**IN THE MATTER OF A SETTLEMENT HEARING**
**PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF**
**THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

## Re: Thomas Charles Bulloch

Heard: October 30, 2014, in Toronto, Ontario
Reasons for Decision: January 15, 2015

# REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

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| Terrance A. Sweeney | Chair |
| Greg Juby | Industry Representative |
| Matthew Onyeaju | Industry Representative |

Appearances:

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| Maria L. Abate | ) | Enforcement Counsel, Mutual Fund Dealers |
| | ) | Association of Canada |
| | ) | |
| Paul Le Vay | ) | Counsel for the Respondent |
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## BACKGROUND

1. We were constituted as a Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada ("MFDA") to consider a settlement agreement dated September 15, 2014 (the "Settlement Agreement") between the MFDA ("Staff") and Thomas Charles Bulloch (the "Respondent").

2. At the commencement of the hearing, we ordered that the proceedings be moved *in camera*. We then considered the Settlement Agreement and heard from Counsel as to why we should accept the Settlement Agreement and, if so, what the appropriate penalty might be.

3. The Hearing Panel then moved into public session and the Chair announced that the Hearing Panel would accept the Settlement Agreement and the penalties therein imposed. The Chair indicated that brief reasons for our decision would follow.

4. These are those Reasons

## CONTRAVENTIONS

5. The Respondent made referrals in respect of the sale of approximately $7,336,181.88 [$3,576,399.44 excluding reinvestments] of investment products to at least five clients and six other individuals outside Sun Life, for which he received fees or compensation totalling approximately $50,274.01, contrary to MFDA Rule 2.4.2 and sections 13.7 and l3.8 of National Instrument 31-103.

## TERMS OF SETTLEMENT

6. The Respondent agrees to the following terms of settlement:

   a) the Respondent shall pay a fine in the amount of $25,000 pursuant to section 24.1.1(b) of MFDA By-law No. 1;

b) the Respondent shall pay costs of $5,000 pursuant to section 24.2 of MFDA By-law No.1;

c) the Respondent shall be permanently prohibited from conducting securities related business while in the employ of, or associated with, a Member of the MFDA;

d) the payment by the Respondent of the fine and costs in sections a) and b) above shall be made to and received by MFDA Staff in certified funds as follows:

   i. $12,500 (fine) upon entering into the settlement agreement;

   ii. $12,500 (fine) on or before December 31, 2014; and

   iii. $5,000 (costs) upon entering into the settlement agreement.

**ANALYSIS AND DECISION**

7. The Hearing Panel may either accept or reject the Settlement Agreement.[1] The Hearing Panel will accept a settlement agreement if it is within a reasonable range of appropriateness. The Hearing Panel is likely to accept a settlement agreement where it has been negotiated between Counsel for Staff and experienced Counsel for the Respondent as is the case here.

8. The overwhelming concern of the Hearing Panel is to protect the public investor.[2]

9. From December 1, l987 to February 1, 2011, the Respondent was registered as a mutual fund salesperson with Sun Life Financial Investment Services (Canada) Inc. or its predecessors ("Sun Life" or the "Member"). The Respondent retired at the end of April 2010 and the Respondent's Advisor Agreement with the Member accordingly ended effective May 1, 2010. However, the Respondent remained registered and held the title of Associate Advisor to oversee the transition of his client roster to new Sun Life advisors. Transfer of the Respondent's clients was completed in early 2011 and the Respondent formally resigned from Sun Life effective February 1, 2013. The Respondent is now 64 years old.

10. In 2006, the Respondent was contacted by a representative of Harris Brown & Partners Inc. ("Harris Brown") which promoted various investment products sold by Seaquest

[1] MFDA By-law No. 1, s. 24.4.3

[2] *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 (S.C.C.) at paras.59 and 68.

Corporation ("Seaquest"), Seaquest Capital Corporation ("Seaquest Capital") and related corporations. In 2007, the Respondent through his corporation invested in an investment product offered by Seaquest Capital and subsequently referred some of his clients to Harris Brown and, thus, to the investment products of the Seaquest group.

11. The Respondent had been the mutual fund sales person responsible for servicing the accounts of the parents of FB and LP at Sun Life, on and off, for almost 20 years. FB and LP are sisters. FB did not become a client of Sun Life until late 2007. LP was an existing client of Sun Life.

