



1. On April 20, 2010, the Hearing Panel heard submissions by the parties as to whether a Settlement Agreement reached before the hearing should be accepted. At the conclusion of the hearing, the Panel was of the view that the Agreement met the established criteria and that it should, therefore, be accepted, and the Panel so ordered. Set out below are the reasons for the Panel's decision.

## **The Facts**

2. The facts of this case are not in dispute, and they are set out in the Agreement:

### **Registration and Background History**

- 6) From September 1, 2001 to the present, the Respondent has been registered in Ontario as a mutual fund salesperson with Assante Financial Management Ltd. ("Assante"), a Member of the MFDA since May 30, 2002. The Respondent has resigned from Assante, effective April 20, 2010.
- 7) The Respondent is 74 years old and lives much of the year outside of Canada. He is retired, and has sold his book of mutual fund business.
- 8) The Respondent worked for much of his career in the financial services industry, and in particular, as an actuary in the insurance industry.
- 9) The Respondent has had no prior disciplinary history with the MFDA.

### **The Maypoint Debentures**

- 10) Maypoint Investments Inc. ("Maypoint") is an Ontario company incorporated on July 14, 2004.
- 11) At the material time, Maypoint purportedly carried on business raising funds through the sale of debentures to investors (the "Maypoint debentures").
- 12) The Maypoint debentures were for a term of one year, required a minimum investment of \$25,000 and paid investors 14% annually.
- 13) The proceeds from the sale of the Maypoint debentures were purportedly invested by Maypoint in the secured notes of an entity known as GTA Financial Inc. ("GTA"), which in turn purportedly used those proceeds to advance consumer loans to individuals to finance the purchase of used vehicles.
- 14) The Maypoint debentures were sold by way of an offering memorandum in

reliance upon the exemptions from the prospectus and registration requirements in the Securities Act (Ontario). The Maypoint debentures were distributed to investors in Ontario through limited market dealers.

- 15) The Maypoint debentures were not an investment product approved by Assante for sale by its representatives.
- 16) At the material time, the Respondent was licensed in Ontario to sell life and health insurance.
- 17) In 2004, the Respondent attended a meeting in Toronto at which Maypoint made a presentation about the Maypoint debentures and provided attendees, including the Respondent, with a package of Maypoint materials that included a subscription agreement, the offering memorandum and other documents.
- 18) The Respondent was advised by Maypoint that he would earn a fee of up to 4% to 5% of the amounts invested by any individuals he referred to Maypoint.
- 19) In January 2005, following the Maypoint presentation, the Respondent personally invested \$50,000 in Maypoint debentures, and contacted at least two Assante clients, BK and IR, who were also insurance clients of the Respondent, and told them about the opportunity to invest in the Maypoint debentures and left them with the material he had been given by Maypoint.
- 20) Thereafter, between January 2005 and September 2005, the Respondent referred or facilitated the sale of Maypoint debentures to client BK on three occasions, for a total investment by client BK in the amount of \$100,000.
- 21) In May 2005, the Respondent referred or facilitated the sale of \$50,000 of Maypoint debentures to client IR.
- 22) The Respondent was paid the following referral fees in respect of the clients' purchases of the Maypoint debentures:
  - (a) \$2,400 in total on BK's investments;
  - (b) \$1,200 on IR's investment; and
  - (c) \$2,000 on his own investment.
- 23) None of the transactions involving the Maypoint debentures nor the resulting referral fees received by the Respondent were carried on for the account or through the facilities of Assante.
- 24) GTA filed for bankruptcy in or about June 9, 2006. Maypoint has not made interest or principal payments to Maypoint debenture holders in several years and there is no reasonable prospect of it doing so.

- 25) BK and IR are aware of the circumstances surrounding the Maypoint debentures and have not sought any form of compensation or reimbursement from the Respondent.

### **Contravention**

3. The Respondent admitted that, between January and September 2005, he 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 \$150,000 of an investment product to two clients, when that investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1.

