Re Robertson

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

David Alan Robertson

2025 CIRO 32

Canadian Investment Regulatory Organization
Hearing Panel (Pacific District)

Heard: May 30, 2025, in Vancouver, British Columbia by videoconference
Decision: May 30, 2025
Reasons for Decision: June 23, 2025

Hearing Panel:
Susan E. Ross, Chair, Bruce Krutow and Jared Webb

Appearances:
Lerina J.M. Koornhoff, Enforcement Counsel
David Alan Robertson (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

[1] This Hearing Panel held a settlement hearing to consider whether to accept a settlement agreement dated February 14, 2025 (**Settlement Agreement**) between Enforcement Staff of the Canadian Investment Regulatory Organization (**CIRO**) and the Respondent, David Alan Robertson.

[2] The Settlement Agreement was reached, and the hearing was conducted pursuant to Rule 7.4.4 of the Mutual Fund Dealer Rules and Rules 1.8, 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

[3] In the Settlement Agreement, the Respondent admitted that between February 2019 and May 2024, he contravened Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4) by borrowing monies from a client which gave rise to a conflict of interest that the Respondent failed to disclose to his Dealer Member and ensure was addressed by the exercise of reasonable business judgment influenced only by the best interests of the client.[1]

[4] The terms of the Settlement Agreement are:

(a) a fine of $10,000;

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[1] On January 1, 2023, the Mutual Fund Dealers Association of Canada and the Investment Industry Regulatory Organization of Canada were consolidated into the Canadian Investment Regulatory Organization and the MFDA Rules were incorporated into the current Mutual Fund Dealer Rules. The Respondent's misconduct, between February 2019 and May 2024, was governed by MFDA Rule 2.1.4 (now Mutual Fund Dealer Rule 2.1.4.).

(b) a 12-month prohibition 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; and

(c) costs of $2,500.

[5] Pursuant to the Mutual Fund Dealer Rules of Procedure, the Settlement Agreement was conditional on acceptance by a hearing panel and the settlement hearing was closed to the public until the Settlement Agreement was accepted.

[6] At the conclusion of the hearing, we accepted the Settlement Agreement with reasons to follow. These are our reasons for decision.

AGREED FACTS

[7] The agreed facts are set out in full in Part III of the attached Settlement Agreement.

[8] From March 15, 2015, to November 24, 2022, the Respondent was registered as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (**Sun Life**), a Dealer Member of CIRO (and formerly a Mutual Fund Dealer of the Mutual Fund Dealers Association). At all material times, he conducted business in the Burnaby area of British Columbia.

[9] The Respondent was also registered with two other Dealer Members from March 14, 2003, to September 1, 2009, and from September 28, 2009, to January 30, 2015, respectively.

[10] On February 25, 2019, the Respondent sought and obtained a $15,000 loan (the **Loan**) from an elderly client (the **Client**), whose accounts he had serviced for many years. The Loan was not reduced to writing and there were no set terms for repayment, duration or interest. On the same day, the Respondent facilitated the redemption of $15,000 from the Client's non-registered mutual fund account with Sun Life. He used the borrowed monies to pay for his personal expenses.

[11] From 2019 through 2022, the Respondent submitted annual questionnaires to Sun Life attesting that he had not entered into any personal financial dealings or borrowing with clients.

[12] On November 24, 2022, the Respondent resigned from Sun Life and ceased to be registered in the securities industry.

[13] Around December 2022, a family member and Power of Attorney for the Client discovered the Loan and contacted the Respondent about its repayment.

[14] Around January 2023, the Respondent prepared a handwritten "Personal Services Agreement", signed only by him, for "future services" to the Client or their beneficiaries until the Loan was recouped.

[15] Around January 25, 2023, the Power of Attorney made a complaint to Sun Life about the Loan. In early March, after investigating the matter, Sun Life offered to reimburse the Client for the Loan, but at that point, the Respondent had already agreed to repay the Loan in $1,000 post-dated cheques from March 1, 2023, to May 1, 2024.

[16] At the time of the settlement hearing, the Respondent had fully repaid the Loan.

[17] The Respondent agreed that between February 19, 2019, and May 1, 2024, he violated Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4) by borrowing monies from the Client which gave rise to a conflict of interest that the Respondent failed to disclose to his Dealer Member or otherwise ensure was addressed by the exercise of reasonable business judgment influenced only by the best interests of the Client.

[18] At the settlement hearing, Enforcement Staff added, with the Respondent's consent, that the Respondent was in personal financial difficulty when he obtained the Loan from the Client, had fully cooperated with CIRO's investigation, regretted his misconduct, and has not been the subject of prior MFDA or CIRO disciplinary proceedings.

[19] The Respondent has also expressed deep embarrassment and remorse about the misconduct directly to the Hearing Panel.

