



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: Douglas A. Lawson

Heard: June 19, 2012 in Toronto, Ontario
Reasons for Decision: October 22, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q. C.)	Chair
Nick Pallotta)	Industry Representative

Appearances:

Melissa J. MacKewn)	For the Mutual Fund Dealers Association of
)	Canada
Douglas A. Lawson)	In person
)	

A. NOTICE OF SETTLEMENT HEARING

1. By Notice of Settlement Hearing, dated June 6, 2012, the Mutual Fund Dealers Association of Canada (“MFDA”) announced that it proposed to hold a Hearing, on June 19, 2012, to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a Hearing Panel of the MFDA should accept the Settlement Agreement entered into between Staff of the MFDA and Douglas A. Lawson (“Lawson”).

B. SETTLEMENT HEARING

2. This Settlement Hearing was originally scheduled to be heard by a Hearing Panel comprised of three members of the Central Regional Council. Unfortunately, on June 19, 2012, an industry representative advised that, for personal reasons, she was unable to continue to serve on the Hearing Panel.

3. Rule 19.9(1) of By-law No. 1 states that Hearing Panels be composed of:

“(a) three members of the Regional Council: one public representative, who will be the Chair of the Hearing Panel, and two industry representatives who may be either elected or appointed members of the Regional Council, but shall not include ex-officio members of the Council or

(b) two members of the Regional Council: one public representative who will be the Chair of the Hearing Panel and one industry representative in the event that an industry representative in (a) above is unable to continue to serve on a Hearing Panel. The Chair of the Hearing Panel shall decide whether or not to proceed with a two-member Hearing Panel.”

4. The parties were consulted as to whether they wished the Settlement Hearing to be adjourned or whether they wished to proceed before the remaining two members of the Central Regional Council. Both Staff and Lawson advised that they wished to proceed.

5. The Chair of the Hearing Panel decided, pursuant to section 19.9(b), to proceed with a two-member Hearing Panel.

6. At the outset of the proceeding, Staff advised that the Settlement Agreement had been prepared and publicized in accordance with section 24.4 of By-law No. 1 and Rule 15.2(1) of the

MFDA Rules of Procedure.

7. We also considered a joint Motion by Staff and Lawson to move the proceedings “in-camera”. This Motion was brought pursuant to Rule 15.2(2) of the MFDA Rules of Procedure, which provides as follows:

“(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.”

8. Rule 1.8(2) provides as follows:

“(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

9. We granted the Motion on the condition, which was agreeable to both Staff and Lawson, that, should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision which, along with the Record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the MFDA Rules of Procedure.

10. After considering the Settlement Agreement, along with the submissions of both Staff and Lawson, the Hearing Panel unanimously accepted the Settlement Agreement on June 19, 2012, and made an Order to this effect. These are the Reasons for our Decision.

11. The salient portions of the Settlement Agreement are as follows:

C. THE SETTLEMENT AGREEMENT

“II. JOINT SETTLEMENT RECOMMENDATION

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

IV. OVERVIEW

6. Wealth Advisory Services (“WAS”) is a Member of the MFDA. Lawson is and was at all times a salaried employee of WAS. Lawson is the President and Secretary of WAS, its only salesperson and its Compliance Officer. Promittere S & P 500 Limited (“Promittere”) was a non-arm’s length company to WAS by virtue of common ownership at the time the Promittere product described herein was launched. Robert J. Thiessen (“Thiessen”) is the director of Promittere and the controlling mind of both WAS and Promittere. WAS is wholly owned by Promittere Capital Group Limited Partnership, which at all material times was owned 70% by Thiessen through wholly-owned corporations. The remaining 30% was at all material times owned directly, indirectly or beneficially by members of Thiessen’s family. In the ordinary course of activities at WAS, Lawson reported to and acted under the direction of Thiessen.

7. Between August 2002 and November 2005, Lawson sold shares of Promittere to clients of WAS as a means of investing in S&P 500 Futures Index Contracts and other similar instruments on the Chicago Mercantile Exchange. The trading in respect of Promittere was to be managed by G.H. Lewis and Associates (“G.H. Lewis”). In total, 48 clients of WAS invested \$2,883,993 USD (in 39 accounts) in shares of Promittere on the advice of Lawson. As a result of these sales, Lawson earned fees of approximately \$50,000 CDN paid to him through WAS in the form of shares in Promittere. Upon the collapse of Promittere, Lawson’s shares were cancelled and he has not participated in and hereby undertakes that he will not participate in any pro rata recovery paid to shareholders.

