



**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: Hugh Blair Smilestone**

Heard: January 8, 2013 in Halifax, Nova Scotia  
Reasons for Decision: August 8, 2013

**REASONS FOR DECISION**

Hearing Panel of the Atlantic Regional Council:

Edward W. Keyes	)	Chair
Robert G. Malcolm	)	Industry Representative
John R. Maguire	)	Industry Representative

Appearances:

Shelly Feld	)	Counsel, Mutual Fund Dealers Association of Canada
	)	
	)	
Brian K. Awad	)	Counsel for the Respondent
	)	

1. On August 17, 2012, this matter was set down for a hearing on the merits to take place on January 8, 2013. All required notices were given to the Parties and to the public.

2. The staff of the Mutual Fund Dealers Association of Canada (“MFDA”) and Hugh Blair Smilestone (“the Respondent”) entered into a Settlement Agreement pursuant to Section 24.4 of By-law No. 1 of the MFDA. On recommendation of the MFDA and in accordance with Section 24.4.3 of the By-law, the Settlement Agreement was then referred to this Hearing Panel for acceptance or rejection. After hearing counsel for the parties and considering the exhibits filed, we concluded that we should accept the Settlement Agreement. We made an Order accepting the Settlement Agreement and indicated that the Reasons for our Decision would follow in due course. These are those Reasons. The Settlement Agreement is attached as Appendix “A” to the Reasons.

3. In the Notice of Hearing, the Respondent was alleged to have committed the following violations:

**Allegation #1:** Between June 1, 2004 and March 10, 2010, the Respondent falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:

- (a) complete new client application forms (“NCAFs”);
- (b) update Know-Your-Client (“KYC”) and banking information;
- (c) implement changes to pre-authorized contributions (“PACs”) and systematic withdrawal plans (“SWiPs”); and
- (d) execute trades in client accounts;

contrary to MFDA Rule 2.1.1(b) and (c).

**Allegation #2:** Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases the securities to be traded;

contrary to MFDA Rules 2.3.1(a) and 2.1.1(b) and (c).

**Allegation #3:** In November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MH after he had falsified the signature of client MH on the trade tickets, contrary to MFDA Rule 2.1.1(b).

**Allegation #4:** Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MFDA Rule 1.2.1(d)(iii), (iv) and (vi) and MFDA Rule 2.1.1(b).

**Allegation #5:** On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

4. The Respondent has admitted to these violations.
  
5. The key portions of the Settlement Agreement entered into with the MFDA and the Respondent are as follows:

## **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff conducted an investigation of the Respondent's activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of the MFDA By-law No. 1.

4. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

5. Staff and the Respondent agree that the terms of this 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...

## **IV. AGREED FACTS**

### **Registration History**

7. From June 1, 2004 until March 10, 2010, the material time giving rise to the conduct described in this Settlement Agreement, the Respondent was registered in Nova Scotia and Ontario as a mutual fund salesperson with Dundee Private Investors Inc. ("Dundee"), a Member of the MFDA. The Respondent conducted business from a sub-branch located in Halifax, Nova Scotia.

8. In total, the Respondent was registered as a mutual fund salesperson in Nova Scotia and Ontario from January 5, 1996 to March 10, 2010 and in New Brunswick from March 2002 to June 2004.

9. Dundee terminated the Respondent on March 10, 2010 as a result of the events described herein.

### **Falsification of Client Account Documents**

10. In accordance with Dundee's policies and procedures, the Respondent was required to obtain a client's signature and/or initials on the following types of documents:

- (a) NCAFs containing a client's KYC information collected for the purpose of opening new accounts;
- (b) KYC update forms, which Dundee required Approved Persons to obtain from clients in the following circumstances:
  - (i) in the event of a material change to a client's KYC information at any time;
  - (ii) if a client account became active after more than a year of inactivity and a review with the client revealed changes in the client's financial resources or investment objectives; and
  - (iii) if a client account had been inactive for more than 2 years; and
- (c) Documents used for processing a trade in a client's account unless the trade was being processed using a limited trading authorization.<sup>1</sup>

11. Between June 1, 2004 and March 10, 2010, the Respondent falsified client signatures and initials on account documents and falsified the content of certain other documents as described below:

- (a) he traced, or by other means imitated the client's signature on account documents that had not been signed by the client;
- (b) he reused trade documents that had previously been signed by a client by applying correction fluid to change the date and trade directions and then resubmitting a copy or a fax of the altered document in order to process a new transaction in the client's account; and
- (c) he used correction fluid to alter photocopies of cheques that had previously been used to purchase investments in a client's account and then resubmitted the altered photocopies as 'void' cheques to mutual fund companies to make changes to PACs and SWiPs in the client's account.

12. The Respondent states that he falsified client signatures and initials in the following circumstances:

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<sup>1</sup> The Respondent acknowledged that he had obtained a limited trading authorization from only one of approximately 126 clients whose mutual fund accounts he serviced for Dundee.

- (a) when clients did not respond to his requests for updated NCAF's of KYC information;
- (b) he feared he would be perceived by clients as bothersome if he contacted them to request that they complete and sign the required documentation;
- (c) he was concerned he would be criticized for delays in taking action; and
- (d) the client was unavailable to meet with him to sign required documentation.

