



**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: Olympian Financial Inc.**

Heard: September 12, 2018 in Toronto, Ontario  
Decision: September 12, 2018  
Reasons for Decision: October 31, 2018<sup>1</sup>

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Malliha Wilson	Chair
Michael-Murray Coulter	Industry Representative
Guenther W. K. Kleberg	Industry Representative

Appearances:

Francis Roy	)	Enforcement Counsel for the Mutual Fund Dealers Association of Canada
	)	
	)	
John Fabello	)	Counsel for the Respondent
	)	
Alexander Mitonidis	)	Chief Operating Officer of Respondent
	)	
	)	

<sup>1</sup> The initial Reasons for Decision issued October 24, 2018 have been replaced by these Reasons for Decision to correct clerical errors identified in paragraphs 3 and 5 on page 2 (under Contraventions).

## Settlement Agreement

1. The Hearing Panel accepted the Settlement Agreement dated July 31, 2018 (the “Settlement Agreement”) between the staff of the MFDA and Olympian Financial Inc. (the “Respondent”). A copy of the Settlement Agreement is attached hereto as Schedule “1” and a copy of the Order is attached as Schedule “2”.
2. The agreed facts are set out in paragraphs 7-16 of the Settlement Agreement.

## Contraventions

3. The Respondent admits that between March 2009 and October 2017, it did not conduct an on-site compliance review of every sub-branch location at least once every three years, contrary to MFDA Rule 2.5.1 and MFDA Policy Number 5.
4. The Respondent admits that it was required to have a robust supervisory regime to ensure that its business is handled in compliance with applicable MFDA rules, by-laws, policies and other securities legislation.
5. Here, of particular relevance is a requirement to establish and implement supervisory practices to monitor the activities of its branches and its approved persons. The Respondent admits that it did not conduct an on-site compliance review of every sub-branch location at least once every three years for the eight and a half years in question. The Respondent did, however, develop a review program at some point (October 2013) but it did not maintain evidence of risk reviews.
6. There was no evidence of client harm as a result of the Respondent’s deficient supervisory practices. In this respect, this case is distinguishable from the *Sun Life* case referenced in the materials submitted to the panel.<sup>2</sup>

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<sup>2</sup> Re: *Sun Life Financial Investment Services (Canada) Inc.* (July 24, 2015).

## **Agreed Penalty**

7. The agreed penalties were:
- a) a fine of \$25,000;
  - b) a costs award of \$5,000; and
  - c) compliance with MFDA Rule 2.5.1 and MFDA Policy No. 5.

## **Considerations**

8. The following considerations guided the Hearing Panel's acceptance of the Settlement Agreement. First, the agreed penalty needed to be within an acceptable range considering similar cases. Secondly, the agreed penalty had to be fair and reasonable, i.e. proportional to the seriousness of the contravention and relevant circumstances. Thirdly, the agreed penalty should serve as a deterrent to the respondent and the industry.

## **Nature of the Misconduct**

9. The Respondent's misconduct is serious. It reflects repeat and continued supervisory lapses. In particular, the Respondent did not conduct on-site compliance and reviews of every one of its sub-branches at least once every three years. Therefore, the Respondent was not effectively assessing and monitoring compliance with regularity requirements in its sub-branches. When these activities are left unsupervised, or are inadequately supervised, they have the potential to result in significant client harm and/or client losses. Here, there is no evidence that the clients' suffered losses or other harm as a result of the Respondents lack of supervision of its sub-branches.

## **Other Considerations re Acceptability of Agreed Penalty**

10. The Respondent has cooperated extensively with the MFDA's investigation.

11. The Respondent accepted responsibility for its misconduct.
12. The Respondent has not been the subject of a prior MFDA proceeding.
13. Since October 2017 the Respondent has been in compliance with the requirements of Policy No. 5. The Respondent is now able to properly comply and perform its supervisory function.
14. None of the Respondents sub-branches were deemed to be high risk; all were characterized as low risk.
15. The agreed penalty is substantial to the Respondent, particularly in relation to the size of the Respondent.
16. The agreed penalty helps the MFDA to send a message to the Respondent and others with respect to specific and general deterrence.
17. The agreed penalty is within the reasonable range of appropriateness with respect to other decisions, as submitted to us by staff, made by MFDA hearing panels in similar circumstances.