ANALYSIS

STANDARD OF REVIEW FOR REVIEWING A SETTLEMENT AGREEMENT

[20] We applied the established standard for the review of settlement agreements in the investment industry that a settlement should be accepted if the agreed penalties fall within a reasonable range of appropriateness with respect to the misconduct in question. This standard was summarized as follows in *Milewski (Re)*[2]:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.
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> This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so in a settlement hearing differ from those in a contested hearing.
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> See also:
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> *Sterling Mutuals Inc. (Re)*[3]
>
> *Culliton (Re)*[4]

[21] Hearing panels reviewing settlement agreements typically determine whether the proposed sanctions fall within a reasonable range of appropriateness by considering the facts of the case in relation to the principles and factors in the Sanction Guidelines and prior hearing panel decisions involving comparable misconduct.

[22] The Sanction Guidelines, while non-exhaustive and non-binding on hearing panels, are intended to reinforce consistency, fairness and transparency in the sanctioning process. They cover such principles as the expectation that sanctions are preventative, not punitive; that offenders should not be able to benefit financially from their misconduct; that multiple violations should be sanctioned proportionately to the totality of the misconduct; and that repeat offenders should be treated more severely.

[23] The Sanction Guidelines explain that sanctions should address specific and general deterrence, weigh relevant mitigating and aggravating factors, and conform to sanctions in comparable prior cases. They list key factors that are commonly considered when determining appropriate sanctions. The listed factors, not all of which will apply to every case, include the number, size, extent and duration of the transactions in issue, whether there was a pattern of misbehaviour, the extent of harm caused by the misconduct, the vulnerability of victims and efforts to compensate them, financial benefit to the respondent, prior disciplinary history, whether the misconduct was intentional, wilfully blind or reckless respecting regulatory requirements, and whether the misconduct occurred notwithstanding prior warnings from regulators or supervisors.

[24] When the sanctions are imposed pursuant to a settlement agreement, the sanctioning process is affected by the limitations on the role of the hearing panel. This includes recognizing that proposed sanctions are arrived at through the give and-take of negotiations between the parties, and settlements usually bring the benefits of reducing the expenditure of regulatory resources and being more expeditious than contested hearings.

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[2] [1999] I.D.A.C.D. No. 17, pp. 9-10
[3] 2008 CanLII 87748 (CA MFDAC), para. 35
[4] 2020 CanLII 30059 (CA MFDAC), paras. 15-16

THE CONTRAVENTIONS

[25] Enforcement Staff and the Respondent jointly submitted that we should accept the Settlement Agreement.

[26] Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4) requires an Approved Person to take reasonable steps to identify conflicts of interest, promptly report such conflicts to their Dealer Member, and ensure that they are addressed in the best interests of the client.

[27] Sun Life's policies and procedures also prohibited the Respondent from engaging in personal financial dealings with and borrowing from clients.

[28] Enforcement Staff provided an industry notice[5] and prior cases[6] concerning conflicts of interest arising from borrowing money from a client. These authorities establish that borrowing money from a client raises a significant actual conflict of interest, regardless of whether the money is subsequently repaid. It is a core responsibility of an Approved Person to be vigilant to conflicts of interests with clients, report them to their Dealer Member, and resolve them with only the best interests of the client in mind. Failure to keep client interests first and foremost is a failure to deal with clients fairly, honestly and in good faith.

[29] The Respondent has admitted that he violated Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4) by borrowing monies from the Client which gave rise to a conflict of interest that the Respondent failed to disclose to his Dealer Member or otherwise ensure was addressed by the exercise of reasonable business judgment influenced only by the best interests of the Client.

[30] He has also admitted submitting false and misleading annual questionnaires to his Dealer Member attesting that he had not entered into any personal financial dealings or borrowing with clients.

REASONABLENESS OF THE PROPOSED SETTLEMENT

[31] The terms of the Settlement Agreement are:

(a) a fine of $10,000;

(b) a 12-month prohibition 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; and

(c) costs of $2,500.

[32] The Respondent borrowed $15,000 from a long-time elderly client. He failed to disclose the Loan to his Dealer Member for almost four years, and he only agreed to repay the Loan after the Power of Attorney for the Client learned of the matter and reported it to the Dealer Member. The misconduct, including the time for the Respondent to repay the Loan, took place over 52 months.

[33] The Respondent engaged in serious misconduct involving a vulnerable type of client. In addition to the principal amount of the Loan, the Respondent received a significant financial benefit from the absence of any set terms for repayment, duration or interest. The length of time over which he enjoyed the benefits of the Loan, and failed to disclose and mislead his Dealer Member about his misconduct, are also aggravating factors.

[34] Mitigating factors are that the Respondent has no prior disciplinary history, his misconduct involved a single loan and client, he eventually repaid the borrowed monies. He has admitted and expressed remorse for his misconduct, and the proposed settlement has saved time, resources and expenses associated with a full disciplinary hearing.