13. The Respondent also falsified client signatures on trade documents and KYC update documents in circumstances where the holdings in a client's account did not match the risk tolerance stated in the client's documented KYC information. According to the Respondent, he engaged in this conduct to avoid or reverse the application of trade restrictions placed on the account by Dundee compliance Staff.

14. During the Respondent's first meeting with a new client, it was his practice to describe what he referred to as the 'annual migration', a practice followed by the Respondent whereby the Respondent would exercise the client's right to transfer annually without charge or penalty 10% of any units of a mutual fund purchased on a deferred sales charge ("DSC") basis to a non-DSC mutual fund within the same mutual fund family, which was usually the non-DSC version of the same mutual fund in which the client had initially invested.<sup>2</sup>

15. In some instances, if the Respondent was unable to contact a client or if a client as unable to meet with the Respondent for the purpose of signing the documentation required for the processing of trades to carry out the annual migration, the Respondent falsified the client's signature and/or initials on the trade processing documentation.

### **Branch review and detection**

16. During the fall of 2009, the Respondent's branch manager became suspicious that client signatures and initials had been falsified on account documents filed in respect of six clients. After confirming with one client that the client had not filled out the net worth information recorded on the NCAF and had not signed the NCAF that had been submitted by the Respondent on the client's behalf, the branch manager reported her concerns to Dundee's compliance department.

17. In December 2009, Dundee compliance staff conducted a review of the Respondent's sub-branch (the 'December 2009 review'). On December 17-18, 2009, Dundee compliance staff reviewed 126 files of clients whose accounts were serviced by the Respondent and observed suspicious signatures that may have been falsified in approximately 83% of the files. The Respondent was immediately suspended pending

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<sup>2</sup> The right of a client to transfer these "10% free" units without charge or penalty from a DSC mutual fund to a non-DSC mutual fund within the same mutual fund family is provided for in the simplified prospectus for the mutual fund family and is not itself a prohibited practice. The Respondent states that he explained the annual migration program to clients during his initial meeting with them and if the clients did not object to it, then the Respondent believed that the clients had implicitly granted him authority to exercise the right on their behalf without seeking the clients' instructions whenever DSC free units were available.

further investigation by Dundee. Dundee subsequently terminated the Respondent in March 2010.

18. During the course of a subsequent MFDA investigation of the Respondent's conduct, the Respondent admitted that he had engaged in the practice of falsifying client signatures on documents when he thought it was necessary to do so to facilitate transactions or update KYC information. The Respondent estimated that in one third of the cases in which he falsified client signatures on documents, the clients were aware that he intended to do so. In the other two thirds of the cases, the Respondent admitted that he falsified client signatures on documents without the knowledge or authorization of the clients.

19. By falsifying client signatures and initials on account documents and falsifying the content of certain other documents as described above, the Respondent engaged in conduct contrary to MFDA Rule 2.1.1.

### **False Signature Guarantees**

20. On November 16, 2009, the Respondent falsified the signature of client MH on the trade tickets required to process the sale of one mutual fund and the purchase of two other mutual funds in client MH's account. The Respondent then provided his signature guarantee on each of the documents, thereby falsely representing to anyone reviewing or processing the trade tickets that the signature of client MH on the document was authentic.

21. By falsifying the signature of client MH on the trade tickets and then falsely providing signature guarantees of client MH's signature, the Respondent contravened Dundee's policies and procedures designed to address the risk of unauthorized trades being processed in a client's account and failed to observe high standards of ethics and conduct in the transaction of business contrary to MFDA Rule 2.1.1(b).

### **Discretionary Trading**

22. From time to time, the Respondent processed authorized and unauthorized discretionary trades in client accounts in circumstances where he states he was unable to reach clients or he did not want to bother clients to obtain their instructions to process trades that he believed the clients would want him to execute in their accounts. The trades constituted discretionary trades because the Respondent determined one or more of the following elements of the trades without adequate instructions from the client:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases, the securities to be traded.

23. The Respondent processed these discretionary trades in client accounts in the following situations:

- (a) As part of the Respondent's annual migration practice (as described in paragraph 8 above), the Respondent processed:

- (i) switches of DSC-free units to a non-DSC version of the same mutual fund without obtaining instructions from the client with respect to the amount of the DSC free units to be switched (if any) and the timing of the switch;
  - (ii) switches of DSC-free units to a non-DSC mutual fund with a composition and management style similar to the initially purchased DSC mutual fund if a non-DSC version of the same mutual fund did not exist. The Respondent sometimes processed such trades without obtaining instructions from the client with respect to the amount of DSC free units to be switched (if any), the selection of the non-DSC mutual fund, and the timing of the switch.
- (b) In order to reverse the application of trade restrictions imposed by Dundee on a client's account as a consequence of discrepancies between the risk levels of the mutual funds held in the client's account and the client's documented risk tolerance, the Respondent sometimes processed trades in the client's account to rebalance the client's holdings without obtaining adequate instructions from the client with respect to all elements of the trade.

24. By processing switches and other trades in client accounts without obtaining adequate instructions from the clients with respect to one or more of the elements of the trade, the Respondent engaged in authorized and unauthorized discretionary trading contrary to MFDA Rules 2.3.1(a) and 2.1.1(b) and (c).

