



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: Marc Joseph Monforton

Heard: November 24, 2016, in Toronto, Ontario
Reasons for Decision: January 19, 2017

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.
Guenther W. K. Kleberg
Robert C. White

Chair
Industry Representative
Industry Representative

Appearances:

Sarah Glickman)	Counsel for the Mutual Fund Dealers
)	Association of Canada
)	
Marc Monforton)	By teleconference
)	
)	

Acceptance of settlement agreement

1. The Hearing Panel accepted the settlement agreement dated August 30, 2016 (the “Settlement Agreement”) between the Mutual Fund Dealers Association of Canada (the “MFDA”) and Marc Monforton (the “Respondent”), a copy of which is attached as Schedule ‘1’ to these reasons.

2. The violations admitted to, the relevant law transgressed, and the pertinent facts and considerations taken into account in arriving at the penalties, are set out and explained in the Settlement Agreement.

3. Although the Respondent agreed in the Settlement Agreement to appear in person at the hearing, he participated by teleconference with the consent of staff and the panel.

The misconduct

4. The Respondent admitted that he had referred at least 8 clients and 12 individuals to a mortgage broker to invest in syndicated mortgage products and received at least \$10,400 in referral fees, thereby participating in a referral arrangement that did not comply with MFDA rules and National Instrument 31-103.

5. The Respondent did not disclose to his Member that he was making referrals and the Member had no knowledge of such referrals until much later.

Agreed penalties

6. The agreed penalties include a fine of \$12,000 payable in 12 monthly instalments, and a prohibition from conducting securities related business for 6 months. In addition, the respondent agreed to pay a costs award of \$2,500.

7. The Respondent's Member terminated his employment as a result of the misconduct set out in the Settlement Agreement. The Respondent is not currently in the securities industry in any capacity.

The law

8. The Respondent entered into a referral arrangement directly with a broker. In doing so, he acted contrary to his Member's policies, MFDA Rules and National Instrument 31 -103. These required that all referral arrangements and securities related business take place through the Respondent's Member. (See *Caicco* (Re), MFDA File No. 201503, Hearing Panel of the Central Regional Council, Decision and Reasons dated August 4, 2015; *Oosterveld* (Re), MFDA File No. 201514, Hearing Panel of the Prairie Regional Council, Decision and Reasons dated October 11, 2016; *Young* (Re), MFDA File No. 201324, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 6, 2014.)

9. This regulatory framework ensures that Members can effectively oversee any products that their Approved Persons refer to clients through oversight, due diligence and risk appraisals. (See *Andrews* (Re), MFDA File No. 201324, Hearing Panel of the Central Regional Council, Decision and Reasons dated May 6, 2014, at para. 43; *Qi* (Re), MFDA File No. 201253, Hearing Panel of the Central Regional Council, Decision and Reasons (Penalty) dated November 20, 2013, at para. 11; *Caicco* (Re), *supra*, at paras. 20 – 23.)

10. Hearing Panels have found that where an Approved Person enters into a referral arrangement directly and not through the Member, and accepts referral fees, the Approved Person violates MFDA Rule 2.4.2 and National Instrument 31-103.

11. In the present case, in addition to the above-referenced regulatory framework, the Member's policies and procedures also prohibited the Respondent from entering directly into a referral arrangement. In addition to the oversight of products, these policies and procedures help the Member adequately deal with any potential of conflict of interest that may arise out of a referral arrangement.

Considerations in the Present Case

12. The misconduct at issue is serious. The regulatory framework surrounding referral arrangements is a pillar of securities regulation and is designed to protect clients.

Client Loss

13. The matter came to the MFDA's attention through an anonymous complaint sparked by a poster at a golf club referring to the respondent's referral services. After investigation of the Respondent, there was no evidence of client losses.

Benefits Received by the Respondent

14. The Respondent received referral fees of at least \$10,400 from the broker by engaging in the referral arrangement.

Respondent's Experience and Level of Activity in the Capital Markets

15. The Respondent was registered in the mutual fund industry between 1984 and 2015. As an experienced mutual fund salesperson, he ought to have known and respected the compliance requirements of the Member and the MFDA.

Deterrence

16. The agreed penalty is significant and sends a message to the Respondent and others in the capital markets about the seriousness of the misconduct at issue.

