



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: Sentinel Financial Management Corp.

Heard: July 14, 2011 in Saskatoon, Saskatchewan
Reasons for Decision: August 25, 2011

REASONS FOR DECISION

Hearing Panel of the Prairie Regional Council:

Garrett Wilson, Q.C.
Nada Israeli
Richard R. Sydenham

Chair
Industry Representative
Industry Representative

Appearances:

Shelly Feld)	For the Mutual Fund Dealers Association of Canada
)	
D. Roger Arnold)	For Sentinel Financial Management Corp.
)	

1. We convened as a Hearing Panel of the Prairie Regional Council for the purpose of considering a Settlement Agreement between the Mutual Fund Dealers Association of Canada (“MFDA”) and Sentinel Financial Management Corp. (“Sentinel”) (the “Parties”) pursuant to section 24.4 of MFDA By-law No. 1. The Parties agreed through counsel that we were properly appointed and constituted and possessed full jurisdiction to carry out that function.

2. Observing that several members of the public were present, the Chair inquired if a motion would be requested under Rule 15.2(2) of the MFDA Rules of Procedure ordering that all or part of the settlement hearing be held in the absence of the public. Both Mr. Feld and Mr. Arnold stated that they had no desire for such an order and accordingly the hearing continued in the presence of the public.

3. We received and entered into evidence as Exhibit #1 the Notice of Settlement Hearing for the above time and place, dated June 22, 2011, which was accepted as compliance with rule 15.2(1) of MFDA By-law No. 1.

4. Cognizant of the requirement that the Settlement Agreement must remain confidential unless and until it was accepted by this Hearing Panel, upon it being tendered in evidence by Mr. Feld it was marked as Exhibit #2 for Identification Only.

5. We then proceeded to a consideration of the Settlement Agreement between the Parties. To assist us, Mr. Feld provided a detailed account of the circumstances giving rise to the Agreement and a submission urging us to accept it as being appropriate to the situation before us, the interests of both parties, as well as the interest of the public.

6. When Mr. Feld concluded his presentation, Mr. Arnold advised us that he fully adopted Mr. Feld’s comments, had nothing more to add, and on behalf of his client urged us to accept the Settlement Agreement.

7. The Hearing Panel retired to consider the Settlement Agreement which, for ease of reference, is herewith incorporated in these Reasons.

SETTLEMENT AGREEMENT

I. INTRODUCTION

8. 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 MFDA By-law No. 1, a hearing panel of the Prairie 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 Sentinel Financial Management Corp. (the “Respondent”).

II. JOINT SETTLEMENT RECOMMENDATION

9. 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.

10. 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”.

11. Staff and the Respondent agree that the terms of this Settlement Agreement, including Schedule “A”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

12. 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 approved by the MFDA.

IV. AGREED FACTS

Registration History

13. The Respondent is registered as a mutual fund dealer and an exempt market dealer in the provinces of British Columbia, Alberta, Saskatchewan and Manitoba.

14. The Respondent has been a Member of the MFDA since May 10, 2002.

Corporate Structure

15. The Respondent's head office is located in Saskatoon, Saskatchewan (the "Head Office"). Presently, the Respondent has sub-branch offices located throughout the province of Saskatchewan.

The 2007 Compliance Examination

16. Commencing on March 19, 2007, MFDA Compliance Staff conducted a compliance examination (the "2007 Examination") at the Head Office and at a branch office of the Respondent located in Calgary, Alberta¹ in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period from October 1, 2004 to January 31, 2007.

17. The results of the 2007 Examination were summarized and delivered to the Respondent in a report dated July 10, 2007 (the "2007 Report").

18. The 2007 Report identified compliance deficiencies in the operations of the dealer including the failure to conduct second tier supervision of trading that occurred at the Respondent's Calgary branch office and the failure of the Respondent to maintain adequate

¹ The Member no longer maintains the branch in Calgary that was reviewed during the 2007 Examination.

evidence of first tier trade supervision that was being conducted by the branch manager of the Calgary office including inquiries made, responses received and resolutions achieved as a result of the trade supervision process.

19. On October 28, 2008, the Respondent sent the MFDA a written response to the 2007 Report that stated, among other things, that the Respondent had implemented second tier trade supervision which would include a review of:

- a) any trades greater than \$5,000.....irrespective of the product being purchased or redeemed;
- b) redemptions.....for potentially inappropriate or unauthorized purposes. For example, “churning” or “subjugation of clients interest;” and
- c) exempt securities and leveraged accounts.