#### **Contravention of Policies Concerning Outside Business Activities**

25. In accordance with its regulatory obligations pursuant to (then) MFDA Rule 1.2.1(d)<sup>3</sup>, Dundee established policies and procedures governing the approval and conduct of outside business activities engaged in by Approved Persons.

26. Dundee approved the Respondent's participation in an outside business activity providing tax return preparation services to clients, subject to the following conditions:

- (a) The Respondent was required to provide each customer of the outside business activity with a disclosure and acknowledgement form indicating that the outside business activity was not part of the business or responsibility of the Member; and
- (b) The Respondent was required to maintain documentation associated with the outside business activity separate and apart from and not integrated with Dundee client files.

27. The Respondent's failure to comply with these conditions was identified as a deficiency in his business practices following a review of his sub-branch conducted by Dundee in 2007. At that time, Dundee reminded the Respondent of the conditions for

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<sup>3</sup> Since re-numbered as MFDA Rule 1.2.1(c).

approval of his outside business activity and directed him to rectify the deficiencies in the future.

28. During the December 2009 Branch Review, Dundee compliance staff determined that the Respondent failed to obtain signed outside business activity acknowledgement forms from many of the customers to whom the Respondent provided tax preparation services. Dundee compliance staff also found documents for customers of the tax preparation service comingled with documents in their Dundee client files.

29. In response to questioning by MFDA Staff investigators, the Respondent acknowledged that he did not always adhere to the conditions imposed on him by Dundee with respect to the approval of his outside business activity.

30. By failing to adhere to the conditions of Dundee's approval of his outside business activity, the Respondent contravened (former) MFDA Rule 1.2,1(d)(iii), (iv) and (vi) and MFDA Rule 2.1.1(b).

### **Providing False Responses to Dundee Compliance Staff**

31. During the December 2009 review, Dundee compliance staff conducted an interview with the Respondent during which they asked him about some of his business practices. The Respondent provided false responses to many of the questions that were asked by Dundee compliance staff when he:

- (a) denied that he had falsified client signatures on documents;
- (b) denied that he had ever altered client documents including NCAFs or signed/initialed documents on behalf of clients; and
- (c) stated that he never used correction fluid to alter client documents.

32. The results of the December 2009 review raised doubts about the accuracy of the Respondent's answers.

33. During the course of the MFDA's investigation of the Respondent, the Respondent admitted that some of the statements that he provided to Dundee compliance staff were not truthful.

34. By providing false responses to Dundee compliance staff investigating his conduct, the Respondent attempted to mislead or deceive the Member and undermined the ability of the Member to supervise the Respondent's activities, contrary to MFDA Rules 2.1.1(b) and (c).

### **V. CONTRAVENTIONS**

35. Between June 1, 2004 and March 10, 2010, the Respondent:

- 1) falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:

- (a) complete new client application forms (“NCAFs”);
- (b) update Know-Your-Client (“KYC”) and banking information;
- (c) implement changes to pre-authorized contributions (“PACs”) and systematic withdrawal plans (“SWIPs”); and
- (d) execute trades in client accounts; and

- 2) in November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MU after he had falsified the signature of client MB on the trade tickets;

contrary to MFDA Rule 2.1.1(b) and (c).

36. Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases the securities to be traded;

contrary to MFDA Rules 2.3.1(a) and 2.1.1 (b) and (c).

37. Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MIFDA Rule 1.2.1(d) (iii), (iv) and (vi)<sup>4</sup> and MFDA Rule 2.1.1(b).

38. On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

## **VI. TERMS OF SETTLEMENT**

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

- (a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two years, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- (c) Following the two year period during which the Respondent is prohibited

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<sup>4</sup> On December 3, 2010, amendments to the numbering and wording of certain MFDA rules came into effect as a consequence of which, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

from conducting securities related business, if the Respondent wishes to conduct securities related business while in the employ of or associated with a Member of the MFDA:

- (i) prior to doing so the Respondent shall successfully complete an ethics course acceptable to the MFDA;
  - (ii) the Respondent shall be subject to close supervision by the Member with whom he is employed or associated for the first 12 months during which he conducts securities related business in the future; and
  - (iii) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 2.1.1, 2.2.1, 2.3.1(a) and 1.2.1(c).
- (d) The Respondent shall pay costs in the amount of \$5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1; and
- (e) The Respondent shall attend the Settlement Hearing in person.

## **VII. STAFF COMMITMENT**

40. 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...

## **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

45. 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 section 24.3 of MFDA By-law No. 1 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 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.

## **Factors Concerning Acceptance of the Settlement Agreement**

6. It is clear from the jurisprudence emanating from the Courts and previous MFDA hearing

panels that this Hearing Panel's task is not to decide whether, in this case, we have arrived at the same decision as that reached by the parties. Rather, it is our responsibility to determine whether the penalty agreed upon is a reasonable one. That is, one that falls within the range of penalties imposed in other cases and whether it meets the objectives of the disciplinary process, which are to maintain the integrity of the investment industry. If the settlement maintains the integrity of the investment industry, it would be our duty to accept it.

7. In deciding whether to accept or reject the proposed Settlement Agreement in this matter, the Hearing Panel has taken into account the following considerations set out by previous decisions of courts and MFDA hearing panels:

- a) Whether acceptance of the Settlement Agreement would be in the public interest;
- b) Whether the Settlement Agreement is reasonable in proportion 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 Agreement 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;
- f) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA; and
- g) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re: *Professional Investments (Kingston) Inc. (Re)*, [2009] MFDA, Ontario Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009 at page 9.

