Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

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: Roderick Iain McLeod

Heard: June 10, 2010 in Toronto, Ontario
Reasons for Decision: July 27, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.	Chair
Selwyn Kossuth	Industry Representative
Heather A. Phillips	Industry Representative

Appearances:

Lyla Simon	)	For the Mutual Fund Dealers Association of Canada
	)	
Roderick Iain McLeod	)	Unrepresented
	)	

1. The Panel was convened to hear submissions as to a Settlement Agreement reached between the Respondent, Roderick Iain McLeod, and Staff of the MFDA on May 17, 2010. The Panel was required to consider whether, pursuant to section 24.4 of By-law No. 1, the Panel should accept the Settlement Agreement.

2. At the outset of the proceedings we considered a joint motion by Staff and the Respondent to move the proceedings *in camera*. We granted that motion. We then considered, in detail, the provisions of the Settlement Agreement itself. We heard submissions as to the applicable law that should guide this Panel in determining whether to accept or reject the Settlement Agreement. We next heard submissions as to why this particular Settlement Agreement met the appropriate criteria. We then retired to consider both the Settlement Agreement and the applicable legal principles. After deliberation we unanimously concluded that it was appropriate to accept the Settlement Agreement.

3. The investigation by Staff of the Respondent's activities disclosed that the Respondent had engaged in an activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to section 24.1 of By-law No. 1. The specific allegation was that in December 2004 the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by referring or facilitating the sale of a total of $125,000 of an investment product (the Maypoint debentures) to two individuals when that investment product had not been approved for sale by the Member, contrary to MFDA rule 1.1.1. Complete details of the facts supporting this allegation are found in paragraphs 10 to 20, inclusive, of the Settlement Agreement. In short, the Respondent was in contact with two individuals, neither of whom were clients of the Member firm. He provided an outline of the Maypoint debentures and attendant risks, and after meetings with those clients and the Maypoint representatives referred or facilitated the sale of $25,000 worth of Maypoint debentures on December 13, 2004 and an additional $100,000 of Maypoint debentures on December 14, 2004. The Respondent admitted that he engaged in securities related business that was not carried on for the account of the Member.

4. We have concluded that the proposed Settlement Agreement should be accepted as it would be in the public interest and the penalty proposed will protect investors. We have also determined that the penalty is reasonable and proportionate having regard to the conduct of the Respondent. The penalty addresses the issues of both specific and general deterrence. This settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future. As such, the Settlement Agreement will foster confidence in the integrity of the Canadian Capital Markets, the MFDA, and the regulatory process itself.

5. In addition, we have carefully reviewed the MFDA Penalty Guidelines and the effect of these Penalty Guidelines on this type of conduct. The proposed penalty in the amount of $7,000 by way of a fine, together with costs in the amount of $2,500, is a reasonable amount for a matter of this nature and should not be disturbed. We are aware that the recommended amount found in the Penalty Guidelines is $10,000, but under all of the circumstances of this case we believe that the figure of $7,000 is appropriate. In this regard we have considered the fact that the Respondent has not been the subject of any previous MFDA discipline hearings. He made a full admission as to the misconduct. By entering into the Settlement Agreement he has accepted full responsibility for his misconduct. This step has eliminated the necessity of a full investigation and hearing. Enforcement counsel takes the position that the Respondent is truly remorseful when one considers his cooperation and his resignation from the industry.

6. We agree with the submission of Enforcement counsel that a negotiated settlement should not be disturbed provided that the penalties are within a reasonable range of appropriateness. In that regard we have considered the remarks of the Panel of the District Council in *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. The Panel made these comments at page 9:

> 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.

7. In addition, we believe the Respondent's personal circumstances are important mitigating factors in this case. The Respondent is 65 years of age. He tendered his resignation as a mutual fund salesperson to the Member, FundEX Investments Inc. (FundEX), in December 2009. His avowed intention is that he will not be returning to the mutual fund industry.

8. Finally we find the fact situation in this case is very much akin to the fact situation found in the decision of *Rosenfelder (Re)*, [2010] MFDA Central Regional Council, Case No. 200914, Settlement Agreement dated April 20, 2010, wherein a penalty of $10,000 was imposed upon a Respondent who had engaged in securities related business by selling or facilitating the sale of $150,000 of Maypoint debentures to two clients. In that case, the commission earned was $3,600. The costs imposed were $2,500. There are two issues that must be addressed. First of all, the clients in this particular case were not clients of the firm. In the *Rosenfelder* case they were clients of the firm. Secondly, the Settlement Agreement contains paragraph 31, which provides the right to bring proceedings under the by-laws of the MFDA if the Respondent fails to honour any of the terms of the settlement. We view this as an excellent control over the activities of the Respondent if he should, for some reason, decide to enter into the securities field again.

9. For all of the above reasons we accepted the Settlement Agreement and signed the appropriate Order presented to us at the Hearing. We agreed to provide reasons for our decision after the Hearing. These are our reasons.

DATED this 9th day of July, 2010.

"John Webber"
The Hon. John B. Webber, Q.C.,
Chair

"Selwyn Kossuth"
Selwyn Kossuth,
Industry Representative

"Heather A. Phillips"
Heather A. Phillips,
Industry Representative

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