The 2009 Compliance Examination

20. Commencing on March 23, 2009, MFDA Compliance Staff conducted a compliance examination (the “2009 Examination”) at the Head Office in Saskatoon and at three sub-branch offices of the Respondent (one sub-branch located in Rosetown, Saskatchewan and two sub-branches located in Saskatoon, Saskatchewan) in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period from February 1, 2007 to February 28, 2009.

21. The results of the 2009 Examination were summarized and delivered to the Respondent in a report dated July 27, 2009 (the “2009 Report”).

22. The 2009 Report identified a number of compliance deficiencies, including the failure of the Respondent to establish, implement and maintain adequate policies and procedures for conducting trade supervision.

Inadequate Trade Supervision By Head Office

23. During the 2009 Examination, MFDA Compliance Staff identified deficiencies in the trade supervision conducted by the Respondent’s Head Office insofar as the Respondent’s Head Office:

- a) failed to ensure that daily reviews of account activity were conducted using a reasonable sample of trades (including initial trades, leveraged trades and trades in accounts operating under limited trading authorizations) to detect a lack of suitability as required by MFDA Policy No. 2 in that the Respondent only reviewed trades with a dollar value exceeding \$100,000 and in doing so, failed to implement trade supervision of “any trades greater than \$5,000” as indicated in the Respondent’s October 28, 2008 written response to the 2007 Report;
- b) failed to maintain records of second tier trade supervision that was conducted including inquiries made, responses received from Approved Persons and resolutions achieved as a result of supervisory inquiries, contrary to MFDA Rules 2.5.1 and former MFDA Rule 2.5.4 (now MFDA Rule 2.5.7)² and MFDA Policy No. 2; and
- c) failed to ensure that the Know-Your-Client (“KYC”) information contained on the Respondent’s back office system which was used by compliance officers to conduct trade supervision corresponded in all cases with the KYC information contained in client files with the result that the Respondent could not ensure the suitability of all trades that were reviewed as required by MFDA Rule 2.2.1.

Inadequate Supervision of Trades at Sub-Branch Locations

24. During the 2009 Examination, MFDA Compliance Staff identified deficiencies with the Respondent’s Branch Office supervision of trades in that the Branch Manager responsible for Tier 1 supervision of sub-branch trading activity failed to maintain records of inquiries made, responses received from Approved Persons, and resolutions achieved as a result of the supervisory inquiries, contrary to MFDA Rules 2.5.1 and 2.5.4 and MFDA Policy No. 2.

Inadequate Supervision of Trades in Exempt Products

25. During the 2009 Examination, MFDA Compliance Staff identified deficiencies with the Respondent’s Head Office supervision of trades in exempt products in that the Chief Compliance Officer:

- a) failed to query trades that may have been unsuitable given the clients’ documented KYC information; and
- b) failed to maintain evidence of inquiries made, responses received and resolutions achieved to ensure that sales of exempt securities were made in accordance with applicable exemptions and other regulatory requirements.

² As of January 21, 2011, the MFDA Rules were amended and renumbered such that former MFDA Rule 2.5.4 which set out the obligation to maintain records of compliance and supervisory activities undertaken by the Member and Approved Persons responsible for compliance is now MFDA Rule 2.5.7.

Current Practices

26. Since the 2009 Report was received by the Respondent, the Respondent has represented to MFDA Staff that it has established and implemented changes to its policies and procedures, including its policies and procedures with respect to trade supervision and ensuring that up to date KYC information is recorded on its back office system, in order to address the deficiencies described in paragraphs 16-18 above and to enhance its compliance with MFDA By-Laws, Rules and Policies.

27. The Respondent is responsible for implementing its revised policies and procedures and may be subject to further disciplinary action if it fails to do so.