Re: *Melvin Robert Penny (Re)*, [2009] MFDA, Atlantic Regional Council, File No. 200831, Hearing Panel Decision dated May 13, 2009, at page 8.

Re: *Alden M. Kaley (Re)*, MFDA, Atlantic Regional Council, File No 200911, Hearing Panel Decision dated August 21, 2009, at page 6

8. The Hearing Panel in this matter has also considered the factors that previous Hearing Panels have stated should be considered in determining whether a penalty is appropriate. These factors include the following:

- a) The seriousness of the allegations proven against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- e) The harm suffered by investors as a result of the Respondent's conduct;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction were the Respondent to continue to operate in the capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to determine whether not only those involved in the case being considered, but also any others participating in the capital markets engaged in a similar improper activity;
- j) The need to alert others to the consequences of inappropriate activity to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

Re: *Lamoureux (Re)*, [2002] A.S.C.D. No. 125 at para 11

Re: *In the matter of Robert Roy Parkinson* [2005] MFDA Ontario Regional Council, File No. 200509, Hearing Panel Decision dated February 21, 2006, at pp 25-26.

Re: *Alden M. Kaley (Re)*, [2009] MFDA Atlantic Regional Council, File No. 200911, Hearing Panel Decision dated September 28, 2009 at page 7.

9. We have also been guided by the MFDA Penalty Guidelines (“the Guidelines”), which state the following in the introduction:

**Range is Guideline Only**

The penalty types and ranges stated in the Guidelines are not mandatory. The Guidelines suggest the types and ranges of penalties that would be appropriate for particular case types. The Guidelines are intended to provide a basis upon which discretion can be exercised consistently and fairly in like circumstances but are not binding on a Hearing Panel.

10. The Guidelines recommend that consideration be given to the following penalties for

Approved Persons in similar cases involving the misconduct alleged in the present case:

a) **Standard of Conduct:**

- Fine: Minimum of \$5,000.
- Write or rewrite appropriate industry course
- Suspension.
- Permanent prohibition in egregious cases.

b) **Discretionary/Unauthorized Trading:**

- Fine: Minimum of \$5,000.
- Period of increased supervision.
- Write or rewrite appropriate industry course.
- Suspension.
- Permanent prohibition in egregious cases.

c) **Provincial Securities Requirements (Legislation, Orders, Terms and Conditions of Registration):**

- Fine: Minimum of \$5,000.
- Write or rewrite appropriate industry course.
- Suspension or permanent prohibition in egregious cases.

d) **Policies and Procedures:**

- Fine: Minimum of \$5,000.
- Write or rewrite appropriate industry course
- Increased supervision or suspension.
- Permanent prohibition in egregious cases.

e) **Failure to Cooperate:**

- Fine: Minimum of \$50,000.
- Permanent prohibition.

**Standard of Conduct**

11. Rule 2.1.1 of the MFDA Rules codifies the standard of conduct to which all Members and Approved Persons are held. It requires that Members and Approved Persons deal fairly, honestly and in good faith with their clients; observe high standards of ethics and conduct in the transaction of business; and refrain from engaging in any business conduct or practice which is unbecoming or detrimental to the public interest.

12. Rule 2.1.1 was drafted broadly to protect the public interest and has been applied to prohibit a large range of misconduct including misappropriation, forgery, falsification of clients' signatures, preferring Approved Persons' own interests when engaging in business dealings with clients, the possession of pre-signed forms and discretionary trading.

Re: *Gary Alan Price (Re)*, [2011] MFDA Central Regional Council, File No. 200714, Hearing Panel Decision dated April 18, 2011 at page 24.

Re: *John A. Moro (Re)*, [2007] MFDA Central Regional Council, File No. 200814, Hearing Panel Decision dated November 27, 2007.

Re: *Leo Alexander O'Brien and David Baxter Snow (Re)*, [2008] MFDA Atlantic Regional Council, File No. 200809, Hearing Panel Decision dated November 25, 2008.

Re: *Cory Edwin Griffiths (Re)*, [2010] MFDA Prairie Regional Council, File No. 200916, Hearing Panel Decision dated January 13, 2010.

Re: *David George Rounthwaite (Re)*, [2012] MFDA Prairie Regional Council, File No. 201123, Hearing Panel Decision dated July 30, 2012.

## **The Seriousness of the Violations**

### **Falsification of Client Signatures**

13. It is clear and obvious that forgery is and always must be considered a serious occurrence. The Hearing Panel in *Bell (Re)*, [2005] I.D.A.C.D. No. 15 made the following comments at page 35:

Forgery is always serious. It is unequivocally condemned because it is fundamentally dishonest and dangerous. Any act of forgery is a step onto a steep and slippery slope of deception that is always potentially harmful to clients and actually harmful to the Member firm and the securities industry as a whole. While there is no such thing as a "minor case" of forgery, we can distinguish between more and less egregious examples of forgery...Less egregious examples of forgery are distinguished by the absence of aggravating factors, which may be viewed obversely as the presence of mitigating factors.

