFD”) Rule 2.2.6 requires Approved Persons to ensure that all trades are suitable for the client. The Rule states, among other things:

2.2.6(1) Suitability Determination

- (1) Before a Member or Approved Person opens an account for a client, makes a recommendation for an account of a client, including a recommendation to borrow to invest, purchases, sells, deposits,

¹ *Sterling Mutual Inc. (Re)*, MFDA File No. 200820, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 21, 2008 at para. 37.

² *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 at p. 12, Ontario District Council Decision dated July 28, 1999.

³ *British Columbia (Securities Commission) v. Seifert*, [2006] B.C.J. No. 225 at paras. 48-49 (S.C.), aff’d, [2007] B.C.J. No. 2186 at para. 31 (C.A) [“*British Columbia (Securities Commission)*”].

exchanges, or transfers investments for a client's account or takes any other investment action for a client, the Member or Approved Person must determine, on a reasonable basis, that the action satisfies the following criteria:

- (a) The action is suitable for the client based on the following factors:
 - i. the client's information collected in accordance with Rule 2.2.1 (Know-Your-Client);
 - ii. the member or Approved Person's assessment or understanding of the investment consistent with Rule 2.2.5 (Know-Your-Product);
 - iii. the impact of the action on the client's account, including the concentration of investments within the account and the liquidity of those investments;
 - iv. the potential and actual impact of costs on the client's return on investment;
 - v. a reasonable range of alternative actions available to the Approved Person through the Member, at the time the determination is made;
- (b) the action puts the client's interest first.

[10] Canadian securities authorities and previous hearing panels have established the following three-stage process that a registrant must complete when determining suitability:

- a) Due Diligence – involves a registrant engaging in due diligence to know essential facts about the clients (“KYC Information”) whose accounts the registrant is servicing and important information about the products (“KYP Information”) including the associated risks of purchasing any product that the registrant may recommend;
- b) Applying Judgment – involves a registrant applying “sound professional judgment” to identify and recommend investment products and strategies for particular clients that are suitable for the client bearing in mind the applicable KYC and KYP Information obtained during the due diligence stage of the process; and
- c) Disclosure of Material Risks and Benefits – involves a registrant making the client aware of the material negative and positive factors involved in any investment transaction that was recommended to or discussed with the client during the second stage of the process to ensure that the client is able to make an informed decision about whether to proceed ⁴.

[11] Where, as in the present case, leveraging is involved, the registrant must assess whether the client would have the ability to meet debt obligations and tolerate losses in the event of a market downturn. The registrant must also ensure that the client understands the risks of borrowing to invest ⁵.

[12] When an Approved Person fails to comply with their suitability obligations set out in Rule 2.2.6, such conduct is also a violation of the standard of conduct under MFD Rule 2.1.1, which requires that Approved Persons 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 ⁶.

[13] The Panel was aware that, in the present case, the Dealer Member's policy and procedures contained extensive requirements that Approved Persons were required to follow when implementing a leveraged investment strategy in a client's non-registered account. MFD Rule 1.1.2 requires each Approved Person who participates in any securities related business in respect of a Dealer Member to comply with the Bylaws and

⁴ *Tachauer (Re)*, 2024 CIRO 17, at para. 20 *Lamoureux (Re)*, [2001] ASCD No. 613, at pp. 18-19; *DeVuono (Re)*, [2012] Hearing Panel of the Pacific Regional Council, MFDA File No. 201102, Panel Decision (Misconduct) dated November 22, 2012, at para. 55

⁵ *Tachauer (Re)*, *supra* at para. 21

⁶ *Tachauer (Re)*, *supra* at para. 25

Rules of the Member as they relate to the Approved Person. The Respondent admits that in this particular case, she failed to comply with any of the Member's Rules for leverage strategies

[14] In this case, it was clear that the leveraged investment strategy was not suitable for the two clients because,

- a) the husband was unemployed;
- b) the wife had an annual income under \$50,000; and
- c) the clients, husband and wife had a combined total debt service ratio of 115%.