V. CONTRAVENTIONS

28. The Respondent admits that prior to July 2009, the Respondent failed to establish, implement and maintain adequate policies and procedures to fulfill its obligations to:

- a) conduct proper two tier trade supervision on a daily basis to:
 - (i) ensure that each order accepted and each recommendation made for any account of a client is suitable for the client and in keeping with that client's investment objectives;
 - (ii) ensure that sales of exempt securities were made in accordance with applicable exemptions and other regulatory requirements; and
 - (iii) ensure that the handling of the Respondent's business was in accordance with the By-laws, Rules and Policies of the MFDA and applicable securities legislation; and

- b) maintain adequate records of trade supervision undertaken including inquiries made, responses received and resolutions achieved following supervisory inquiries;

contrary to MFDA Rules 2.2.1, 2.5.1, 2.5.4 and MFDA Policy No. 2.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$35,000, pursuant to s. 24.1.2(b) of the By-law;
- b) the Respondent shall pay costs of this proceeding in the amount \$2,500, pursuant to s. 24.2 of the By-law;
- c) in accordance with s. 24.4.2(b) of the By-law, the Respondent agrees that in the future it will comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.5.1 and 2.5.4 and MFDA Policy No. 2; and
- d) a senior officer of the Respondent will attend the Settlement Hearing in person.

VII. STAFF COMMITMENT

30. 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 or any of its officers or directors 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. Furthermore, 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 referenced in Parts IV and V, whether known or unknown at the time of settlement including investigations regarding the Respondent's fulfillment of its complaint handling obligations, including without limitation, with respect to complaints concerning unsuitable trading recommendations or practices by Approved Persons of the Respondent or inadequate trade supervision or other supervisory deficiencies of the Respondent whether such incidents or complaints arose prior to, or after the date of this Settlement Agreement and regardless of whether or not Staff has been informed of such complaints or alleged conduct prior to the date of the Settlement Agreement.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

31. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

32. 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.

33. 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.

34. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

35. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent and any of its officers or directors 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

36. 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.

37. 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.

XI. DISCLOSURE OF AGREEMENT

38. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

ANALYSIS

42. The Panel was initially concerned that Sentinel's failure to implement the supervision procedures outlined in its October 28, 2009 response to MFDA's 2007 Compliance Examination, as disclosed by the March 23, 2009 Compliance Examination, amounted to a breach of undertaking, but were assured on this point by Mr. Feld and accepted that MFDA does not take this position.

43. The Panel also noted that the Settlement Agreement provided for a single fine in the amount of \$35,000 to cover the two offences, or Contraventions, specified in the Agreement, rather than directing a portion of the fine to each. Upon reviewing the Penalty Guidelines submitted to us, we noted that had the fine been allocated to each Contravention separately it would reasonably have resulted in the same result.

44. It is seldom that a settlement that has been worked out by competing litigants will not be accepted by the presiding tribunal. It is a fundamental and established principle that the parties are far better able to identify and protect their interests than a third party. Here both MFDA and Sentinel are represented by experienced and competent counsel and only in the event that we concluded that the public interest was not well served by the Settlement Agreement would we feel compelled to interfere.

45. We unhesitatingly accept the criteria established by the Hearing Panels that have gone before us in considering the appropriateness of settlement agreements: We would subscribe to the views expressed by past panels that, in general, settlement agreements should be accepted, bearing in mind the following criteria:

- a) That it is in the public interest to do so and that the penalties proposed will be sufficient to protect investors;
- b) That the agreement is reasonable and proportionate, having regard to the conduct of the Respondent;
- c) That the agreement addresses the issues of both specific and general deterrence;
- d) That the agreement is likely to prevent the type of conduct set out in the facts;
- e) That the agreement will foster confidence in the integrity of the Canadian capital markets;
- f) That the agreement will foster confidence in the integrity of the MFDA; and
- g) That the agreement will foster confidence in the regulatory process itself.

These criteria, quoted from the decision of a Hearing Panel in the matter of Sterling Mutuals Inc. on September 3, 2008, are expressed in terms that differ only slightly from those submitted to us Mr. Feld for the MFDA

46. Having carefully considered the circumstances of this case and weighed the above criteria, all members of the panel were of the view that the Settlement Agreement reached between the Parties should be approved.

47. We noted that it is a condition of the Settlement Agreement that a senior officer of Sentinel attend this hearing and that Merlin Chouinard, president of Sentinel, was in attendance throughout the hearing.

48. Accordingly, at the conclusion of the hearing, the panel announced its decision accepting and approving the Settlement Agreement and directed that it be entered as a full exhibit with the effect that it become available to the public.

49. The panel executed an Order to the above effect with written Reasons to follow. These are the Reasons.

DATED this 26th day of August, 2011.

“Garrett Wilson”

Garrett Wilson, Q.C.,
Chair

“Nada Israeli”

Nada Israeli,
Industry Representative

“Richard Sydenham”

Richard R. Sydenham,
Industry Representative

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