8. In September of 2006, Lawson was informed that a fraud had occurred and that Promittere could not account for WAS-client funds. Gordon H. Lewis (“Lewis”), the principal of G.H. Lewis, was subsequently charged with fraud and theft by the Metropolitan Toronto Police Force. On September 14, 2009, Lewis pleaded guilty to a fraud charge and was sentenced to 12 months under house arrest.

V. AGREED FACTS

Lawson’s History with Thiessen

9. Thiessen is a chartered accountant. From 1983 to 1993, Thiessen was a senior executive at Equion Securities Ltd. (“Equion”). Lawson joined Equion in January 1985 as a Manager of Corporate Services. Lawson understood that Thiessen, along with Equion’s president at the time, was the creator of virtually all of Equion’s investment products.

10. Lawson remained employed at Equion until December 31, 1994. Based on his 10 years at Equion, Lawson perceived Thiessen to be a skilled professional, specifically with respect to the creation of investment products.

11. In 1993, Thiessen left Equion to set up his own company, Promittere Securities Ltd., to create investment products. As set out in paragraph 13 below, Promittere Securities Ltd. was registered in Ontario as a limited market dealer and a securities dealer.

12. Lawson joined Thiessen in January of 1995 as a salaried employee of Promittere Securities Ltd. Lawson has been registered as the sole salesperson and the President,

Secretary, and Compliance Officer of Promittere Securities Ltd. (and its successors) since 1995, as set out in paragraph 14 below.

Registration History

13. Between January 19, 1993 and October 1, 1999, WAS carried on business as Promittere Securities Ltd. Between June 1, 1993 and December 22, 1994, Promittere Securities Ltd. was registered in Ontario as a limited market dealer. Between December 22, 1994 and November 20, 2001, WAS (operating as Promittere Securities Ltd. until October 1, 1999) was registered in Ontario as a securities dealer. Since November 20, 2001, WAS has been registered in Ontario as a mutual fund dealer and a limited market dealer. WAS became a Member of the MFDA on March 4, 2003.

14. Lawson has been registered as a mutual fund salesperson with WAS (and its predecessor, Promittere Securities Ltd.) since January 1, 1995. At all material times, Lawson was and remains registered as the President and Secretary of WAS, its sole salesperson and its Compliance Officer.

15. At all material times, WAS was essentially a one-person mutual fund dealer with Lawson as its only salesperson. Thiessen and Lawson worked out of the same office (which was shared by WAS and Promittere) and Promittere did not have any employees other than the two administrative support personnel that Promittere and WAS shared.

Sale of Promittere S&P 500

16. On October 8, 1992, Thiessen incorporated 1003686 Ontario Limited. In early 2002, Thiessen and Lewis created the Promittere product. G.H. Lewis was retained to manage the investment of funds raised by the sale of shares of Promittere through trading in S&P Futures Index Contracts and other similar instruments on the Chicago Mercantile Exchange. On June 25, 2002, Thiessen changed the company's name from 1003686 Ontario Limited to Promittere S & P Limited (defined above as "Promittere").

17. Thiessen has, at all material times, been the sole director, President and Secretary of Promittere and its predecessor.

18. Thiessen presented and recommended the Promittere product to Lawson for sale to WAS-clients and, on August 1, 2002, Lawson began selling shares of Promittere to WAS-clients.

19. Lawson states that he invested \$5,000 in Promittere as a means of testing the product. He did not monitor the trading conducted by Lewis in respect of these funds. Upon inquiry, Lawson was advised by Thiessen and Lewis that he made a profit but no back-up documentation was provided.

20. Lawson and his wife subsequently invested further funds in shares of Promittere such that their combined total investment was in the amount of \$135,118 CDN, plus the approximately \$50,000 CDN in fees that Lawson had received in the form of shares as at September of 2006. To make their cash contributions for these shares, Lawson and his wife wrote personal cheques in the cumulative amount of \$58,163 CDN, Lawson's

numbered company, 614385 Canada Inc., wrote cheques in the cumulative amount of \$63,955 CDN, and Lawson directed that fees or commissions payable to him by Promittere Capital Group for sales of other products in the cumulative amount of \$13,000 CDN be paid directly to Promittere.

