



**IN THE MATTER OF
THE MUTUAL FUND DEALER RULESⁱ
and
BENJAMIN THOMAS BANKS**

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 Alberta District Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Benjamin Thomas Banks (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:¹

¹ At the time of the conduct addressed in this proceeding, MFDA Rules 2.3.1(b), 1.1.2, 2.5.1, 5.1(b), and 2.1.1 were in effect and are now incorporated into Mutual Fund Dealer Rule 2.3.2(b), 1.1.2, 2.5.1, 5.1(b), and 2.1.1

- (a) Between July 9, 2020 and November 20, 2020, the Respondent engaged in discretionary trading by processing trades without obtaining client instructions with respect to all elements of the trades, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.3.1(b) and Rule 2.1.1. (formerly MFDA Rules 2.3.1(b) and 2.1.1); and
- (b) Between January 3, 2020 and May 17, 2021, the Respondent failed to:
 - (i) verify client trade instructions received by email; and
 - (ii) record notes of client trade instructions or authorization, contrary to the Dealer Member's policies and procedures and Mutual Fund Dealer Rules 2.1.1, 5.1(b), 1.1.2 (as it relates to Rule 2.5.1) (formerly MFDA Rule 2.1.1, 5.1(b), and 1.1.2 (as it related to Rule 2.5.1)).

III. Terms of Settlement

- 5. Staff and the Respondent agree and consent to the following terms of settlement:
 - (a) the Respondent shall pay a fine of \$12,500, in instalments in accordance with the schedule set out in sub-paragraph 5(c) below, pursuant to Mutual Fund Dealer Rule 7.4.1.1(b));
 - (b) the Respondent shall pay \$5,000 in costs, in certified funds upon acceptance of the Settlement Agreement, pursuant to pursuant to Mutual Fund Dealer Rule 7.4.2;
 - (c) Payment by the Respondent of the fine referred to in sub-paragraph 5(a) above shall be made to and received by CIRO as follows;

referred to in this proceeding. On July 7, 2022, amendments to MFDA Rule 1.1.2 came into effect. As the conduct addressed in this proceeding pre-dated the amendments to this Rule, the version of MFDA Rule 1.1.2 that was in effect prior to July 7, 2022 is applicable to this proceeding.

- i) \$4,167 on or before the last business day of the first calendar month following the date of the acceptance of the Settlement Agreement,
 - ii) \$4,167 on or before the last business day of the second calendar month following the date of the acceptance of the Settlement Agreement, and
 - iii) \$4,166 on or before the last business day of the third calendar month following the date of the acceptance of the Settlement Agreement.
- (d) If the Respondent fails to make any of the payments described above in sub-paragraph 5(c) of this Settlement Agreement, then any unpaid amounts of the total fine of \$12,500 shall immediately become due and payable to CIRO;
- (e) the Respondent shall in the future comply with Mutual Fund Dealer Rules 2.3.1(b), 1.1.2, 5.1(b) and 2.1.1; and
- (f) the Respondent shall attend 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.

IV. AGREED FACTS

Registration History

8. The Respondent has been registered in the securities industry since January 2000.

9. Since March 28, 2012, the Respondent has been registered in Alberta as a dealing representative with Sun Life Financial Investment Services (Canada) Inc., a dealer member (“Dealer Member”) of CIRO (formerly a Member of the MFDA).²

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

Discretionary Trading

11. At all material times, the Dealer Member’s policies and procedures prohibited discretionary trading. It required its Approved Persons to obtain specific instructions concerning all elements of the trade prior to the execution of the trade including the investment to be purchased or sold, the amount of investment, and the timing of the trade.

12. Between July 9, 2020 and November 20, 2020, the Respondent processed 11 switches (22 mutual fund transactions) for three clients without obtaining instructions from the clients with respect to the timing of the trades in the clients’ accounts.

² The Respondent has also been registered with the Dealer Member in British Columbia since September of 2017.

13. The Respondent processed the transactions in the clients' accounts in order to implement a dollar cost averaging strategy whereby a client invested a certain amount at intervals in order to diversify the purchase price for a unit of a given mutual fund.

14. The Respondent had initial discussions with and obtained instructions from the clients about this strategy, and the clients agreed to have their monies invested in mutual funds over the course of a number of weeks rather than in one lump sum.

15. However, the Respondent did not obtain from the clients instructions regarding the specific date for the trades prior to processing the trades, and used his discretion in respect of this element the trades.

16. There was no material change in the mutual fund unit price between the dates of the initial discussions that the Respondent had with each of the Clients and the dates that the trades were placed in the Clients accounts.

Failure to Verify Client Instructions Received By Email or to Maintain Adequate Records of Client Instructions

17. At all material times, the Dealer Member's policies and procedures provided the following:

"...Advisors must document all client conversations related to trade instructions and keep in the client file.

For nominee name accounts, Trade Authorization (TA) is part of the account structure. A client signature is not necessary to process trades, however, detailed client notes, evidencing the client's authorization is required for each trade before the trade can take place.

For more information on maintaining client notes, refer to Chapter 6 – Books, Records & Reporting.

Advisors are not permitted to act on instructions received from clients by email, text or other electronic means. Upon receipt of any electronic instruction from a client, advisors must verbally authenticate that the electronic instructions were sent by the client prior to making any changes to their account or submission of trade instructions"

18. Between January 3, 2020 and May 17, 2021, for 18 transactions relating to three clients, the Respondent failed to call or meet with the three clients to verify instructions that the client's provided to the Respondent by email, or in instances where the Respondents had conversations with clients, the Respondent failed to record notes of the client conversation evidencing the instructions or authorization he received from the clients.

Additional Facts

19. In order to determine whether the trades in their accounts were authorized, the Dealer Member sent letters to the clients in respect of whom the Respondent engaged in discretionary trading and failed to record adequate notes as described above. No clients complained to the Dealer Member about a lack of authorization in respect of the trades in their accounts.

20. The Dealer Member imposed close supervision for 7 months and required the Respondent to review its policies and procedures and Code of Conduct. The Respondent was also charged a fee by the Dealer Member in respect of the close supervision in the amount of \$2800, which amount was paid to the Dealer Member by the Respondent.

21. There is no evidence of any client loss.

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

23. 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

24. 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.

25. 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.mfda.ca.

26. 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.

27. 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 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 contraventions described in this Settlement Agreement. Nothing in this

Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any 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 (Approved Persons) 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.

28. 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.

29. 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.

30. 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.

31. 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 9th day of February, 2024.

“Benjamin Banks”
Benjamin Banks

“Witness”
Witness - Signature

“Witness”
Witness - Print name

“Jennifer Galarneau”
Staff of CIRO
Per: Jennifer Galarneau
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 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.