14. The MFDA penalty guidelines suggest that in cases of forgery, in almost all cases a permanent prohibition is an appropriate penalty. Because, as *Bell (Re)* points out, mitigating factors can have the effect of categorizing a forgery as a less egregious one, and in doing so in this case, we have considered the following to be mitigating circumstances:

- a) The Respondent's conduct was not geared towards theft or increased commissions;
- b) Prior to the investigation there were no complaints against the Respondent;
- c) The forgery did not result in any harm to the person whose signature was forged;
- d) The Respondent did not benefit from his conduct;
- e) The Respondent cooperated fully with the investigation and participated in this disciplinary process;
- f) The Respondent, by admitting his responsibility and agreeing to the settlement, has saved the MFDA membership the expense of a full contested hearing;
- g) The Respondent has admitted his responsibility and expressed remorse; and
- h) The Respondent was terminated by the Member and has not been registered for a period of three years.

### **Discretionary Trading**

15. As has been stated in previous decisions, discretionary trading is fundamentally wrong, subject to certain exceptions which are not applicable here. MFDA Rule 2.3.1 absolutely prohibits it. It undermines the client's right and ability to make informed trading and prevents the Member from properly supervising trading activity and destroys integrity of the audit trail.

Re: *Rounthwaite*, supra at pp 7-8

### **Misleading the Member during its Investigation**

16. The Respondent acknowledges that he misled investigators from the Compliance Department of the Member by giving false answers to many of the investigators questions on the issues in question.

17. In the decision of *Re: Earl Crackower*, [2005] MFDA Central Regional Council, File No. 200506, dated August 22, 2005, the Hearing Panel held that providing misleading answers during an investigation is akin to failing to cooperate with an investigation.

### **Failing to Comply with Member Policies**

18. The Respondent also failed to comply with his Member's policies regarding outside business activities as required by Rule 1.2.1(c) (formerly member rule 1.2.1(d)). While the Respondent did advise the Member that he was involved in a tax preparation business, he failed to comply with conditions which the Member had imposed on him requiring him to, *inter alia*, maintain documentation regarding the outside business and ensure that each client of the business acknowledged in writing that the outside business was not part of the business or responsibility of the Member.

19. These requirements are intended to prevent Approved Persons from becoming involved in outside business activities which have the effect of compromising service to clients and/or which result in the Approved Person engaging in illegal or unethical conduct.

### **Considerations in the Present Case**

20. The parties submit that we should accept the Settlement Agreement and the proposed penalties for, *inter alia*, the following reasons:

- a) That the Respondent's contraventions in this case were serious;
- b) That the Respondent engaged in a practice of falsifying client signatures and processing discretionary trades over a period of more than 5 years;
- c) When confronted with the facts he initially denied the allegations;
- d) He disregarded the Member's procedures regarding his outside business activities;
- e) The Respondent was a registered mutual fund salesperson for more than 15 years and has no past disciplinary history with the MFDA;
- f) The Respondent has never been the subject of a client complaint made to the MFDA;
- g) The Respondent has demonstrated significant remorse;
- h) By entering into the Settlement Agreement, the Respondent has accepted responsibility for his misconduct and avoided the necessity of the MFDA incurring further time and the expense of conducting a Hearing;
- i) There is no evidence that any clients suffered any financial losses and the misconduct was not geared towards theft or churning on the part of the Respondent;
- j) There is no evidence that the Respondent derived any material benefit as a result of

- his misconduct;
- k) The Respondent co-operated fully with the MFDA in the resolution of this matter;
  - l) The Respondent was terminated by the Member and has not been registered for the past 3 years; and
  - m) The penalties proposed in the Settlement Agreement are consistent with previous decisions made in similar circumstances.

Re: *Christopher Andrew Nivet (Re)*, [2010] MFDA Central Regional Council, File No. 200940, Hearing Panel Decision dated May 11, 2010.

Re: *David George Rounthwaite (Re)*, [2012] MFDA Central Regional Council, File No. 201123, Hearing Panel Decision dated July 30, 2012.

Re: *John A. Moro (Re)*, [2007] MFDA Central Regional Council, File No. 200714, Hearing Panel Decision dated November 22, 2007.

Re: *Cory Edwin Griffiths (Re)*, [2010] MFDA Prairie Regional Council, File No. 200916, Hearing Panel Decision dated January 13, 2010.

21. In our opinion, this Settlement Agreement and the proposed penalties are in keeping with the purpose of the MFDA Rules which are intended to enhance investor protection and promote public confidence in the Canadian mutual fund industry.

22. We believe that the penalties specifically provided for in the Settlement Agreement will deter the Respondent, Mr. Smilestone, and others from engaging in similar misconduct in the future, thereby protecting the public and fostering confidence in the mutual fund industry in Canada.

23. After considering all of the above, we unanimously conclude that the Settlement Agreement reached was reasonable in the circumstances, is in the public interest and should be accepted by this Hearing Panel pursuant to Section 24.4.3 of the MFDA By-laws.

**DATED** this 8<sup>th</sup> day of August, 2013.

“Edward W. Keyes”

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Edward W. Keyes,  
Chair

“Robert G. Malcolm”

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Robert G. Malcolm,  
Industry Representative

“John Maguire”

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John Maguire,  
Industry Representative

DM 348884 v1

## Appendix “A”

Settlement Agreement

File No. 201129



**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: Hugh Blair Smilestone**

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### **SETTLEMENT AGREEMENT**

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#### **I. INTRODUCTION**

1. By Notice of Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a proceeding pursuant to sections 20 and 24 of MFDA By-law No. 1 commencing a disciplinary proceeding against Hugh Blair Smilestone (the “Respondent”). A hearing was scheduled to proceed before a hearing panel of the Atlantic Regional Council (the “Hearing Panel”) of the MFDA on January 8-9, 2013.