21. Upon the collapse of Promittere, the Lawsons lost their entire investment.

22. Between August 1, 2002 and November 1, 2005, 48 clients of WAS invested \$2,883,993 USD in shares of Promittere on the advice of Lawson. In respect of those sales, Lawson directed clients to make cheques payable to Promittere in US funds. Thiessen forwarded these funds from Promittere's US dollar bank account to a US dollar bank account over which Lewis had sole signing authority. Lewis then allegedly transferred the funds to a trading account held by Lewis or G.H. Lewis at ED & F Man International Inc., a broker for exchange-listed futures and options.

23. Upon receipt of funds from Promittere, Promittere was issued units of a trust established as part of the Promittere product that Lewis and Thiessen had created. Corresponding shares of Promittere were then issued to clients of WAS who had invested in the product.

24. Once WAS-client investment funds were relinquished to Lewis or G.H. Lewis, the alleged performance of the trust units was reported to Thiessen by Lewis daily by email. The email contained a single figure which Lewis described as the closing value for the trust units for the day.

25. Thiessen provided investors in Promittere with a monthly update on the value of their shares. Each investor also received an annual statement from Promittere. Lawson and/or Thiessen periodically provided some investors with a copy of a monthly newsletter which Lewis provided to Promittere to describe his alleged trading activities.

26. At the time of sale, Lawson asked clients to complete a Promittere share subscription agreement and a WAS New Account Application Form. Lawson also provided clients with a current version of a 2-page share offering summary for Promittere, which had been prepared by Thiessen and reviewed by Lewis (the "Promittere Summaries"). The Promittere Summaries contained the following representations, with returns reported up to the most recent year-end:

- (a) Promittere was created to permit shareholders to participate in the managed trading of S&P 500 Futures Index Contracts;
- (b) Lewis' net return to investors to date has been: 77% in 1999 (six months), 163% in 2000, 169% in 2001, 230% in 2002, 102.6% in 2003, and 70.5% in 2004. The Promittere Summary noted that these returns were calculated net of management fees, trading costs and currency conversions;
- (c) G.H. Lewis would receive an incentive-based fee equal to 50% of the amount by which the percentage increase in the value of the investment exceeded an annual return of 20% (the "Management Fee"). The percentage increase in the value of the investment was to be calculated net of commissions. To the extent that the 20% threshold was not reached, the amount of such shortfall would be

carried forward and deducted from the increase in the value of the investment in future years;

- (d) Promittere's investment objectives and risk management strategies included the active use of limit price and stop loss orders, the closure of all contracts at the end of the day resulting in 100% cash position, and a 15-20% limit of asset exposure on any one trade hence the risk of large losses as a percentage of assets was negligible¹; and
- (e) Redemptions would only be processed once per year, on the last business day of December.

Regulatory Investigations, Proceedings and Fraud Charges

a. Compliance Review – Conflict of Interest

27. As set out in subparagraph 26(c) above, in return for managing the trading activities of Promittere, G.H. Lewis received the Management Fee. Lawson understands that G.H. Lewis then paid one of Thiessen's Promittere companies, but not Promittere as defined herein, a fee equal to 20% of the Management Fee collected, on an annual basis, in either cash or trust units (the "Promittere Fee"). Thiessen then paid Lawson, through WAS, a percentage of the Promittere Fee as a fee for his role in selling shares of Promittere to WAS-clients. Lawson earned fees in the amount of approximately \$50,000 CDN which he received in the form of shares in Promittere. Lawson states that these shares were cancelled after he discovered the fraud.

28. In September of 2005, MFDA Compliance Staff conducted a compliance examination (the "Compliance Examination") of WAS during which Staff advised Lawson that Staff was concerned with, among other things, the accuracy of WAS' disclosure to clients regarding its relationship with Promittere and Thiessen. At that time, clients had only been advised that Promittere was created by Thiessen to allow shareholders to participate in Lewis' trading activities. Written disclosure of the compensation payable to WAS, Thiessen and Lawson as a result of the sale of shares of Promittere, as well as the fact that Thiessen was a director and controlling mind of both WAS and Promittere, had not been made to clients of WAS.