Respondent's Past Conduct

17. The Respondent has not previously been subject to MFDA disciplinary proceedings.

Respondent's Recognition of the Seriousness of His Misconduct

18. By entering into this Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring the time and expense of conducting a full disciplinary hearing.

19. The Respondent stated at the hearing that he was embarrassed by his conduct and did not realize at the time that he was acting improperly. He showed remorse for his conduct and at his ignorance of the Member's policies and the law.

Penalty Guidelines

20. The Penalty Guidelines suggest the following in the event of non-permissible referral arrangement:

Breach	Penalty Type & Range	Specific Factors to Consider
Referral Arrangements (NI 31-103) (Guidelines, p. 18)	Fine: Minimum of \$10,000 Write or rewrite an appropriate industry course (e.g. IFIC Officers', Partners' and Directors' Course or Canadian Investment Funds Course) Suspension Permanent prohibition in egregious cases	Magnitude (in size and value) of referrals Number of clients affected Magnitude of client losses (if any) Suitability of referrals if involving securities Compensation received by the Respondent Any personal interest of the Respondent in referral Existence of client complaints Legality of referral

21. The proposed fine of \$12,000 and a 6 month prohibition from conducting securities related business is consistent with the Penalty Guidelines, which suggest a fine and a prohibition as possible penalty types for this type of misconduct. The proposed penalty is appropriate given the fact that there is no evidence of any client loss or client complaints and considering the compensation received by the Respondent.

Previous Decisions Made in Similar Circumstances

22. The proposed resolution is within the reasonable range of appropriateness with regard to other decisions made by MFDA Hearing Panels in similar circumstances:

Case:	Facts:	Penalties:
<i>Rajpal (Re)</i> [2015], MFDA File No. 201362 Hearing Panel of the Central Regional Panel, Decisions and Reasons dated April 9, 2015,	Between July 2010 and November 2010, the Respondent referred at least two clients to a company that sold mortgage investment products and received \$2,500 in referral fees for doing so. There were no client complaints and no client losses in this case.	The Hearing Panel accepted the following settlement terms: Fine of \$5,000 Costs of \$2,500
<i>Duggal (Re)</i> [2015] MFDA File No. 201364 Hearing Panel of the Central Regional Panel, Decisions and Reasons dated May 4, 2015,	Between December 2009 and June 2011, the Respondent referred one client to a company that sold mortgage investment products and received \$60,500 in referral fees for doing so. There were no client complaints and no client losses in this case. The Respondent had paid the Member \$24,600 by the time of the MFDA's disciplinary hearing, and that amount was taken into consideration by the Hearing Panel when it accepted the fine of \$40,900, relative to the referral fees received by the Respondent.	The Hearing Panel accepted the following settlement terms: Fine of \$40,900 Costs of \$2,500

Costs

23. An award of costs in the amount of \$2,500 was appropriate in the circumstances.

Conclusion

24. The panel concluded that the agreed penalties were within the range of appropriateness, were fair and reasonable, and would provide an adequate deterrent to the Respondent and the industry in general. For these reasons the panel accepted the Settlement Agreement because to do so was in the public interest.

DATED this 19th day of January, 2017.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg
Industry Representative

“Robert C. White”

Robert C. White
Industry Representative

DM 510676 v1

Schedule "1"

Settlement Agreement

File No. 201673



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: Marc Joseph Monforton

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Mutual Fund Dealers Association of Canada ("Staff") and the Respondent, Marc Joseph Monforton (the "Respondent"), consent and agree to settlement of this matter by way of this agreement (the "Settlement Agreement").

2. Staff conducted an investigation of the Respondent's activities which disclosed activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the MFDA:

- a) between January 2011 and July, 2015, the Respondent referred at least 8 clients and 12 individuals to a mortgage broker to invest in syndicated mortgage products and received at least \$10,400 in referral fees, thereby participating in a referral arrangement that did not comply with MFDA Rules 2.4.2, 2.5.1, 1.1.2, 2.1.4 and National Instrument 31-103.

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

- a) the Respondent shall pay a fine in the amount of \$12,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
- b) the Fine shall be payable in 12 installments in the amount of \$1000 each, which installments are due on or before the final business day of the 12 months that follow the date of the acceptance of the settlement agreement by the Hearing Panel;
- c) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 6 months from the date of the settlement hearing, pursuant to s. 24.1.1€ of MFDA By-law No. 1;
- d) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1;
- e) the Respondent shall in the future comply with MFDA Rules 2.4.2, 2.5.1, 1.1.2, 2.1.4 and National Instrument 31-103; and
- f) the Respondent will attend in person, on the date set for the Settlement Hearing.

