



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: Sterling Mutuals Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing dated July 24, 2008, 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, a hearing panel of the MFDA Central Regional Council (the “Hearing Panel”) should accept this settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Sterling Mutuals Inc.

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 paragraph 44) 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. The Respondent became a member of the MFDA on March 8, 2002.

7. The Respondent is registered as a mutual fund dealer in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan. The Respondent is registered as a mutual fund dealer and limited market dealer in Ontario.

Repeat Compliance Deficiencies

8. In December 2002, Staff conducted a first round compliance examination of the Respondent covering the period April 2002 to November 2002 in order to assess the Respondent’s compliance with MFDA Rules, By-laws and Policies (the “First

Examination”), the results of which were summarized and delivered to the Respondent in a report dated July 10, 2003.

9. The First Examination identified numerous compliance deficiencies which required immediate corrective action by the Respondent. Staff required the Respondent to describe in writing by no later than July 31, 2003 the steps it had taken, or intended to take, to resolve each of the deficiencies.

10. By letter dated August 7, 2003, the Respondent provided Staff with a summary of the steps it had taken, or intended to take, to resolve the deficiencies.

11. By letter dated September 5, 2003, Staff asked the Respondent to clarify portions of its August 7, 2003 response and take further action to correct the deficiencies by no later than September 19, 2003.

12. By letter dated October 6, 2003, the Respondent provided the clarifications requested by Staff and outlined the further steps it intended to take to resolve the deficiencies.

13. By letter dated October 9, 2003, Staff advised the Respondent that, based on the Respondent’s actions to date, and provided that the Respondent proceeded to take certain other corrective measures to resolve the deficiencies, Staff was satisfied that the deficiencies identified during the First Examination either had been, or would be, resolved.

14. In April 2006, Staff conducted a second round compliance examination of the Respondent covering the period January 2003 to February 2006 (the “Second Examination”), the results of which were summarized and delivered to the Respondent in a report dated September 22, 2006.

15. The Second Examination revealed that several deficiencies found during the First Examination had not been resolved. The Respondent either had not taken the corrective

measures which it undertook to implement or the corrective measures it took were inadequate to resolve the deficiencies.

(i) Repeat Deficiency – Evidence of Trade Supervision

16. Between January 2003 and February 2006, the Respondent failed to establish, implement and maintain policies and procedures which ensured adequate head office account supervision in accordance with MFDA Policy 2, including policies and procedures which ensured that evidence of trade reviews was maintained in accordance with MFDA Rule 2.5.4, contrary to MFDA Rule 2.5.1 and MFDA Policy 2.

17. In particular, the First Examination revealed that the head office Compliance Officer did not consistently initial and date the Respondent's daily trade blotter. In addition, the Compliance Officer was reviewing and approving his own trading activity. Staff asked the Respondent to state what action it intended to take to resolve this deficiency.

18. In its August 7, 2003 letter, the Respondent advised Staff that it had changed its procedures to improve the recording and approval of trading activity. The Respondent also advised that trades made, reviewed and approved by the Compliance Officer in question were on behalf of self-serve clients using the Respondent's "discount service" who initiate all trades and do not seek the advice of the representative. The Respondent added that in such cases the Compliance Officer was "simply executing the clients [sic] instructions."

19. In its September 5, 2003 letter, Staff replied that an alternate Compliance Officer should review all transactions placed under the principal Compliance Officer's representative code. Staff also reminded the Respondent that MFDA Rule 2.2.1(c) requires that *all trades* accepted by the Member for any account of a client must be suitable for the client, emphasizing that Rule 2.2.1(c) does not differentiate between unsolicited trades and those placed on the advice of an Approved Person. Staff asked the Respondent to confirm that the alternate Compliance Officer would perform suitability

reviews of all trades placed under the principal Compliance Officer's "rep code" and that all trades would be subject to review going forward.