2. By Notice of Settlement Hearing, the MFDA will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel of the MFDA should accept this settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent.

#### **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of

MFDA By-law No.1.

4. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

5. Staff and the Respondent agree that the terms of this 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.

### **III. ACKNOWLEDGEMENT**

6. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part IX below) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

7. From June 1, 2004 until March 10, 2010, the material time giving rise to the conduct described in this Settlement Agreement, the Respondent was registered in Nova Scotia and Ontario as a mutual fund salesperson with Dundee Private Investors Inc. (“Dundee”), a Member of the MFDA. The Respondent conducted business from a sub-branch located in Halifax, Nova Scotia.

8. In total, the Respondent was registered as a mutual fund salesperson in Nova Scotia and Ontario from January 5, 1996 to March 10, 2010 and in New Brunswick from March 2002 to June 2004.

9. Dundee terminated the Respondent on March 10, 2010 as a result of the events described herein.

### **Falsification of Client Account Documents**

10. In accordance with Dundee's policies and procedures, the Respondent was required to obtain a client's signature and/or initials on the following types of documents:

- (a) NCAFs containing a client's KYC information collected for the purpose of opening new accounts;
- (b) KYC update forms, which Dundee required Approved Persons to obtain from clients in the following circumstances:
  - (i) in the event of a material change to a client's KYC information at any time;
  - (ii) if a client account became active after more than a year of inactivity and a review with the client revealed changes in the client's financial resources or investment objectives; and
  - (iii) if a client account had been inactive for more than 2 years; and
- (c) Documents used for processing a trade in a client's account unless the trade was being processed using a limited trading authorization.<sup>5</sup>

11. Between June 1, 2004 and March 10, 2010, the Respondent falsified client signatures and initials on account documents and falsified the content of certain other documents as described below:

- (a) he traced, or by other means imitated the client's signature on account documents that had not been signed by the client;
- (b) he reused trade documents that had previously been signed by a client by applying correction fluid to change the date and trade directions and then resubmitting a copy

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<sup>1</sup> The Respondent acknowledged that he had obtained a limited trading authorization from only one of approximately 126 clients whose mutual fund accounts he serviced for Dundee.

or a fax of the altered document in order to process a new transaction in the client's account; and

- (c) he used correction fluid to alter photocopies of cheques that had previously been used to purchase investments in a client's account and then resubmitted the altered photocopies as 'void' cheques to mutual fund companies to make changes to PACs and SWiPs in the client's account.

12. The Respondent states that he falsified client signatures and initials in the following circumstances:

- (a) when clients did not respond to his requests for updated NCAF's or KYC information;
- (b) he feared he would be perceived by clients as bothersome if he contacted them to request that they complete and sign the required documentation;
- (c) he was concerned he would be criticized for delays in taking action; and
- (d) the client was unavailable to meet with him to sign required documentation.

13. The Respondent also falsified client signatures on trade documents and KYC update documents in circumstances where the holdings in a client's account did not match the risk tolerance stated in the client's documented KYC information. According to the Respondent, he engaged in this conduct to avoid or reverse the application of trade restrictions placed on the account by Dundee compliance staff.

14. During the Respondent's first meeting with a new client, it was his practice to describe what he referred to as the "annual migration", a practice followed by the Respondent whereby the Respondent would exercise the client's right to transfer annually without charge or penalty 10% of any units of a mutual fund purchased on a deferred sales charge ("DSC") basis to a non-DSC mutual fund within the same mutual fund family, which was usually the non-DSC version of the same mutual fund in which the client had initially invested.<sup>6</sup>

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<sup>2</sup> The right of a client to transfer these "10% free" units without charge or penalty from a DSC mutual fund to a non-DSC mutual fund within the same mutual fund family is provided for in the simplified prospectus for the mutual fund family and is not itself a prohibited practice. The Respondent states that he explained the annual migration program to clients during his initial meeting with them and if the clients did not object to it, then the Respondent

15. In some instances, if the Respondent was unable to contact a client or if a client was unable to meet with the Respondent for the purpose of signing the documentation required for the processing of trades to carry out the annual migration, the Respondent falsified the client's signature and/or initials on the trade processing documentation.

### **Branch review and detection**

16. During the fall of 2009, the Respondent's branch manager became suspicious that client signatures and initials had been falsified on account documents filed in respect of six clients. After confirming with one client that the client had not filled out the net worth information recorded on the NCAF and had not signed the NCAF that had been submitted by the Respondent on the client's behalf, the branch manager reported her concerns to Dundee's compliance department.

17. In December 2009, Dundee compliance staff conducted a review of the Respondent's sub-branch (the "December 2009 review"). On December 17-18, 2009, Dundee compliance staff reviewed 126 files of clients whose accounts were serviced by the Respondent and observed suspicious signatures that may have been falsified in approximately 83% of the files. The Respondent was immediately suspended pending further investigation by Dundee. Dundee subsequently terminated the Respondent in March 2010.