29. Following the Compliance Examination, Lawson provided clients with written disclosure that Thiessen was a director of both WAS and Promittere. At that time he provided Form 45-501F3 to clients who he states had purchased under the closely held issuer exemption (as set out in paragraphs 42-44 below) and WAS advised clients that any requests for the sale of shares of Promittere would be accommodated. The compensation payable to WAS, Thiessen and Lawson for the sale of shares of Promittere was not disclosed.

30. In September 2006, Thiessen and Lawson advised Staff that they had just learned that the investment returns provided by Lewis appeared to have been fabricated such that the value of the investment was greatly overstated. They further advised Staff that they had

¹ Note that the Promittere Summary for 2002 identified 25-30% of asset exposure on any one trade as opposed to 15-20%.

been advised that the actual amount remaining in the bank and trading accounts was approximately \$40,000 USD. This represented a shortfall of approximately \$5,760,000 USD based on Lewis' reported value of Promittere in the amount of \$5,800,000 USD at that time.

31. In 2008, a handful of WAS-clients appear to have received payments directly from Promittere on account of their shares in Promittere in the cumulative amount of approximately \$63,000, in exchange for the provision of full and final releases.

32. Lawson believes that some Promittere shareholder funds have been recovered through court proceedings or may be recovered as a result of potential tax refunds not yet obtained. However, to date, WAS-clients have not been compensated for the losses they have incurred as a result of their investment in shares of Promittere (with the exception of the payments described in paragraph 31 above). Accordingly, these clients appear to have lost their entire investment in shares of Promittere with no reasonable prospect of recovery.

b. MFDA Investigation

33. On September 16, 2006, Lawson participated in an examination at his office conducted by Staff pursuant to s. 22 of MFDA By-law No. 1. On June 17, 2010, Lawson attended at the offices of the MFDA and participated in a second examination conducted by Staff, Lawson has had an opportunity to review the transcripts of both examinations in their entirety and confirms the truth of their contents. In September of 2006, at the request of MFDA Staff and as a result of the investigation in this matter, WAS agreed to accept the terms and conditions on its membership which included a requirement to cease trading in all exempt securities and related issuers, as well as increased financial reporting requirements to the MFDA. While these terms and conditions expired on March 31, 2007, WAS agreed to continue to abide by them on a voluntary basis. The second and third round compliance examinations conducted by MFDA Compliance Staff confirm that WAS has continued to comply with the terms and conditions.

34. On September 15, 2006, the Manitoba Securities Commission ("MSC") issued a temporary cease trade order against Promittere in relation to the distribution of its shares to the public allegedly in reliance on the accredited investor exemption to the applicable statutory prospectus and registration requirements. An order was also made removing the availability of any trading registration exemptions from Thiessen. On August 3, 2007, the MSC extended the cease trade order against Promittere until a hearing is held to examine the allegations against Promittere. The MSC's order against Thiessen lapsed effective July 18, 2007.

c. Fraud Charges Against Lewis

35. On June 20, 2007, Lewis was arrested and charged with two counts of Fraud Over \$5,000 and Theft Over \$5,000 by the Metropolitan Toronto Police Force. On September 14, 2009, Lewis plead guilty to a fraud charge and has served a sentence of 12 months under house arrest.

d. Failure to Conduct Adequate Due Diligence

36. Lawson should have ensured that WAS subjected Promittere to a heightened level of

due diligence to ensure that he fully understood the nature and risks of the investment before approving for sale and selling shares of Promittere to clients of WAS, for the following reasons, among others:

