



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: Collin John Spithoff

Heard: June 3, 2021 by electronic hearing in Toronto, Ontario

Decision: June 3, 2021

Reasons for Decision: June 10, 2021

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Paul M. Moore, Q.C.
Brigitte J. Geisler
Joseph Yassi

Chair
Industry Representative
Industry Representative

Appearances:

Alan Melamud)	Enforcement Counsel for the Mutual Fund
)	Dealers Association of Canada
)	
)	
Collin John Spithoff)	Respondent
)	
)	

Settlement Agreement

1. The Hearing Panel accepted the settlement agreement dated February 26, 2021 (“Settlement Agreement”) between the staff of the MFDA (“Staff”) and Collin John Spithoff (“Respondent”) at an electronic settlement hearing held in accordance with MFDA rules for an electronic hearing.
2. A copy of the Settlement Agreement is attached to these Reasons as Schedule “1”. The agreed facts are set out in section IV of the Settlement Agreement.

Contraventions

3. The Respondent admitted that:
 - a) from September 2015 to April 2018, he engaged in securities related business that was not carried on for the account and through the facilities of the Member when he recommended and facilitated the sale of at least \$1,270,000 worth of promissory notes to 14 clients, contrary to the Member’s policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.5.1 and 2.1.1.
 - b) in or about December 14, 2017, he misled the Member by making false statements to a branch review officer and not disclosing that he recommended and facilitated the sale of investments outside the Member, contrary to MFDA Rule 2.1.1.

Agreed penalties

4. Under the terms of the Settlement Agreement, the Respondent:
 - a) will pay a fine of \$25,000;
 - b) will pay costs of \$5,000; and
 - c) will 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 5 years from the date the Settlement Agreement is accepted.

Considerations

5. The Hearing Panel determined that it had to be satisfied regarding three considerations before it could accept the Settlement Agreement.

- a) First, the agreed penalty had to be within an acceptable range taking into account similar cases.
- b) Secondly, the agreed penalty had to be fair and reasonable (i.e. proportional to the seriousness of the contravention taking into consideration relevant circumstances) and should appear to be so to members of the public and industry.
- c) Thirdly, the agreed penalty should serve as a deterrent to the Respondent and to industry.

6. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on the Respondent of the agreed penalty.

Misconduct

7. The Hearing Panel determined that the misconduct admitted to by the Respondent was in contravention of MFDA Rules 1.1.1, 1.1.2, 2.5.1 and 2.1.1.

Other considerations in determining acceptability of agreed penalties

8. There was no evidence that the Respondent received any benefit from the misconduct.
9. There was no evidence of client complaints or client loss.
10. By entering into the Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

Costs

11. The costs award is reasonable.

Conclusion

12. The agreed penalties are
 - a) within the recommendations of the MFDA Sanction Guidelines and the reasonable range of appropriateness with regard to MFDA decisions, submitted to us by Staff, made by MFDA Hearing Panels in similar circumstances;
 - b) fair and reasonable; and
 - c) will serve as a specific and general deterrent.

13. Accordingly, we concluded that the Settlement Agreement was in the public interest and, consequently, we accepted it.

DATED this 10th day of June, 2021.

“Paul M. Moore”

Paul M. Moore, Q.C.
Chair

“Brigitte J. Geisler”

Brigitte J. Geisler
Industry Representative

“Joseph Yassi”

Joseph Yassi
Industry Representative



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Re: Collin John Spithoff

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Collin John Spithoff (the "Respondent").

II. JOINT SETTLEMENT RECOMMENDATION

2. 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 By-law No.1.

3. 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".

4. 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. ACKNOWLEDGMENT

5. 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) 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

6. Commencing in October 2000, the Respondent was registered in the securities industry.

7. From October 5, 2002 to October 31, 2018, the Respondent was registered in Ontario as a dealing representative with IPC Investment Corporation (the “Member”), a Member of the MFDA.

8. Effective October 31, 2018, the Respondent retired from the mutual fund industry, and he is not currently registered in the securities industry in any capacity.

9. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

Securities Related Business Outside the Member

10. At all material times, the Member’s policies and procedures prohibited its Approved Persons from selling or advising on any investments that would be considered securities under applicable legislation through any entity other than the Member.

11. EBF Group Ltd. (“EBF”) and Bancorp Commercial Finance Inc. (“Bancorp”) are two affiliated companies engaged in the business of factoring and asset based lending. Both companies offer 12-month promissory notes, which pay a fixed rate of return of 9% and 15%, respectively.

12. The Respondent’s spouse invested in the promissory note offered by EBF, and received the promised return and repayment of the principal. The Respondent had also become friends with the principal of EBF/Bancorp.