[15] The Respondent acknowledged that she failed to complete any of the steps that were mandated by the Dealer Member's policy and procedures when implementing a leverage investment strategy, including:

- a) failed to complete the necessary forms required by the Dealer Member when completing a leveraged strategy and failed to have those forms approved by the Dealer Member;
- b) failed to indicate on the client's KYC form that the account was leveraged, and failed to indicate that the clients had used borrowed monies to purchase the investments in the account.

[16] By virtue of the foregoing, the Respondent contravened the Dealer Member's policies and procedures and failed to ensure that the leverage investment strategy was suitable for the two clients. Additionally, the Respondent admits that by engaging in the conduct described above, she contravened MFD Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1).

Falsified Clients' Signatures

[17] The Panel understood that an Approved Person engages in conduct that is contrary to MFD Rule 2.1.1 when they sign a client's signature on an account form ⁷.

[18] CIRO has warned Approved Persons against engaging in signature falsification ⁸.

[19] Hearing panels have repeatedly held that signing a client's signature is serious misconduct. In particular, because it shows that the respondent lacks the honesty required of a professional in the securities industry.

[20] As outlined above, signing a client's signature adversely affects the integrity and reliability of account documents, leads to the destruction of the audit trail, has a negative impact on Member complaint handling, and has the potential for misuse in the form of unauthorized trading, fraud and misappropriation.

[21] In the present case, the Respondent admits that between November 2021 and July 2022, she signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing.

[22] The Respondent admits that by engaging in the conduct described above, she contravened MFD Rule 2.1.1.

[23] Accordingly, the Panel is satisfied that both contravention one and two have been proven. Therefore, consistent with the terms of the Settlement Agreement, the Respondent will receive the following sanctions,

- a) 18-month prohibition;
- b) Fine of \$30,000; and
- c) Requirement to pay costs of \$5,000.

Appropriateness of the Sanctions

[24] Factors that hearing panels frequently consider when determining whether a penalty is appropriate include the following:

⁷ *Che (Re)*, 2024 CIRO 08, at para. 12; *Mollons (Re)*, 2024 CIRO 14

⁸ MFDA Staff Notice 0056, Signature Falsification, dated October 31, 2007 (updated January 26, 2017); MFDA Bulletin #0661-E, Signature Falsification, dated October 2, 2015

- a) The seriousness of the allegations proved against the respondent;
- b) The respondent's past conduct, including prior sanctions;
- c) The respondent's experience and level of activity in the capital markets;
- d) Whether the respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the respondent's activities;
- f) The benefits received by the respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
- i) 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;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances⁹.

[25] The Panel may also refer to CIRO's Sanction Guidelines. The Guidelines are not mandatory or binding on the Panel but provide a summary of the key factors upon which discretion can be exercised consistently and fairly. Many of the same factors that are listed above, which have been considered in previous decisions of hearing panels, are also reflected and described in the Guidelines.

[26] An Approved Person's suitability obligations are essential to protecting the public, and any failure to comply with these obligations is a serious matter ¹⁰.

[27] Where, as in the present case, the suitability obligations pertain to a leveraged investment strategy, they take on particular significance because leveraging presents unique risks to investors and can result in magnified investment losses.

[28] In addition, and as described above in paragraph 11, in the present case the Dealer Member's policies and procedures had extensive requirements that Approved Persons were required to follow when implementing a leveraged investment strategy in a client's non-registered account. These included, among other things, requirements to complete a Leveraged Investing Analysis form (the "LIA Form"), have the client acknowledge and sign the LIA Form, have the Approved Person's branch compliance officer approve and sign the LIA Form, and indicate on the client's KYC form that the account is "leveraged".

[29] For the reasons stated above in paragraph 18, signing a client's signature is serious misconduct.

[30] In the present case, an aggravating factor is that the Respondent signed the client signatures at issue after the publication of MFDA Bulletin #0661-E (the "Bulletin") in October 2015. In the Bulletin and MFDA Staff Notice 0066 (updated on January 26, 2017), Enforcement Staff advised Members and Approved Persons that Staff would be seeking enhanced penalties at disciplinary proceedings for signature falsification that occurred after the publication of the Bulletin ¹¹.

[31] As a result of implementing the Leveraged Investment Strategy at issue in this proceeding, the Respondent received compensation in the amount of \$8,043.75.