- a) Promittere had never previously been sold by WAS or Lawson (or by anyone else) and Lawson had no prior experience with an investment like Promittere;
- b) As a newly created investment, Promittere had no prior track record for Lawson to use to assess the performance of Promittere in varying market conditions;
- c) Promittere employed a sophisticated strategy of trading in S&P Futures Contracts and other similar interests listed on the Chicago Mercantile Exchange Index and other similar interests listed with which Lawson had only basic familiarity. The specifics of the strategy were not fully disclosed in the Promittere Summary or otherwise made available in writing to investors. There were also no controls on Lewis' ability to vary or change altogether the strategy employed by Promittere;
- d) Promittere was not required by regulators to disclose the specific securities it held, the extent of its leveraging, or the extent of its short selling. Promittere had no obligation to make periodic or annual regulatory filings in respect of its performance and operations;
- e) It was difficult to identify comparable investments, classes of investments or published benchmarks for investments of Promittere's nature against which Lawson would be able to evaluate its actual performance going forward; and
- f) Lawson was aware that an actual or potential conflict of interest existed because Thiessen was the controlling mind of both WAS and Promittere and as a result of the financial compensation received by WAS, Thiessen and Lawson for the sale of shares in Promittere.

37. Lawson states that, on the basis of his 16 year professional relationship with Thiessen, he trusted and relied almost entirely on Thiessen to conduct the necessary due diligence in respect of G.H. Lewis, Lewis and Promittere.

38. Lawson did not ensure that WAS conducted appropriate due diligence on G.H. Lewis, Lewis and Promittere, before approving for sale and selling shares of Promittere to clients of WAS. Specifically, Lawson did not ensure that WAS took steps to, among other things:

- (a) ***Conduct a review of G.H. Lewis' corporate status*** – G.H. Lewis' corporate status was cancelled in 1992.
- (b) ***Confirm the registration status of Lewis and G.H. Lewis*** – Neither Lewis nor G.H. Lewis was registered to advise or trade in securities in Canada or the US.
- (c) ***Conduct an assessment of G.H. Lewis' and Lewis' management qualifications and track record*** – Lawson did not have a copy of or review Lewis' curriculum vitae. Lawson did not speak to or contact anyone who could

provide a reference for Lewis, his qualifications or his abilities except Thiessen.

- (d) ***Review the financial position and trading history of G.H. Lewis*** – Lawson did not take any steps to verify the historic returns reported by Lewis. He also did not take any steps to confirm his assumption that Thiessen had put in place reasonable internal controls to: confirm that client funds were being handled properly; monitor Lewis' trading activities; and verify Lewis' reported returns.

39. Lawson states that prior to approving for sale and selling Promittere to WAS-clients, he inquired of Thiessen and Lewis and was informed of: (a) the general nature of the trading to be conducted in the Promittere fund; (b) Lewis' representation that the assets of Promittere would typically only be invested to the extent of 15-20% in any one trade; and (c) Lewis' representation that G.H. Lewis would only receive a management fee if the value of the investment exceeded an annual return of 20%. Lawson also states that he was incorrectly advised by Thiessen that Lewis was registered to conduct securities trading in Canada and the US.

e. Suitability of the Investments

40. Lawson did not adequately assess and assign a risk level to Promittere. Lawson presented Promittere to clients as a medium to high-risk product. It was a high risk product based on, among other things, the lack of verified historic trading results for Promittere and the limited liquidity of the product. Further, the only internal controls to monitor G.H. Lewis' trading activities and the handling of client funds were those Lawson believed were being exercised by Thiessen. Lawson provided clients with the Promittere Summaries, which described the risk of large losses as a percentage of assets as negligible. Lawson did not disclose the full risks of investing in the Promittere product to clients of WAS.

41. For 34 clients of WAS to whom Lawson sold shares of Promittere, a risk tolerance of moderate or lower had been identified in their existing Know Your Client ("KYC") information. Promittere was therefore an unsuitable investment for those clients. Lawson did not record sufficient KYC information for 8 other WAS-clients who invested in shares of Promittere in order to determine that the investment was suitable for these clients.

42. Lawson states that he believed that investments in shares of Promittere could be made by clients of WAS in reliance on the closely held issuer or the accredited investor exemptions then provided for pursuant to Ontario securities law.

43. Lawson believed that he understood the requirements for qualification for and use of the closely held issuer exemption.² However, he relied on Thiessen to determine whether the exemption remained available to clients of WAS. Lawson did not provide clients with a copy of Form 45-501F3 at least 4 days before their purchase of shares in Promittere, as was then required pursuant to Ontario securities law in order to rely on the closely held

² In summary, at the material time, the exemption permitted closely-held issuers to raise a lifetime maximum of \$3,000,000 CDN in any number of financings from up to 35 investors. As set out in footnote 3 below, this exemption was replaced with the private issuer exemption in September 2005 which was further amended in 2009.

insurer [sic] exemptions.³ Accordingly, he was unable to rely on this exemption in respect of these sales.