[35] We were provided with several prior decisions sanctioning Approved Persons for misconduct involving borrowing monies from clients. These decisions did not involve entirely analogous facts to this case. One was also imposed after a hearing on the merits, and another involved an Approved Person with a Dealer Member

[5] MFDA Staff Notice #MSN-0047 (October 3, 2005), p. 2

[6] *Wilkins (Re)*, 2024 CIRO 71, paras. 22-23, 80; *Nunweiler (Re)*, 2012 CanLII 49456 (CA MFDAC), paras. 15-23; *Yalkezian (Re)*, 2022 CanLII 31755 (CA MFDAC), para. 13

registered as an investment dealer. However, the decisions provided are relevant guideposts in assessing a reasonable range of appropriate sanctions for the type of misconduct that the Respondent committed.

[36] *Puzara (Re)*[7] approved a settlement imposing a $25,000 fine, 3-month prohibition and $5,000 costs. The respondent borrowed $60,000 from an elderly client, failed to disclose the loan to their Dealer member, made principal and interest payments for several years and then ceased making payments when $8,000 plus interest remained outstanding.

[37] *Hsu (Re)*[8] approved a settlement imposing a $20,000 fine, a 5-year prohibition and $5,000 costs. The respondent borrowed $50,000 from two clients, failed to disclose the loans to their Dealer Member and fully repaid the loans.

[38] *Davidson (Re)*[9] was decided after a merits hearing. The respondent borrowed $18,000 from two clients and failed to disclose the loans to their Dealer Member. The clients suffered a $12,000 loss and the respondent failed to attend the hearing. The hearing panel imposed a $25,000 fine, permanent prohibition and $7,500 costs.

[39] *Alam (Re)*[10] approved a settlement imposing a $7,500 fine, a 6-month prohibition and $3,750 costs. The respondent borrowed $15,000 from a client, which was repaid, and entered into a personal financial transaction with the client involving the transfer of $17,000 to the client's family member outside Canada.

[40] Weighing the relevant factors and prior decisions, we were satisfied that the sanctions proposed in the Settlement Agreement with the Respondent fall within a reasonable range of appropriateness. The Respondent's misconduct was serious but his cooperation with the investigation, repayment of the Loan over time, remorse and absence of prior disciplinary history are important mitigating factors.

CONCLUSION

[41] We accepted the Settlement Agreement on May 30, 2025, the date of the settlement hearing.

[42] In accordance with the terms of the Settlement Agreement, the agreed fine and costs were payable immediately upon our acceptance of the Settlement Agreement, unless otherwise agreed to by Enforcement Staff and the Respondent.

Dated at Vancouver, British Columbia this 23rd day of June 2025.

"Susan E. Ross"

Susan E. Ross, Chair

"Bruce Krutow"

Bruce Krutow, Industry Representative

"Jared Webb"

Jared Webb, Industry Representative

[7] 2024 CIRO 80
[8] 2022 CanLII 115327 (CA MFDAC)
[9] 2021 CanLII 93631 (CA MFDAC)
[10] 2020 CanLII 80866 (CA MFDAC)

IN THE MATTER OF
THE MUTUAL FUND DEALER RULES

AND

DAVID ALAN ROBERTSON

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization ("CIRO")[i] will issue a Notice of Settlement Hearing to announce a settlement hearing pursuant to Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure ("Rules of Procedure") to consider whether a Hearing Panel should accept this Settlement Agreement between Enforcement Staff and David Alan Robertson (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Registration History

4. Between March 15, 2015, and November 24, 2022, the Respondent was registered in British Columbia as a dealing representative with Sun Life Financial Investment Services (Canada) Inc. (the "Dealer Member") a dealer Member of CIRO (formerly

a Mutual Fund Dealer of the MFDA). The Respondent is no longer an Approved Person.

5. Previously, the Respondent was registered in British Columbia as an Approved Person with two other dealer members from March 14, 2003, until September 1, 2009, and from September 28, 2009, to January 30, 2015, respectively.

6. At all material times, the Respondent conducted business in the Burnaby, British Columbia, area.

Conflict of Interest

7. At all material times, the Dealer Member's policies and procedures prohibited Approved Persons from engaging in personal financial dealings and borrowing from clients.

8. At all material times, MS was a client of the Dealer Member whose accounts were serviced by the Respondent. The Respondent was responsible for servicing client MS's accounts commencing in approximately 2004 while he was registered with previous dealer members.

9. On February 25, 2019, when client MS was 77 years old, the Respondent sought and obtained a loan from client MS in the amount of $15,000 (the "Loan").