20. In its October 6, 2003 letter, the Respondent confirmed to Staff that "An alternate compliance officer will review the transactions placed under the compliance officers [sic] 'rep. code' for suitability."

21. The Second Examination revealed that of 37 trades sampled by Staff, the head office Compliance Officer had failed to evidence the date of his trade review in 32 instances.

(ii) Repeat Deficiency – Approval & Use of Trade Names

22. Between January 2003 and February 2006, the Respondent failed to establish, implement and maintain policies and procedures adequately governing the use of business, trade or style names by its Approved Persons and failed to ensure that any such names were approved by the Respondent and used in accordance with MFDA Rule 1.1.7, contrary to MFDA Rule 2.5.1.

23. In particular, during the First Examination Staff obtained copies of business cards being used by several Approved Persons of the Respondent. Staff notified the Respondent that the legal name of the Respondent did not appear on the business cards in at least equal size to that of the Approved Person's trade or business name. Staff reminded the Respondent that MFDA Rule 1.1.7 requires that the legal name of the Member must appear in at least equal size to that of the Approved Person's trade or business name. Staff asked the Respondent to state what action it intended to take to resolve this deficiency.

24. In its August 7, 2003 letter, the Respondent advised Staff that it was "currently reviewing the business cards of all representatives who use a different trade name. They will conform to the MFDA standards." The Respondent also advised Staff that all such

Approved Persons “were notified of the MFDA rules but were given a reasonable period to deplete old stocks of printed materials.”

25. In its September 5, 2003 letter, Staff stated that “a reasonable period of time has passed with respect to this issue. The MFDA expects Sterling and its Approved Persons to be in compliance with Rule 1.1.7(b)(ii) immediately.”

26. In its October 6, 2003 letter, the Respondent advised Staff that its “Approved Persons have been notified that trade names must be registered and the Sterling Mutuals name/logo must be displayed in equal prominence to the trade name.”

27. The Second Examination revealed that many of the Respondent’s Approved Persons used trade names, however Staff found no evidence of the Respondent’s written authorization for such use. Furthermore, MFDA records indicated that the Respondent had failed to notify the MFDA of the use of these trade names, as required by MFDA Rule 1.1.7.

(iii) Repeat Deficiency – Content of Client Name Statements

28. Between January 2003 and February 2006, the Respondent failed to establish, implement and maintain policies and procedures which ensured that client name account statements which it produced and delivered to clients contained the information required by MFDA Rule 5.3.3(b) and (c), contrary to MFDA Rule 2.5.1.

29. In particular, the First Examination revealed that the Respondent’s client name account statements for the period ending September 30, 2002 did not contain all of the account and transaction information required by MFDA Rule 5.3.3(b) and (c), in particular:

- (a) all debits and credits;
- (b) the quantity and description of each security purchased, sold, transferred and the dates of each transaction;

- (c) for automatic payment plan transactions, the date the plan was initiated, a description of the security and the initial payment made under the plan;
- (d) the date the statement was issued; and
- (e) the period covered by the statement.

Staff asked the Respondent to state what action it intended to take to resolve this deficiency.

30. In its August 7, 2003 letter, the Respondent advised Staff that it was “currently working with our programmers to produce a statement that better reflects the MFDA standards...All statements will be fully compliant for the required annual statement. Sterling will also be moving to electronic delivery of statements as outlined in MR-0016.”

31. In its September 5, 2003 letter, Staff asked the Respondent to provide an implementation plan that includes timelines and dates for completing the programming required to bring the Respondent’s statements into conformity with MFDA Rule 5.3.3.

32. In its October 6, 2003 letter, the Respondent advised Staff the “development of an ‘add-on’ piece of software for Winfund is currently under development. The programmer estimates 6 weeks until the role [sic] out of the software and some additional time for testing. In the interim we are using Winfund’s statements for the quarterly statements and the fund companies are continuing to send trade confirmations.”