44. Form 45-501F3 described investments in small businesses as “inherently risky” and makes the following statement with respect to them, “NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY.” As set out in paragraph 40 above, at the time of sale, Lawson presented the Promittere product to clients of WAS as a medium to high risk product and provided clients with the Promittere Summaries which described the risk of large losses as a percentage of assets as “negligible”.

45. Lawson states that he believed that 23 clients of WAS to whom he sold shares of Promittere (in addition to himself and his wife) qualified as accredited investors. However, complete documentation evidencing their qualification is only available for 14 of these clients. The documentation for the remaining 9 clients was insufficient to enable Lawson to qualify them as accredited investors.

VI. CONTRAVENTIONS

46. Lawson, in his capacity as President and Secretary, Compliance Officer and mutual fund salesperson for WAS, admits that between August 1, 2002 and November 1, 2005:

- (a) He approved, recommended and allowed the sale of shares in Promittere, a related company of WAS, to clients without conducting or ensuring that adequate due diligence had been conducted on the product and without making adequate inquiries to ensure that the product was suitable for sale to clients of WAS and after having provided clients with incomplete and inaccurate information as to the risk level associated with the product, contrary to MFDA Rules 2.2.1(a) and (b) and MFDA Rule 2.1.1(c).
- (b) He sold shares of Promittere to 48 clients of WAS without ensuring that these investments were suitable for all of these clients and in keeping with the clients’ investment objectives, contrary to MFDA Rule 2.2.1(a), (b) and (c), and MFDA Rule 2.1.1(c).
- (c) He sold shares of Promittere to 9 clients of WAS in reliance on the accredited investor exemption without obtaining sufficient documentation to enable him to qualify them as accredited investors in accordance with s. 2.3 of Ontario Securities Commission Rule 45-501 and subsequently, s. 2.3 of National Instrument 45-106, prior to selling them shares of Promittere, contrary to MFDA Rule 2.1.1(c).
- (d) He sold shares of Promittere to clients of WAS in reliance on the closely held issuer exemption when he had not complied with the requirements of such exemption as set out in s. 2.1 of Ontario Securities Commission Rule 45-501,

³ In September of 2005, pursuant to National Instrument 45-106, the closely held issuer exemption (which had been provided for in s. 2.1 of Ontario Securities Commission Rule 45-501), was replaced with the private issuer exemption. Given the nature of the changes made to the exemption, the requirement to provide investors with a copy of Form 45-501F3 ceased. Lawson sold shares of Promittere to one client of WAS after this amendment.

in that he failed to provide any of the clients with a copy of Form 45-501F3 at least 4 days prior to their purchase of shares of Promittere. This contravention engages the jurisdiction of the Hearing Panel to impose a penalty on Lawson pursuant to s. 24.1.1(h) of MFDA By-law No. 1 and contrary to MFDA Rule 2.1.1(c).

- (e) He facilitated the sale of shares of Promittere to 48 clients of WAS without providing clients with written disclosure of the relationship between WAS and Promittere at the time of sale or of WAS' financial interest in the sale of shares of Promittere, thereby giving rise to actual or potential conflict of interest which Lawson did not ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

VII. TERMS OF SETTLEMENT

47. Lawson agrees to the following terms of settlement:

- (a) a fine in the amount of \$20,000;
- (b) a permanent prohibition against Lawson from holding the position of Officer, Director, Compliance Officer, Ultimate Designated Person or Branch Manager of an MFDA Member;
- (c) a permanent prohibition against Lawson from selling any securities pursuant to any exemptions under applicable securities legislation;
- (d) that Lawson shall successfully complete the Canadian Securities Course or such other course acceptable to the MFDA within 12 months of the approval of this Settlement Agreement;
- (e) costs of \$5,000 payable to the MFDA;
- (f) that Lawson will in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations; and
- (g) that Lawson will appear and give truthful testimony at a hearing commenced by the MFDA against any person or entity in relation to any of the facts or allegations referred to in this Settlement Agreement, if requested by Staff.