12. On or about October 1, 2007, the mother of FB and LP died. As part of their inheritance, FB and LP each received $250,000 and each of their respective children received $100,000 as well. FB has three children and LP has two children. The funds inherited by FB and LP and their children were the proceeds of a joint life insurance policy bought by their parents with the Respondent acting as agent on the sale.

13. Sun Life had not previously approved any of the Seaquest or related corporations' products for sale. All of the sales or referrals of these products by the Respondent to clients and other individuals were not processed for the account or through the facilities of Sun Life.

14. At all material times Staff alleged that MFDA Rule 2.4.2 prohibited the Respondent from entering into a referral arrangement between the Respondent in his personal capacity and any of Seaquest, Seaquest Capital or related corporations. Any such referral arrangement was required to be between Sun Life and the other entity and be subject to the requirements of MFDA Rule 2.4.2 and sections 13.7 and 13.8 of National Instrument 31-103. Sun Life did not have a referral arrangement with any of Seaquest, Seaquest Capital or their related corporations.

15. From December 2007 to September 2011, the individuals referred to Seaquest and other related corporations by the Respondent invested approximately $7,336,181.88 [$3,576,399.44 excluding investments] in investment products offered by Seaquest or their related corporations.

16. On October 24, 2011, Seaquest and Seaquest Capital each delivered a Notice of Intention to file a proposal under the *Bankruptcy and Insolvency Act.*

17. On November 24, 2011, Seaquest and Seaquest Capital were deemed to have filed an assignment in bankruptcy when they failed to file a restructuring proposal and a trustee was appointed to manage the estate of Seaquest and Seaquest Capital.

18. The Respondent by his contemptible conduct contributed to devastating financial losses for his clients. Most poignant is the example of the two sisters, FB and LP, and their children who lost almost all of the $1,000,000.00 inherited by them under the insurance policy. It must have been especially galling for the clients when they learned that the Respondent got all his moneys out months before the bankruptcy of the corporations in which they invested.

19. Staff framed their complaint against the Respondent as a breach of MFDA Rule 2.4.2 and sections 13.7 and 13.8 of National Instrument 31-103. The latter prohibits a "registered individual whose registration is sponsored by the registered firm" from participating in a referral arrangement except in certain specified cases. Rule 2.4.2, however, applies only to a "Member". It does not include an "Approved Person" as defined in the MFDA By-Law No. 1 to include an "individual".

20. This was pointed out in a decision of a hearing panel of the MFDA in August 2013.[3] The hearing panel in that case found that the activities of the respondent did not amount to a breach of Rule 2.4.2 as it does not apply to individuals. It is, therefore, surprising to this Hearing Panel that Staff persists in raising Rule 2.4.2 in this case and other similar ones.

21. There is no principle of interpretation that would allow this Hearing Panel to insert words in a Rule which are not there. The Hearing Panel, therefore, rules that this Respondent did not breach Rule 2.4.2. He did breach section 13.8 of National Policy 31-103. He probably also breached MFDA Rules 1.1.1(a), 1.2.1(d) and 2.1.1 although they were not alleged by the MFDA.

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[3] *Re Edmund Ancil Teelucksingh*, [2013] at paras. 57 and 58; Hearing Panel of the O.R.C., File No. 201254; Hearing Panel Decision dated August 8, 2013.

**PENALTY**

22. Members of the Hearing Panel questioned Counsel as to why the Respondent who earned over $50,000.00 from his irresponsible conduct was only being fined $25,000.00. After all, the Respondent knew or ought to have known that his activities were against the policies of his sponsoring firm and also some MFDA rules and National Policy 31-103.

23. The Hearing Panel felt that, at a minimum, the Respondent should be compelled to disgorge his ill-gotten gains

24. Counsel for both the MFDA and the Respondent quickly countered by pointing to the fact that the Respondent had agreed to the "ultimate penalty", namely, a lifetime ban from the securities industry. This is a specious argument given the age of the Respondent and that he is not in the securities business. However, the Hearing Panel is well aware of the benefits to be derived from a settlement agreement as opposed to a contested hearing. It also noted that the Respondent had no prior problems with the MFDA and cooperated fully in the investigation. Accordingly, and somewhat reluctantly, the Hearing Panel agreed to accept the Settlement Agreement and the penalties proposed.

**DATED** this 15th day of January, 2015.

"Terrance A. Sweeney"

Terrance A. Sweeney
Chair

"Greg Juby"

Greg Juby
Industry Representative

"Matthew Onyeaju"

Matthew Onyeaju
Industry Representative

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