## Conclusion

18. Having regard to all the aforementioned factors, the Panel concludes that the penalties proposed in the Settlement Agreement are reasonable, proportionate and will deter the Respondent and others from engaging in the impugned conduct. The Panel is of the view that the acceptance of this Settlement Agreement is in the public interest and will advance the objective of investor protection. The Settlement Agreement is therefore accepted.

**DATED** this 31<sup>st</sup> day of October, 2018.

“Malliha Wilson”

Malliha Wilson  
Chair

“Michael-Murray Coulter”

Michael-Murray Coulter  
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg  
Industry Representative

DM 641526

**Schedule “1”**

**Settlement Agreement**

**File No. 201886**



**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: Olympian Financial Inc.**

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**SETTLEMENT AGREEMENT**

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**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, Olympian Financial Inc. (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. ACKNOWLEDGEMENT**

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 XII) 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**

#### **The Respondent’s Registration History and Branch Structure**

6. The Respondent is registered in Ontario, British Columbia, New Brunswick and Nova Scotia as a mutual fund dealer. The Respondent has been a Member of the MFDA since November 15, 2002.

7. Since becoming a Member of the MFDA, the Respondent has operated only one branch office, which is also its head office and is located in Toronto, Ontario. The Respondent’s head office has an onsite branch manager to supervise the Respondent’s Approved Persons who operate out of this location.

8. At all material times, the Respondent also operated sub-branches registered in Ontario which are affiliated with the Respondent's head office.<sup>3</sup> A branch manager operating from the Respondent's head office was responsible for supervision of Approved Persons at sub-branches.

### **Failure to Review the Respondent's Sub-Branches**

9. On July 24, 2006, MFDA Policy No. 5 came into effect, which requires each MFDA Member to establish a branch<sup>4</sup> review program to effectively assess and monitor compliance with regulatory requirements. Branch reviews are required to be conducted by qualified individuals who are independent from the branch and the branch manager. An MFDA Member is generally expected to perform an on-site review of its branches and sub-branches no less than once every three years, unless the Member can demonstrate the branches that have not been subject to an on-site review are low risk and have been subject to alternative compliance review procedures performed by head office, such as an off-site desk review. Under no circumstances, should a Member never perform an on-site review of a branch.

10. Between about January 2006 and June 2017, the Respondent did not conduct on-site compliance reviews of every sub-branch location at least once every three years. In addition, the Respondent did not maintain evidence demonstrating that its sub-branch locations were low risk or had been subject to alternative compliance review procedures.

11. The Respondent's failure to conduct on-site compliance reviews of every sub-branch location was identified by MFDA Staff as a compliance deficiency during each of the Respondent's 6 scheduled and targeted sales compliance examinations conducted between January 2006 and August 2017.<sup>5</sup> In particular, MFDA Staff concluded that:

- a) From 2006 to 2012, the Respondent had not performed an audit or review of all of its sub-branches and had not maintained evidence of the methodology it had used

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<sup>3</sup> As of the date of this Settlement Agreement, the Respondent operates 13 sub-branch locations registered in Ontario.

<sup>4</sup> Policy No. 5 provides that references to "branches" include sub-branches.

<sup>5</sup> Compliance examinations of the Respondent were completed by MFDA Staff in January 2006, March 2009, November 2010, November 2012, October 2013 and August 2016.

to assess the risk of each sub-branch location according to an objective set of criteria;

- b) In October 2013, though the Respondent had established a branch review program, the Respondent had not maintained evidence of its sub-branch risk rating determinations and conclusions, had not maintained evidence of client file reviews or of advisors' sales communications, advertising and client communications, and had not maintained evidence of interviews of advisors from each sub-branch; and
- c) In August 2016, with regards to its 13 registered sub-branches, the Respondent had:
  - i. never completed reviews of 4 sub-branches which had become registered with the Member in 2014; and
  - ii. not completed reviews of 8 of the remaining 9 sub-branches within a 3 year cycle in accordance with MFDA Policy No. 5.