VIII. STAFF COMMITMENT

48. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against Lawson in respect of any conduct or alleged conduct of Lawson in relation to the facts set out in Parts IV and V of this Settlement Agreement, subject to the provisions of paragraph 53 below.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

53. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent

time, Lawson 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 Lawson based on, but not limited to, the facts set out in Parts IV and V of the Settlement Agreement, as well as the breach of the Settlement Agreement.”

D. GENERAL PRINCIPLES REGARDING ACCEPTANCE OF SETTLEMENTS

12. We agree with the submissions of Staff that the role of the Hearing Panel in a Settlement Hearing is not the same as its role at a contested Hearing.

13. An MFDA Hearing Panel has described the differences in the Hearing Panel’s mandate as follows:

“In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. As has been said:

“The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made.” “

In the Matter of Professional Investments (Kingston) Inc. (Re), [2009] MFDA Central Regional Council, Reasons for Decision dated March 24, 2009, MFDA File No. 200836, (“*Professional Investments (Kingston)*”) at p. 8.

14. Settlements advance the objective of protecting the public by proscribing activities that are harmful to the public, while enabling the parties to reach a flexible remedy tailored to address the interests of both the regulator and a respondent.

British Columbia Securities Commission v. Seifert, [2007] B.C.J. No. 2186 at paras. 44 to 45.

15. MFDA Hearing Panels have taken into account the following considerations when determining whether a proposed settlement should be accepted:

- (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; and
- (e) whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA, and the regulatory process itself.

Professional Investments (Kingston), *supra* at p. 9.

E. GENERAL PRINCIPLES REGARDING THE APPROPRIATENESS OF THE PENALTY

16. Factors that Hearing Panels frequently consider when determining whether a proposed penalty is appropriate include the following:

- (a) The seriousness of the allegations proved 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 the seriousness of the improper activity;
- (e) The harm suffered by investors as a result of the Respondent's activities;
- (f) The benefits received by the Respondent as a result of the improper activities;
- (g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in 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 deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- (j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- (k) Previous decisions made in similar circumstances.

In the Matter of Stephan Headley, [2006] MFDA Ontario Regional Council, Reasons for Decision dated February 21, 2006, MFDA File No. 200509, at pp. 25-26.

17. An additional source that may be taken into account when determining the appropriate

penalties are the MFDA Penalty Guidelines (“Penalty Guidelines”). The Penalty Guidelines are intended to assist Hearing Panels, Staff and Respondents in considering the appropriate penalties in MFDA disciplinary proceedings. As stated in the introduction to the Penalty Guidelines under the heading “Purpose of the MFDA Penalty Guidelines:

“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.”

F. APPLICATION OF FACTORS TO THE PRESENT CASE

(a) Nature of the Misconduct

18. We agree with Staff that the misconduct in this case is serious. At all material times, Lawson was the President and Secretary of WAS, as well as its only salesperson and Compliance Officer. In those capacities, he approved for sale and sold shares in a related company to the Member (referred to as “Promittere” in the Settlement Agreement) to 48 clients of the Member. The proceeds raised from the sale of the Promittere shares were turned over to an individual who was purportedly going to invest the proceeds on behalf of the investors but who was subsequently convicted of fraud under the *Criminal Code* in relation to his handling of those monies. These clients cumulatively invested \$2,883,993.00 USD in Promittere. They appear to have lost their entire investment with no reasonable prospect of recovery.

19. Given his positions of seniority and responsibility at the Member, Lawson was responsible for conducting proper due diligence on Promittere as an exempt product and for understanding and complying with the exemptions he relied upon in selling it. He was also responsible for ensuring that these investments were suitable for clients and in keeping with their investment objectives. He failed in these duties. He engaged in this conduct having failed to provide written disclosure to clients of the Member’s financial interest in the sale of shares of Promittere.

(b) The Respondent’s Recognition of the Seriousness of his Misconduct

20. Lawson has accepted responsibility for his misconduct and has avoided the necessity of the MFDA incurring further time and expense conducting a full hearing of this matter on the merits. Further, he has agreed to appear and give truthful testimony at a hearing commenced by the MFDA against any person or entity in relation to any of the facts or allegations referred to in this Settlement Agreement, if requested by Staff.