10. The Loan was not reduced to writing and there were no set terms for repayment, duration, or interest.

11. The Respondent used the monies he obtained from client MS pursuant to the Loan to pay for his personal expenses.

12. Also on February 25, 2019, the Respondent facilitated the redemption of $15,000 from client MS's non-registered mutual fund account held with the Dealer Member.

13. During the years 2019 through 2022, the Respondent completed and submitted to the Dealer Member annual questionnaires wherein he stated that he had not entered into any personal financial dealings or borrowing with clients. The Respondent's statements to the Dealer Member were false or misleading since the Respondent had borrowed monies from client MS as described above.

14. In November 2022, the Respondent resigned from the Dealer Member and ceased to be registered in the securities industry.

15. In or around December 2022, a family member and power of attorney for client MS (the "Power of Attorney"), discovered that client MS had lent monies to the Respondent, and contacted the Respondent to obtain repayment of the Loan.

16. In or around January 2023, the Respondent prepared a handwritten document, signed only by the Respondent, entitled "Personal Services Agreement" which stated, in part:

> As consideration for funds advanced from [client MS], I, [the Respondent] agree to a reduced fee on future services accounted to [client MS] and/or [client MS's estate] until the amount of $15,000 has been recouped. This shall include services and transactions provided to [client MS] and [client MS's] beneficiaries.

17. On or around January 25, 2023, the Power of Attorney submitted a complaint to the Dealer Member in respect of the unpaid Loan. The Dealer Member commenced an investigation into the Respondent's conduct.

18. On or around March 3, 2023, the Dealer Member offered to reimburse client MS for the Loan. The Power of Attorney advised the Dealer Member that the Respondent had already agreed to a repayment plan for the amounts owed under the Loan.

19. The Respondent repaid the Loan in 15 post-dated cheques each in the amount of $1,000 and dated March 1, 2023, through May 1, 2024, respectively.

20. The Respondent provided Staff with evidence of repayment and the Power of Attorney confirmed to Staff that the Loan was fully repaid.

PART IV – CONTRAVENTIONS

21. By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

> Between February 25, 2019, and May 1, 2024, the Respondent borrowed monies from a client which gave rise to a conflict or potential conflict of interest which the Respondent failed to disclose to the Dealer Member or otherwise ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to Mutual Fund Dealer Rule 2.1.4 (formerly MFDA Rule 2.1.4).[1]

22. The Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.4.

PART V – TERMS OF SETTLEMENT

23. The Respondent agrees to the following sanctions and costs:

(i) a fine in the amount of $10,000;

(ii) costs in the amount of $2,500; and

(iii) a prohibition 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 12 months.

[1] On June 30, 2021, MFDA Rule 2.1.4 was amended and renumbered to become MFDA Rule 2.1.4(2) in respect of the conduct of Approved Persons. As the conduct addressed in this proceeding occurred before and after this amendment, the version of MFDA Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021, and the version of MFDA Rule 2.1.4(2) that was in effect between June 30, 2021 and December 31, 2022 are applicable to this proceeding. On January 1, 2023, MFDA Rule 2.1.4(2) was incorporated into Mutual Fund Dealer Rule 2.1.4(2). The version of Mutual Fund Dealer Rule in effect between January 1, 2023 and May 1, 2024 is also applicable to the conduct addressed in this proceeding.

24. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above immediately upon such acceptance, unless otherwise agreed between Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

25. If the Hearing Panel accepts this Settlement Agreement, Enforcement Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

26. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Mutual Fund Dealer Rule 7 against the Respondent. These proceedings may be based on, but not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

27. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

28. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with Mutual Fund Dealer Rule 7.4.4, and Rules of Procedure 14 and 15, in addition to any other procedures that may be agreed upon between the parties.

29. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

30. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules and By-law No. 1 of CIRO, and any applicable legislation to any further hearing, appeal, and review.

31. If the Hearing Panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

32. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

33. This Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the Hearing Panel's written reasons for its decision to accept this Settlement Agreement.

34. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

35. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

37. An electronic copy of any signature will be treated as an original signature.

DATED this 14 day of February, 2025.

"Witness"	"David Alan Robertson"
Witness	Respondent
	"Lerina J.M. Koornhof"
	Lerina J.M. Koornhof Enforcement Counsel on behalf of Enforcement Staff of the Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this 30th day of May, 2025, by the following Hearing Panel:

Per: "Susan E. Ross"
Chair

Per: "Jared Webb"
Industry Member

Per: "Bruce Krutow"
Industry Member

[i] Where the rules, by-laws, and policies of the Mutual Fund Dealers Association of Canada (the "MFDA") that were in force immediately prior to amalgamation of the Investment Industry Regulatory Organization of Canada and the MFDA have been incorporated into the Mutual Fund Dealer Rules, Enforcement Staff have referenced the relevant section of the Mutual Fund Dealer Rules.