13. From September 2015 to April 2018, the Respondent recommended and facilitated the sale of at least \$1,270,000 of promissory notes in EBF and Bancorp to at least 14 clients as follows:

Client Name	Date of Investment	Amount	EBF/BANCORP
SO & HO	September 2015	\$75,000	EBF
	March 2016	\$50,000	EBF
RE	October 2015	\$50,000	EBF & Bancorp
LH & TH	December 2015	\$350,000	EBF & Bancorp
RV & DV	April 2016	\$50,000	EBF
	July 2016	\$50,000	
	January 2017	\$50,000	
	February 2017	\$100,000	
	April 2018	\$50,000	
AS & MS	May 2016	\$100,000	EBF
DP	July 2016	\$100,000	EBF
PL	July 2017	\$65,000	EBF
MH	November 2017	\$80,000	EBF
BM	January 2018	\$50,000	EBF
DB	May 2018	\$50,000	EBF
Total:		\$1,270,000	

14. In each case, the Respondent introduced the investment in the promissory notes offered by EBF and Bancorp when his clients advised that they had become dissatisfied with their investments in mutual funds. In particular, the Respondent did one or more of the following with each client:

- a) introduced the investment in the promissory note offered by EBF and Bancorp as an alternative to mutual funds;
- b) advised of the details of the investment and the risks;
- c) recommended the investment in the promissory notes;
- d) advised of new offerings from EBF and Bancorp;
- e) contacted EBF and Bancorp on behalf of clients to make arrangements for the investment and ascertain the rate of return;
- f) had clients sign the required documentation; and
- g) facilitated the transfer of money from the clients to EBF and/or Bancorp to make the investment.

15. The promissory notes offered by EBF and Bancorp are a security. In each case, the promissory notes were evidenced by an agreement between either EBF and Bancorp and the individual clients, which provided that the notes automatically renewed unless the investor provided 90-days advance notice of cancellation, and offered no security for the investment other

than the guarantee of EBF or Bancorp, as the case may be, and the personal guarantee of the principal of the companies.

16. The Respondent did not inform the Member of his activities of recommending and facilitating the sale of the promissory notes offered by EBF and Bancorp. The EBF and Bancorp promissory notes were not investments that the Member approved to be offered by its Approved Persons.

Misleading the Member

17. On or about December 14, 2017, the Respondent was interviewed by a branch review officer as part of a routine branch audit.

18. In response to a question about what services/products the Respondent offers outside the Member, the Respondent answered, "None".

19. In response to a question about what the Respondent does or would do when he receives a request to purchase securities that he is not registered to trade, the Respondent answered, "I don't deal in them and have so advised my clients."

20. The Respondent's answers were false or misleading, since as at December 14, 2017, the Respondent had engaged in the recommendation and facilitation of the sale of promissory notes in EBF and Bancorp to 12 of the 14 clients noted above at paragraph 13.

21. By providing false answers during the interview, the Respondent misled the Member.

Additional Factors

22. There is no evidence of client complaints arising from investments that the Respondent facilitated in EBF and Bancorp. To date, there is no evidence of clients experiencing any financial loss as a result of the investments that the Respondent facilitated in EBF and Bancorp.

23. The Respondent states that he was offered a 1-2% commission from EBF/Bancorp on the amount of money invested by his clients pursuant to the promissory notes. The Respondent declined the commission, and advised EBF/Bancorp to instead pay the foregone commission to his clients.

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

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

V. CONTRAVENTIONS

26. The Respondent admits that from September 2015 to April 2018, he engaged in securities related business that was not carried on for the account and through the facilities of the Member when he recommended and facilitated the sale of at least \$1,270,000 worth of promissory notes to 14 clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.5.1 and 2.1.1.

27. The Respondent admits that in or about December 14, 2017, he misled the Member by making false statements to a branch review officer and not disclosing that he recommended and facilitated the sale of investments outside the Member, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

28. 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 5 years from the date the Settlement Agreement is accepted, pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine of \$25,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-Law No. 1;
- c) the Respondent shall pay costs of \$5,000 in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-Law No. 1; and
- d) the Respondent will attend in person or by videoconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

29. 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 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 contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the

contraventions set out in Part 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

30. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

31. 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 or appeal 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.

32. 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. 24.1.1 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.

33. 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.

34. 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 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 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.

IX. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

35. 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 By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

36. 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.

X. DISCLOSURE OF AGREEMENT

37. 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.

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

XI. EXECUTION OF SETTLEMENT AGREEMENT

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

40. An electronic copy of any signature shall be effective as an original signature.

DATED this 26th day of February, 2021.

“Collin John Spithoff”

Collin John Spithoff

“JW”

Witness – Signature

JW

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Collin John Spithoff

ORDER

WHEREAS on December 22, 2020, 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 Collin John Spithoff (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 MFDA By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent:

- a) from September 2015 to April 2018, engaged in securities related business that was not carried on for the account and through the facilities of the Member when he recommended and facilitated the sale of at least \$1,270,000 worth of promissory notes to 14 clients, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 1.1.2, 2.5.1 and 2.1.1; and
- b) in or about December 14, 2017, he misled the Member by making false statements to a branch review officer and not disclosing that he recommended and facilitated the sale of investments outside the Member, contrary to MFDA Rule 2.1.1.

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

1. The Respondent is prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of 5 years from the date of this Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1.
2. The Respondent shall pay a fine of \$25,000 in certified funds, pursuant to section 24.1.1(b) of MFDA By-Law No. 1.
3. The Respondent shall pay costs of \$5,000 in certified funds, pursuant to section 24.2 of MFDA By-Law No. 1.
4. 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]

DM 824472