## **V. CURRENT PRACTICES**

12. As of October 2017, the Respondent is in compliance with MFDA Policy No. 5 in that it has:

- a) properly assessed and provided a risk rating for each of its sub-branches; and
- b) discover, monitor and address non-compliance by its sub-branches with the Respondent's policies and procedures and MFDA By-laws, Rules and Policies;

13. As a result, the Respondent is now able to:

- a) properly assess supervisory procedures and practices in place at sub-branches, as well as the quality of execution of those procedures; and
- b) ensure that branch supervisors and a selection of other Approved Persons were interviewed or that the information provided was substantively tested to verify its accuracy.

## **VI. MITIGATING FACTORS**

14. The Respondent at all times cooperated with the MFDA's investigation of the issues that form the subject matter of this Settlement Agreement.

15. There is no evidence that clients suffered losses or other harm as a result of the Respondent's failure to complete on-site reviews of its sub-branches pursuant to MFDA Policy No. 5 and MFDA Rule 2.5.1.

16. The Respondent hereby undertakes to comply with its branch review obligations in the future.

## **VII. CONTRAVENTIONS**

17. The Respondent admits that, between about March 2009<sup>6</sup> and October 2017, it did not conduct an on-site compliance review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.

## **VIII. TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine of \$25,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
- b) the Respondent shall pay costs of \$5,000 pursuant to s. 24.2 of MFDA By law No. 1;
- c) the Respondent shall in the future comply with MFDA Rule 2.5.1 and MFDA Policy No. 5; and
- d) a senior officer of the Member will attend in person, on the date set for the Settlement Hearing.

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<sup>6</sup> The date of MFDA Staff's second targeted sales compliance examinations. See paragraph 11 above.

## **IX. STAFF COMMITMENT**

19. 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 VIII of this Settlement Agreement, subject to the provisions of Part XII below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Parts IV and VIII 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 VIII, 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.

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

20. 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.

21. 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 its 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.

22. 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.

23. 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 it.

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

24. 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.

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

25. 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.

26. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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.

**XIII. DISCLOSURE OF AGREEMENT**

27. 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.

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

**XIV. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 31<sup>st</sup> day of July, 2018.

**Olympian Financial Inc.**

“Alexander Mitonidis”

\_\_\_\_\_  
Name: Alexander Mitonidis  
Title: Chief Operating Officer

“ER”

\_\_\_\_\_  
Witness – Signature

ER

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

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

**Schedule “A”**

**Order  
File No.**



**Mutual Fund Dealers Association of Canada**  
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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Olympian Financial Inc.**

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**ORDER**

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

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

**AND WHEREAS** the Hearing Panel is of the opinion that between at least January 2006 and October 2017, the Respondent did not conduct a review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.

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

1. The Respondent shall pay a fine of \$25,000 pursuant to s. 24.1.2(b) of MFDA By law No. 1;
2. The Respondent shall pay costs of \$5,000 pursuant to s. 24.2 of MFDA By law No. 1;
3. The Respondent shall in the future comply with MFDA Rule 2.5.1, and MFDA Policy No. 5; and
4. 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, then 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 [day] day of [month], 20[ ].

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]

**Schedule “2”**

**Order**

**File No. 201886**



**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: Olympian Financial Inc.**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON SEPTEMBER 12, 2018)

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**WHEREAS** on August 15, 2018, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Olympian Financial Inc. (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA dated July 31, 2018 (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 September 12, 2018 at 10:00 a.m. (Eastern) a hearing to consider the Settlement Agreement was held before a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) in the MFDA hearing room located at 121 King Street West, Toronto, Ontario;

**AND WHEREAS** the Hearing Panel is of the opinion that between about March 2009 and October 2017, the Respondent did not conduct an on-site compliance review of every sub-branch location at least once every three years, contrary to MFDA Policy No. 5 and MFDA Rule 2.5.1.

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

5. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

6. The Respondent shall pay a fine in the amount of \$25,000, pursuant to section 24.1.2(b) of By-law No. 1;

7. The Respondent shall pay the costs of this proceeding and investigation in the amount of \$5,000, pursuant to section 24.2 of By-law No. 1; and

8. The Respondent shall in the future comply with MFDA Rules, 2.5.1 and MFDA Policy No. 5.

**DATED** this 12<sup>th</sup> day of September, 2018.

“Malliha Wilson”

Malliha Wilson  
Chair

“Michael Coulter”

Michael Coulter  
Industry Representative

“Guenther W. K. Kleberg”

Guenther W. K. Kleberg  
Industry Representative