⁹ *Headley (Re)*, 2006 LNCMFDA3, at para. 85

¹⁰ *Mohammed (Re)*, [2023] Hearing Panel of the Central Regional Council, MFDA File No. 202248, Panel Decision dated February 7, 2023 at para. 10

¹¹ MFDA Staff Notice 0066, Signature Falsification, dated October 31, 2007 (updated January 26, 2017); MFDA Bulletin #00661, Signature Falsification, dated October 2, 2015

[32] The proposed fine in this case includes an amount sufficient to disgorge the \$8,043.75 benefit that the Respondent received from implementing the Leveraged Investment Strategy.

[33] During the period when clients RD and SD held the Fund in their account, the value of the Fund in their account declined by approximately \$43,700 (net of redemptions, fees, and taxes).

[34] In August 2023, clients RD and SD fully repaid the mortgage loan that they had used to fund the Leveraged Investment Strategy. The repayment amount was \$488,578.88, and the source of the repayment was:

- a) Proceeds of the redemptions described above on October 28, 2022, totalling \$430,546.48; and
- b) A shortfall of \$58,032.40, was absorbed by a bank affiliated with the Dealer Member.

[35] The Respondent has not previously been the subject of CIRO or MFDA disciplinary proceedings.

[36] By entering into the Settlement Agreement, the Respondent has accepted responsibility for her misconduct and has saved CIRO the time, resources, and expenses associated with conducting a contested hearing of the allegations.

[37] The proposed sanctions will act as a general deterrent and reinforce the message that the misconduct described in the Settlement Agreement is serious and will not be tolerated by CIRO.

[38] The proposed sanctions will also act as a specific deterrent regarding the Respondent engaging in misconduct in the future.

[39] The Panel considered the submissions of Enforcement Staff in the matter and also the limited submissions made on behalf of the Respondent. The Panel also considered previous decisions made in similar cases, of which the Panel was made aware, and the CIRO Sanction Guidelines to which the Panel was directed. After full consideration of the matter of penalty, the Panel concluded that the sanctions agreed to in the Settlement Agreement fell within a reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all of the surrounding circumstances.

Result

[40] For all the above reasons, the Panel concluded that the Settlement Agreement was reasonable and proportionate, and the Settlement Agreement should be accepted. Accordingly, the following penalties will be imposed upon the Respondent:

- a) An 18-month prohibition on the authority of the Respondent to conduct securities-related business in any capacity while in the employ of or associated with any CIRO member;
- b) A fine in the amount of \$30,000.00 in respect of allegations one and two in the Notice of Settlement Hearing;
- c) Costs in the amount of \$5,000.00;
- d) If at any time a non-party to this proceeding, with the exception of the bodies set out in MFD 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 Hearings Office 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 Mutual Fund Dealer Rules of Procedure.

DATED at Toronto, this 8th day of May 2025.

"Frederick W. Chenoweth"

Frederick W. Chenoweth, Chair

"Shaine Pollock"

Shaine Pollock, Industry Representative

"Robert Christianson"

Robert Christianson, Industry Representative



CIRO · OCRI

Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

Settlement Agreement

File No. 202424

**IN THE MATTER OF
THE MUTUAL FUND DEALER RULES¹**

and

Kelly June Hetherington

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 Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Ontario District Hearing Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Kelly June Hetherington (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 Mutual Fund Dealer Rules:

(a) In January 2022, the Respondent failed to ensure that a leveraged investment strategy that she implemented in the joint account of two clients (spouses) was suitable for them, contrary to Mutual Fund Dealer Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1); and

(b) Between November 2021 and July 2022, the Respondent signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing, contrary to Mutual Fund Dealer Rule 2.1.1.

III. TERMS OF SETTLEMENT

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

- (a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any CISO Dealer Member for a period of 18 months, commencing on the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(e);
- (b) The Respondent shall pay a fine in the amount of \$30,000, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b), which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (c) The Respondent shall pay costs in the amount of \$5,000, pursuant to Mutual Fund Dealer Rule 7.4.2, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- (d) The Respondent shall in the future comply with Mutual Fund Dealer Rules 2.2.6, 2.1.1 and 1.1.2 (as it relates to Rule 2.5.1); and
- (e) The Respondent shall attend 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 CISO's Privacy Policy, then the CISO Hearing Office 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. The Respondent was registered in the securities industry commencing in 2010.
9. Between July 2014 and July 26, 2022, the Respondent was registered in Ontario as a dealing representative with Royal Mutual Funds Inc. (the “Dealer Member”), a Dealer Member of CIRO (formerly a Member of the MFDA).
10. On July 26, 2022, the Respondent resigned from the Dealer Member and is not currently registered in the securities industry in any capacity.
11. At all material times, the Respondent conducted business in the Wallaceburg, Ontario area.

