



**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Robert Michael Smylski

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing dated April 18, 2007 the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that it proposed to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and Robert Michael Smylski (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 a 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” on the basis of the facts set out in Part IV herein.

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 MFDA.

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 paragraph 27) 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

6. From December 13, 2001 to March 24, 2005, the Respondent was registered in Alberta and British Columbia as a mutual fund salesperson for Partners in Planning Financial Services Ltd. (“PIP”), a Member of the MFDA. PIP has been a Member of the MFDA since January 8, 2002.

7. On March 24, 2005, the Respondent was terminated for cause by PIP as a result of the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

8. Prior to being registered as a mutual fund salesperson for PIP, the Respondent was registered in Alberta and British Columbia as a mutual fund salesperson with other mutual fund dealers dating back to 1984.

Sale of Securities Outside the Member

9. As set out in the table below, between July 15, 2003 and March 18, 2005, while registered as a mutual fund salesperson with PIP, the Respondent participated in the sale of the securities of six issuers.

Security	No of sales	Total amount	First sale	Last sale
Windmill Estates Ltd – Mortgage & Ownership Units	13	\$414,640	July 15, 2003	August 31, 2004
Berkshire Real Estate Investment Trust Ltd.	21	\$1,545,000	September 14, 2004	March 18, 2005
Venstar Hospitality Barrie Limited Partnership	5	\$120,000	January 7, 2004	June 24, 2004
WaveForm Energy Limited Partnership I	18	\$251,000	March 26, 2004	November 26, 2004
Lighthouse Pointe Apartments Limited Partnership	7	\$172,500USD	May 28, 2004	July 26, 2004
Riverside Manor Limited Partnership	5	\$110,000	May 28, 2004	December 7, 2004

10. In total, the Respondent made 62 sales totaling \$2,440,640 CAD and made 7 sales totaling \$172,500USD. Each of these securities was purportedly sold pursuant to an exemption under the *Securities Act (Alberta)*.

11. None of these transactions were carried on for the account of PIP or through the facilities of PIP, contrary to MFDA Rule 1.1.1(a).

12. The Respondent did not obtain the written consent of PIP and the Chief of Securities of Administration of the Alberta Securities Commission, contrary to s. 41(2)(g) and 41(2)(h) of the *Securities Act (Alberta)* and ASC Policy 3.10.

13. On or about January 14, 2004, the Respondent signed an acknowledgement that he had read, understood and agreed to comply with PIP's Compliance and Policies & Procedures Manuals (the "PPM") as well as all "subsequent compliance updates/bulletins".

14. The PPM states: "Alberta mutual fund registrants are only permitted to sell approved prospectus filed mutual funds. The sale of any other product must first have been granted a specific exemption by the ASC."

15. In addition, the PPM provides a list of products that have received the appropriate ASC exemption. None of the products sold by the Respondent and listed in the table at paragraph 4 above are included in the PPM.

16. On or about February 26, 2004, PIP issued Compliance Update 11/04 (the "Compliance Update"). The Compliance Update states:

Partners and it's[sic] representatives hold a restricted form of securities registration which limits our activity to the sale of prospectus filed mutual funds. Any activity outside of this requires the approval of Partners and a specific exemption from the ASC.

17. The Compliance Update also states:

To be perfectly clear, financial products including limited partnerships/debentures such as those offered by Venstar may not be sold by Partner's representatives under either the name of Partners, an insurance entity or some other related entity. This is against securities regulations and will not be tolerated. Please review your own practice to ensure you are not violating this rudimentary principle.

18. The Respondent participated in the sale of the Venstar product both before and after the Compliance Update.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

19. The Respondent admits that he engaged in securities related business that was not carried on for the account of PIP or through the facilities of the PIP, contrary to MFDA Rule 1.1.1(a).

20. The Respondent admits that he sold securities under a registration or prospectus exemption without first having obtained the written consent of PIP and the Chief of Securities of Administration of the Alberta Securities Commission, contrary to s. 41(2)(g) and 41(2)(h) of the Alberta Securities Act and ASC Policy 3.10, thereby engaging the jurisdiction of the Regional Council to impose a penalty on the Respondent pursuant to s. 24.1.1(h) of MFDA By-Law No. 1.

VI. TERMS OF SETTLEMENT

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

(a) A permanent prohibition on the authority of the Respondent to conduct securities related business; and

(b) A fine in the amount of \$5,000.

VII. STAFF COMMITMENT

22. If this Settlement Agreement is accepted by the MFDA, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 27 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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

24. 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 MFDA, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the MFDA, then the Respondent shall be deemed to have been penalized by the Regional Council 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.

26. Staff and the Respondent agree that if this Settlement Agreement is accepted by the MFDA, 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.

27. If this Settlement Agreement is accepted by the MFDA and, at any subsequent time, the Respondent fails to comply with any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under 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.

28. If, for any reason whatsoever, this Settlement Agreement is not accepted by the MFDA or an Order in the form attached as Schedule "A" is not made by the MFDA, 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.

29. Whether or not this Settlement Agreement is accepted by the MFDA, 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.

IX. DISCLOSURE OF AGREEMENT

30. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the MFDA, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the MFDA, except with the written consent of both the Respondent and Staff or as may be required by law.

31. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the MFDA.

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: February 28, 2007

“Wendy Nieuwenhuis”

Witness- Signature

“Robert Smylski”

Robert Smylski

“Mark T. Gordon”

Staff of the MFDA
Per: Mark T. Gordon
Executive Vice-President

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