18. During the course of a subsequent MFDA investigation of the Respondent's conduct, the Respondent admitted that he had engaged in the practice of falsifying client signatures on documents when he thought it was necessary to do so to facilitate transactions or update KYC information. The Respondent estimated that in one third of the cases in which he falsified client signatures on documents, the clients were aware that he intended to do so. In the other two thirds of the cases, the Respondent admitted that he falsified client signatures on documents without the knowledge or authorization of the clients.

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believed that the clients had implicitly granted him authority to exercise the right on their behalf without seeking the clients' instructions whenever DSC free units were available.

19. By falsifying client signatures and initials on account documents and falsifying the content of certain other documents as described above, the Respondent engaged in conduct contrary to MFDA Rule 2.1.1.

### **False Signature Guarantees**

20. On November 16, 2009, the Respondent falsified the signature of client MH on the trade tickets required to process the sale of one mutual fund and the purchase of two other mutual funds in client MH's account. The Respondent then provided his signature guarantee on each of the documents, thereby falsely representing to anyone reviewing or processing the trade tickets that the signature of client MH on the document was authentic.

21. By falsifying the signature of client MH on the trade tickets and then falsely providing signature guarantees of client MH's signature, the Respondent contravened Dundee's policies and procedures designed to address the risk of unauthorized trades being processed in a client's account and failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

### **Discretionary Trading**

22. From time to time, the Respondent processed authorized and unauthorized discretionary trades in client accounts in circumstances where he states he was unable to reach clients or he did not want to bother clients to obtain their instructions to process trades that he believed the clients would want him to execute in their accounts. The trades constituted discretionary trades because the Respondent determined one or more of the following elements of the trades without adequate instructions from the client:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases, the securities to be traded.

23. The Respondent processed these discretionary trades in client accounts in the following

situations:

- (a) As part of the Respondent's annual migration practice (as described in paragraph 8 above), the Respondent processed:
  - (i) switches of DSC-free units to a non-DSC version of the same mutual fund without obtaining instructions from the client with respect to the amount of the DSC free units to be switched (if any) and the timing of the switch;
  - (ii) switches of DSC-free units to a non-DSC mutual fund with a composition and management style similar to the initially purchased DSC mutual fund if a non-DSC version of the same mutual fund did not exist. The Respondent sometimes processed such trades without obtaining instructions from the client with respect to the amount of DSC free units to be switched (if any), the selection of the non-DSC mutual fund, and the timing of the switch.
  
- (b) In order to reverse the application of trade restrictions imposed by Dundee on a client's account as a consequence of discrepancies between the risk levels of the mutual funds held in the client's account and the client's documented risk tolerance, the Respondent sometimes processed trades in the client's account to rebalance the client's holdings without obtaining adequate instructions from the client with respect to all elements of the trade.

24. By processing switches and other trades in client accounts without obtaining adequate instructions from the clients with respect to one or more of the elements of the trade, the Respondent engaged in authorized and unauthorized discretionary trading contrary to MFDA Rules 2.3.1(a) and 2.1.1(b) and (c).

### **Contravention of Policies Concerning Outside Business Activities**

25. In accordance with its regulatory obligations pursuant to (then) MFDA Rule 1.2.1(d)<sup>7</sup>, Dundee established policies and procedures governing the approval and conduct of outside

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<sup>3</sup> Since re-numbered as MFDA Rule 1.2.1(c).

business activities engaged in by Approved Persons.

26. Dundee approved the Respondent's participation in an outside business activity providing tax return preparation services to clients, subject to the following conditions:

- (a) The Respondent was required to provide each customer of the outside business activity with a disclosure and acknowledgement form indicating that the outside business activity was not part of the business or responsibility of the Member; and
- (b) The Respondent was required to maintain documentation associated with the outside business activity separate and apart from and not integrated with Dundee client files.

27. The Respondent's failure to comply with these conditions was identified as a deficiency in his business practices following a review of his sub-branch conducted by Dundee in 2007. At that time, Dundee reminded the Respondent of the conditions for approval of his outside business activity and directed him to rectify the deficiencies in the future.

28. During the December 2009 Branch Review, Dundee compliance staff determined that the Respondent failed to obtain signed outside business activity acknowledgement forms from many of the customers to whom the Respondent provided tax preparation services. Dundee compliance staff also found documents for customers of the tax preparation service comingled with documents in their Dundee client files.

29. In response to questioning by MFDA Staff investigators, the Respondent acknowledged that he did not always adhere to the conditions imposed on him by Dundee with respect to the approval of his outside business activity.

30. By failing to adhere to the conditions of Dundee's approval of his outside business activity, the Respondent contravened (former) MFDA Rule 1.2.1(d)(iii), (iv) and (vi) and MFDA Rule 2.1.1(b).

### **Providing False Responses To Dundee Compliance Staff**

31. During the December 2009 review, Dundee compliance staff conducted an interview with the Respondent during which they asked him about some of his business practices. The Respondent provided false responses to many of the questions that were asked by Dundee compliance staff when he:

- (a) denied that he had falsified client signatures on documents;
- (b) denied that he had ever altered client documents including NCAFs or signed/initialed documents on behalf of clients; and
- (c) stated that he never used correction fluid to alter client documents.