Failure to Ensure Suitability of Leveraged Investment Strategy

The Return of Capital (“ROC”) Mutual Fund

12. At all material times, the Dealer Member offered for sale to its clients a ROC mutual fund (the “Fund”). ROC mutual funds are structured to pay a set periodic amount of distributions to an investor which may include a return of the capital originally invested by the investor.
13. Investors in the Fund could select annual distribution rates of five to seven percent, which were payable on a monthly basis.

The Dealer Member’s Policies and Procedures

14. At all material times, the Dealer Member’s policies and procedures required that, when implementing a leveraged investment strategy in a client’s non-registered investment account, Approved Persons:

- (a) perform a suitability assessment and provide the client with a balanced presentation of available options and the risks associated with the use of leverage;
- (b) provide the client with an article entitled “Leveraged Investing – not for the faint of heart” (the “Leveraged Investing Article”), which, among other things, set out risks and factors that the client should consider before borrowing to invest;

- (c) complete a Leveraged Investing Analysis form (the “LIA Form”), which, among other things, set out risks and factors that the client should consider before borrowing to invest (including risks and tax considerations specific to ROC mutual funds), and required a consideration of the criteria set out below at paragraph 15;
- (d) have the client acknowledge and sign the LIA Form;
- (e) have the Approved Person’s Branch Compliance Officer (“BCO”) approve and sign the LIA Form; and
- (f) indicate on the client’s Know-Your-Client (“KYC”) form that the account is “leveraged”.

15. The LIA Form described above set out criteria to assist Approved Persons to determine the suitability of leveraged investing, including that:

- (a) clients should have at least “Average” investment knowledge;
- (b) client should have “Average” or higher risk tolerance;
- (c) generally clients should be under 60 years of age;
- (d) clients should have an investment time frame of 5 years or more;
- (e) clients’ annual income should not be under \$50,000, and clients should have sufficient after-tax disposable income to meet loan payments;
- (f) the amount borrowed for the purpose of purchasing investments should not exceed 30% of a client’s net worth;
- (g) investment loans should not exceed 50% of the client’s estimated liquid assets;
- (h) clients should not have a total debt service ratio that is greater than 40%;
- (i) leveraged investing may not be appropriate for clients who are unemployed, retired or without a stable income;
- (j) leveraged investing may not be appropriate for investors with Secure or Very Conservative Investor Profiles if additional risks are being taken on.

16. If any of the criteria described above were not satisfied, then Approved Persons were required to provide an explanation or reason for the inconsistency on the LIA form.

17. In addition, at all material times, the Dealer Member’s policies and procedures stated the following regarding the suitability of ROC mutual funds for leveraged investing:

The investments held in the account must be carefully considered in the context of the leveraging strategy. For example, mutual funds that distribute “return of capital” are generally not suitable because return of capital payments will reduce the adjusted cost base of the investment portfolio and this will impact the potential tax deductibility of the interest payments.

[Emphasis added]

The Leveraged Investment Strategy

18. In or about late 2021, client RD informed the Respondent that clients RD and SD intended to use borrowed monies to invest in their accounts at the Dealer Member whereby they would:

- (a) obtain a mortgage loan secured against their home;
- (b) use the proceeds from the mortgage loan to purchase units of the Fund; and
- (c) use the distributions from the Fund to pay the monthly borrowing costs of the mortgage loan.

(the “Leveraged Investment Strategy”).

19. The Respondent informed client RD that she approved that they implement the Leveraged Investment Strategy.

20. The Respondent failed to disclose the risks of borrowing to invest, including the risks of borrowing to invest in ROC mutual funds, to clients RD and SD. For example, the Respondent failed to disclose that:

- (a) borrowing to invest can amplify losses if the value of the mutual fund purchased falls below the value of the loan;
- (b) interest costs or mortgage payments may exceed the returns received from the mutual fund purchased, which could require the clients to redeem the principal investment to make such payments; and
- (c) if distributions from a ROC mutual fund were being relied on to make interest or mortgage payments, that a portion of the distributions may consist of a return of the investors' own capital.