(c) The Respondent's Past Conduct and Level of Activity

21. Lawson has been registered in the mutual fund industry since 1995 and has no disciplinary history with the MFDA.

(d) Client Harm

22. As detailed above, during the relevant period of time, 48 clients of WAS invested almost 3 million dollars U.S. in shares of Promittere on the advice of Lawson. It would appear that these clients have lost their entire investments.

(e) Benefits Received by the Respondent

23. Lawson earned fees of approximately \$50,000.00 CDN as a result of his sale of shares of Promittere to clients of WAS. These fees were paid to him in the form of shares of Promittere. Upon the collapse of Promittere, these shares were cancelled. He has not participated in and has undertaken that he will not participate in any *pro rata* recovery paid to shareholders. This undertaking extends to approximately \$135,000.00 CDN Lawson and his wife invested in shares of Promittere.

(f) Previous Decisions Made in Similar Circumstances

24. Every case has its own unique features. This one is no exception. However, Staff brought to our attention previous MFDA Decisions where Hearing Panels considered misconduct by supervisors or senior officers in respect of firm compliance matters in general and the sale of exempt products in particular. These Decisions included:

- (a) *In the Matter of Corner et al.* [2010] MFDA Ontario Regional Council, MFDA File No. 200823, Reasons for Decision dated July 20, 2010.
- (b) *In the Matter of Lamarche* [2009] MFDA Ontario Regional Council, MFDA File No. 200821, Settlement Agreement, Reasons for Decision dated February 23, 2009.
- (c) *In the Matter of Keybase Financial Group Inc. and Dax Sukhraj* [2009] MFDA Ontario Regional Council, MFDA File No. 200823, Reasons for Decision dated June 2, 2009.

G. PENALTY GUIDELINES

25. The Penalty Guidelines recommend the following penalties for the misconduct alleged in this matter:

- (a) Standard of Conduct: minimum fine of \$5,000.00; write or rewrite an appropriate industry course; Suspension; Permanent prohibition in egregious cases;
- (b) Client Accounts – Know your Client: minimum fine of \$10,000.00; write or rewrite an appropriate industry course; period of increased supervision; suspension; termination in egregious cases; permanent prohibition in egregious cases; and
- (c) Conflict of Interest: minimum fine of \$5,000.00; write or rewrite an appropriate industry course; Suspension; Permanent prohibition in egregious cases.

26. We have also considered the nature of these proceedings, the fact that they are public and the effect that this has had, and will have, on Lawson.

27. We have also considered that this was a Settlement Agreement that was reached by the parties after significant discussion and negotiation. It represents what they feel, with their knowledge and experience, is an appropriate resolution.

28. Taking all of these factors into consideration, we unanimously concluded that this Settlement Agreement was reasonable and in the public interest and should be accepted by this Hearing Panel.

H. ORDER

29. At the conclusion of the Settlement Hearing, we issued an Order accepting the Settlement Agreement and imposing the following terms and conditions on Lawson:

- (a) Lawson shall pay a fine in the amount of \$20,000.00 upon the acceptance of this Settlement Agreement, pursuant to s. 24.1.2(b) of MFDA By-law No. 1.
- (b) Lawson shall be permanently prohibited from holding the position of Officer, Director, Compliance Officer, Ultimate Designated Person or Branch Manager of an MFDA Member, except with respect to his continuing status as President and Chief Compliance Officer of WAS for the purpose of ensuring the orderly resignation of WAS.
- (c) Lawson shall be permanently prohibited from selling any securities pursuant to any exemptions under applicable securities legislation.
- (d) Lawson shall successfully complete the Canadian Securities Course or such other course acceptable to the MFDA within 12 months of the approval of this Settlement Agreement.
- (e) Lawson shall pay costs in the amount of \$5,000.00 upon the acceptance of this Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1.
- (f) Lawson shall appear and give truthful testimony at a hearing commenced by the MFDA against any person or entity in relation to any of the facts or allegations referred to in this Settlement Agreement, if requested by Staff.
- (g) Lawson shall, in future, comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations; and
- (h) If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this 22nd day of October, 2012.

“Thomas J. Lockwood”

Thomas J. Lockwood, Q.C.,
Chair

“Nick Pallotta”

Nick Pallotta,
Industry Representative

Doc 316638