32. The results of the December 2009 review raised doubts about the accuracy of the Respondent's answers.

33. During the course of the MFDA's investigation of the Respondent, the Respondent admitted that some of the statements that he provided to Dundee compliance staff were not truthful.

34. By providing false responses to Dundee compliance staff investigating his conduct, the Respondent attempted to mislead or deceive the Member and undermined the ability of the Member to supervise the Respondent's activities, contrary to MFDA Rules 2.1.1(b) and (c).

## **V. CONTRAVENTIONS**

35. Between June 1, 2004 and March 10, 2010, the Respondent:

- 1) falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:
  - (a) complete new client application forms ("NCAFs");
  - (b) update Know-Your-Client ("KYC") and banking information
  - (c) implement changes to pre-authorized contributions ("PACs") and systematic withdrawal plans ("SWiPs"); and

(d) execute trades in client accounts; and

- 2) in November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MH after he had falsified the signature of client MH on the trade tickets;

contrary to MFDA Rule 2.1.1(b) and (c).

36. Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases the securities to be traded,

contrary to MFDA Rules 2.3.1(a) and 2.1.1 (b) and (c).

37. Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MFDA Rule 1.2.1(d) (iii), (iv) and (vi)<sup>8</sup> and MFDA Rule 2.1.1(b).

38. On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

## **VI. TERMS OF SETTLEMENT**

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

- (a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period

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<sup>4</sup> On December 3, 2010, amendments to the numbering and wording of certain MFDA rules came into effect as a consequence of which, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

- of two years, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (c) Following the two year period during which the Respondent is prohibited from conducting securities related business, if the Respondent wishes to conduct securities related business while in the employ of or associated with a Member of the MFDA:
- (i) prior to doing so, the Respondent shall successfully complete an ethics course acceptable to the MFDA;
  - (ii) the Respondent shall be subject to close supervision by the Member with whom he is employed or associated for the first 12 months during which he conducts securities related business in the future; and
  - (iii) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 2.1.1, 2.2.1, 2.3.1(a) and 1.2.1(c).
- (d) The Respondent shall pay costs in the amount of \$5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1; and
- (e) the Respondent shall attend the Settlement Hearing in person.

## **VII. STAFF COMMITMENT**

40. 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.

## **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

41. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on Tuesday, January 8, 2013 at 10:00 a.m. or as soon thereafter as the matter can be heard.

42. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondent also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his 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.

43. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, then 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.

44. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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 him.

## **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

45. 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 section 24.3 of MFDA By-law No. 1 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 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.

## **X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

46. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “A” is not made 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 MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

47. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

## **XI. DISCLOSURE OF AGREEMENT**

48. 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.

49. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

50. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

51. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 20<sup>th</sup> day of December, 2012.

“Hugh Blair Smilestone”  
Hugh Blair Smilestone

“Brian Awad”  
Witness: Signature

Brian Awad  
Witness Name: Brian Awad

“Shaun Devlin”  
Staff of the MFDA  
Per: Shaun Devlin  
Vice-President, Enforcement



**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: Hugh Blair Smilestone**

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**ORDER**

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**WHEREAS** on June 29, 2012, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of Hugh Blair Smilestone (the "Respondent");

**AND WHEREAS** a first appearance in this proceeding was held by teleconference before a hearing panel of the Atlantic Regional council of the MFDA (the "Hearing Panel") on August 17, 2012;

**AND WHEREAS** a schedule for the proceeding was established on consent at the first appearance and the hearing of this matter on its merits was scheduled to commence in Halifax, Nova Scotia at 10:00 a.m. on January 8, 2013 or as soon thereafter as the matter could be heard;

**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** on [DATE], the MFDA issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 concerning the intention of the parties to present the Settlement Agreement to the Hearing Panel on January 8, 2013;

**AND WHEREAS** on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

(1) Between June 1, 2004 and March 10, 2010, the Respondent:

- I. falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:
  - (a) complete new client application forms (“NCAFs”);
  - (b) update Know-Your-Client (“KYC”) and banking information
  - (c) implement changes to pre-authorized contributions (“PACs”) and systematic withdrawal plans (“SWiPs”); and
  - (d) execute trades in client accounts; and
  
- II. in November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MH after he had falsified the signature of client MH on the trade tickets;

contrary to MFDA Rule 2.1.1(b) and (c);

(2) Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases the securities to be traded;

contrary to MFDA Rules 2.3.1(a) and 2.1.1 (b) and (c);

(3) Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MFDA Rule 1.2.1(d) (iii), (iv) and (vi) and MFDA Rule 2.1.1(b); and

(4) On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

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

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two years, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
3. Following the two-year period during which the Respondent is prohibited from conducting securities related business, if the Respondent wishes to conduct securities related business while in the employ of or associated with a Member of the MFDA:
  - (a) prior to doing so, the Respondent shall successfully complete an ethics course acceptable to the MFDA; and
  - (b) the Respondent shall be subject to close supervision by the Member with whom he is employed or associated for the first 12 months during which he conducts securities related business in the future; and

(c) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 2.1.1, 2.2.1, 2.3.1(a) and 1.2.1(c); and

4. The Respondent shall pay costs in the amount of \$5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1.

**DATED** this [DAY] day of [MONTH], 20[ ].

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Edward W. Keyes,  
Chair

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Robert G. Malcolm,  
Industry Representative

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John R. Maguire,  
Industry Representative