21. In January 2022, clients RD and SD obtained a mortgage loan (the “Mortgage Loan”) secured against their home in the amount of \$487,500.

22. On January 13, 2022, the Respondent implemented the Leveraged Investment Strategy for clients RD and SD. In particular, the Respondent:

- (a) opened a joint non-registered investment account (the "Account") at the Dealer Member for clients RD and SD; and
- (b) processed the purchase of \$487,500 of the Fund (at a distribution rate of 6%) in the Account, which was funded by the proceeds of the Mortgage Loan.

23. Based on the criteria set out in the LIA Form, the Leveraged Investment Strategy may have been unsuitable for clients RD and SD because, according to the information on their application for the Mortgage Loan:

- (a) client RD was unemployed;
- (b) client SD's annual income was under \$50,000; and
- (c) clients RD and SD had a combined total debt service ratio of 115%.

24. The Respondent failed to complete any of the steps described above in paragraph 14 that were required by the Dealer Member's policies and procedures when implementing a leveraged investment strategy, including:

- (a) failing to complete an LIA Form and have it acknowledged by the clients and approved by the BCO; and
- (b) failing to indicate on the KYC form in respect of the Account that the Account was "leveraged" or otherwise inform the Dealer Member that clients RD and SD had used borrowed monies to purchase investments in the Account.

25. By failing to inform the Dealer Member that clients RD and SD had used borrowed monies to invest, the Respondent prevented the Dealer Member from assessing whether the Leveraged Investment Strategy was suitable for clients RD and SD.

26. By virtue of the foregoing, the Respondent contravened the Dealer Member's policies and procedures and failed to ensure that the Leveraged Investment Strategy was suitable for clients RD and SD.

Subsequent Events

27. In September 2022, client RD complained to the Dealer Member that he understood that the monthly distributions that were paid by the Fund represented a guaranteed investment return, which would cover the borrowing costs of the Mortgage Loan.

28. On October 28, 2022, clients RD and SD redeemed \$430,546.48 from the Account, leaving a balance in the Account of zero.

29. During the period that clients RD and SD held the Fund in the Account, the value of the Fund in the Account declined by approximately \$43,700 (net of redemptions, fees and taxes).

30. In August 2023, clients RD and SD fully repaid the Mortgage Loan in the amount of \$488,578.88. The source of the repayment was:

(a) proceeds of the redemptions described above in the Account on October 28, 2022 totaling \$430,546.48; and

(b) a shortfall of \$58,032.40, which was absorbed by a bank affiliated with the Dealer Member.

Falsified Client Signatures

31. At all material times, the Dealer Member's policies and procedures prohibited its Approved Persons from engaging in any form of falsification, including signing a client's name on a document.

32. Between November 2021 and July 2022, the Respondent signed the signatures of two clients on nine account forms and submitted them to the Dealer Member for processing. The account forms consisted of redemption forms.

33. As part of its investigation into the Respondent's conduct, the Dealer Member contacted the affected clients and determined that the underlying transactions were authorized by the clients.

Additional Factors

34. The Respondent received compensation in the amount of \$8,043.75 from the purchase of the Fund by clients RD and SD on January 13, 2022 as described above.

35. As described above, the Dealer Member's bank affiliate absorbed the \$58,032.40 shortfall when clients RD and SD repaid their Mortgage Loan in August 2023.

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

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

V. ADDITIONAL TERMS OF SETTLEMENT

38. This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

39. 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 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.ciro.ca.

40. 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 agreed, 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.

41. 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, including before the Board of Directors of CISO 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 Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with 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.

42. 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.

43. 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 Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

44. 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.

45. 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 5th day of November, 2024.

“Kelly June Hetherington”

Kelly June Hetherington

“Witness” _____

Witness - Signature

“Witness” _____

Witness - Print name

“Paul Blasiak”

Staff of the Canadian Investment Regulatory Organization

Paul Blasiak, Senior Enforcement Counsel

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 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.