6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

III. AGREED FACTS

Registration History

7. Between 1984 and August 27, 2015, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a Dealing Representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

8. On August 27, 2015, Quadrus terminated its relationship with the Respondent as a result of the misconduct set out in this Settlement Agreement.

9. The Respondent is not currently registered in the securities industry in any capacity.

10. At all material times, the Respondent conducted business in the Goderich, Ontario area.

Unpermitted Referral Agreement

11. At all material times, Quadrus’ policies and procedures prohibited Representatives, including the Respondent, from entering directly into referral arrangements. Only Quadrus could enter into a referral arrangement with a person or company.

12. In or around 2011, the Respondent entered into a referral arrangement with Mark & Associates Mortgage Brokers (“MAMB”) who offered syndicated mortgage products to investors, which provided that the Respondent would refer individuals to MAMB in return for referral fees equal to 4% of the monies that the individuals referred by Respondent invested in syndicated mortgage products (the “Referral Arrangement”).

13. The Respondent solicited investors for MAMB’s syndicated mortgage products, including by introducing prospective investors to the opportunity to invest with MAMB, and by advertising about the syndicated mortgage products on a poster containing contact information

for both the Respondent and MAMB displayed at a local golf club from July 11, 2015 to July 25, 2015.

14. Between January 2011 and July, 2015, the Respondent referred at least 8 clients and 12 individuals to MAMB.

15. Pursuant to the Referral Arrangement, MAMB paid the Respondent directly at least \$10,400 in referral fees.

16. The Respondent did not disclose to Quadrus that he was making referrals to MAMB.

17. Quadrus had not entered into a referral arrangement with MAMB and had no knowledge of the Referral Arrangement until notified by MFDA Staff in July 2015 (as set out below at paragraph 18).

Quadrus' Investigation

18. On or about July 22, 2015, Staff received a complaint regarding the Referral Arrangement. MFDA Staff notified Quadrus, which commenced its investigation.

19. Quadrus also completed a review of all client files serviced by the Respondent and sent letters to all clients serviced by the Respondent in order to determine whether the Respondent had engaged in any further misconduct. No clients raised any concerns with Quadrus.

Additional Factors

20. There is no evidence of any client loss.

21. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

22. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

IV. ADDITIONAL TERMS OF SETTLEMENT

23. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.

24. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

25. 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 stated, 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.

26. 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 respecting the Respondent in this matter;
- b) the Respondent waives any rights to a full hearing, a review hearing before the Board of Directors of the MFDA 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) Staff will not initiate any proceeding under the By-laws of the MFDA 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. 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 s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1; 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.

27. 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 sections 20 and 24 of By-law No. 1, unaffected by the Settlement Agreement or the settlement negotiations.

28. Staff and the Respondent agree that the terms of the Settlement Agreement, including the attached Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

29. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

DATED this 30th day of August, 2016.

“Marc Joseph Monforton”

Marc Joseph Monforton

“VM”

Witness – Signature

VM

Witness – Print Name

“Shaun Devlin”

Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule “A”

Order

File No. 201673



Mutual Fund Dealers Association of Canada
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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Marc Joseph Monforton

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of [Respondent] (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that between January 2011 and July, 2015, the Respondent referred at least 8 clients and 12 individuals to a mortgage broker to invest in syndicated mortgage products and received at least \$10,400 in referral fees, thereby participating in a referral arrangement that did not comply with MFDA Rules 2.4.2, 2.5.1, 1.1.2, 2.1.4 and National Instrument 31-103.

IT IS HEREBY ORDERED THAT the Settlement Agreement is accepted, as a consequence of which:

1. the Respondent shall pay a fine in the amount of \$12,000 pursuant to s. 24.1.1(b) of MFDA By-law No.1 (the “Fine”);
2. the Fine shall be payable in 12 installments in the amount of \$1000 each, which installments are due on or before the final business day of the 12 months that follow the date of the acceptance of the settlement agreement by the Hearing Panel;
3. the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA for a period of 6 months from the date of the settlement hearing, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
4. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No. 1; and
5. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary 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 MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]