### **Terms of Settlement**

4. The Respondent agreed to the following terms of settlement:
- (a) The Respondent shall pay a fine in the amount of \$10,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
  - (b) The Respondent has resigned as a mutual fund salesperson effective April 20, 2010 and does not have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
  - (c) The Respondent shall undertake not to re-apply or to seek to have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA;
  - (d) The Respondent shall pay costs of the investigation and the hearing in the amount of \$2,500.00, pursuant to section 24.2 of MFDA By-law No. 1;
  - (e) The Respondent shall tender to Staff an affidavit sworn or affirmed by him, confirming that there are not historically or currently any claims, demands, or civil actions commenced against him by Maypoint investors with respect to them seeking to be compensated or reimbursed; and
  - (f) The Respondent shall attend in person at the Settlement Hearing.

### **Staff Commitment**

5. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not

initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. 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 Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, 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.

### **Failure to Honour the Agreement**

6. 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 the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceedings 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

### **DISCUSSION**

7. It is well established that hearing panels will consider the following factors in their determination of whether or not the terms of the settlement are appropriate:

- (a) Whether acceptance of the settlement agreement would be in the public interest and whether the penalty imposed will protect investors;
- (b) Whether the settlement agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the settlement agreement;
- (c) Whether the settlement agreement addresses the issues of both specific and general deterrence;

- (d) Whether the proposed settlement will prevent the type of conduct described in the settlement agreement from occurring again in the future;
- (e) Whether the settlement agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

*Jacobson (Re)*, [2007] MFDA Prairie Regional Council, Case No. 200712, Decision dated July 13, 2007 at pp. 9 and 12 (“Jacobson”), MFDA Book of Authorities, Tab 15.

*Investors Group Financial Services (Re)*, [2005] MFDA Ontario Regional Council, Case No. 200401, Decision dated December 16, 2004 at pp. 2-3, MFDA Book of Authorities, Tab 13.

*IQON Financial Inc. (Re)*, [2007] MFDA Pacific Regional Council, Case No. 200713, Decision dated May 24, 2007 at p. 9, MFDA Book of Authorities, Tab 14.

8. Nor should a negotiated settlement be refused lightly. As the British Columbia Court of Appeal said in *B.C.S.C. v. Seifert* (2007 BCCA 484),

Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide the means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation.

## **DISPOSITION**

9. The sale of unapproved securities constitutes serious misconduct. The public is easily misled, and the results are frequently unfortunate, as indeed they were in this case. On the other hand, it appears that these were isolated transactions, and that the Respondent himself invested heavily in the security in question, which indicates that he honestly believed that he was recommending a good product.

10. The Respondent is 74 years old. He has sold his book of mutual fund business and has retired from the industry. He has no prior violations on his record. The unauthorized sales took place some five years ago, and no claim has been made against him or the Member. He has admitted his misconduct, the benefit he received by way of referral fees

was small, and the agreed-upon fine greatly exceeds the benefit. Certified cheques representing the fine (\$10,000.00) and the costs (\$2,500.00) to be paid were held in escrow by the MFDA pending the acceptance of the Settlement Agreement.

11. The Penalty Guidelines recommend, for this type of offence, a minimum fine of \$10,000, and this has been met. The Guidelines also recommend a suspension or permanent prohibition, and this is satisfied by the Respondent's undertaking not to re-apply or seek to have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA. Past cases have followed these Guidelines.

12. Considering the facts set out above, and after having heard from counsel for the parties, we concluded that the proposed Settlement Agreement was fair and appropriate and that it met the usual requirements, and we therefore approved it.

**DATED** this 20<sup>th</sup> day of May, 2010.

"Fred Kaufman"  
The Hon. Fred Kaufman, Q.C.,  
Chair

"Robert White"  
Robert C. White,  
Industry Representative

"Guenther Kleberg"  
Guenther Kleberg,  
Industry Representative