33. The Second Examination revealed that client name account statements for the period ending December 31, 2005 still failed to meet all of the content requirements of MFDA Rule 5.3.3(b) and (c).

Inadequate Compliance Structure

34. The Second Examination revealed that the Respondent did not require its branch managers to supervise client account activity at the branch office level, meaning that:

- (i) the Respondent had failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, contrary to MFDA Rule 2.5.1 and MFDA Policy 2; and
- (ii) by virtue of the misconduct described in (i) above, the Respondent had prevented its branch managers from discharging their supervisory responsibilities as required by MFDA Rule 2.5.3(b)(ii), contrary to MFDA Rule 2.5.1 and MFDA Policy 2.

35. By virtue of the Respondent maintaining a single-tier compliance structure, trading activity at the branch office level was not being supervised by the Respondent's branch managers, being the individuals with the greatest knowledge of and familiarity with the clients and client accounts serviced by the Approved Persons under their supervision.

V. CONTRAVENTIONS

36. The Respondent admits that between January 2003 and February 2006, it failed to establish, implement and maintain policies and procedures to ensure that the handling of its business was in accordance with MFDA Rules 1.1.7, 2.5.4, 5.3.3 and MFDA Policy 2, contrary to MFDA Rule 2.5.1 and MFDA Policy 2.

37. The Respondent admits that between January 2003 and February 2006, it (i) failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, contrary to MFDA Rule 2.5.1 and MFDA Policy 2; and (ii) prevented its branch managers from discharging their supervisory responsibilities under Rule 2.5.3(b)(ii) by failing to establish, implement and maintain a two-tier compliance structure, contrary to MFDA Rule 2.5.1 and MFDA Policy 2.

VI. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$50,000 upon the acceptance of this Settlement Agreement;
- (b) the Respondent shall retain an independent monitor to resolve the compliance deficiencies set out in paragraphs 16-35 above in accordance with Schedule “B” hereto upon the acceptance of this Settlement Agreement; and
- (c) the Respondent shall pay the costs of the MFDA’s investigation and of this proceeding in the amount of \$5,000 upon the acceptance of this Settlement Agreement.

VII. STAFF COMMITMENT

39. 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 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 44 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

40. 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.

41. 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.

42. 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.

43. 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.

44. 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 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.

45. 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.

46. 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.

IX. DISCLOSURE OF AGREEMENT

47. 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.

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

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: July 24, 2008

Jason Campbell

Witness - Signature

Rocky Ieraci

Sterling Mutuals Inc.
Rocky Ieraci
Vice-President

Jason Campbell

Witness - Print name

Mark T. Gordon

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



Mutual Fund Dealers Association of Canada
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**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: Sterling Mutuals Inc.

ORDER

WHEREAS on July 24, 2008, 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 Sterling Mutuals Inc. (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA dated July 24, 2008 (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of matters for which it could be disciplined pursuant to s. 20 and 24.1.2 of By-law No. 1;

AND UPON reviewing the Settlement Agreement and the Notice of Settlement Hearing, and upon hearing submissions from counsel for the Respondent and Staff of the MFDA;

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

1. Failed to establish, implement and maintain policies and procedures between January 2003 and February 2006 to ensure that the handling of its business

was in accordance with MFDA Rules 1.1.7, 2.5.4, 5.3.3 and MFDA Policy 2, contrary to MFDA Rule 2.5.1 and MFDA Policy 2; and

- 2. Failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity between January 2003 and February 2006, contrary to MFDA Rule 2.5.1 and MFDA Policy 2, and thereby prevented its branch managers from discharging their supervisory responsibilities under Rule 2.5.3(b)(ii), contrary to MFDA Rule 2.5.1 and MFDA Policy 2.

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

- (a) pay a fine in the amount of \$50,000, pursuant to section 24.1.2(b) of MFDA By-Law No. 1;
- (b) retain an independent monitor to resolve the compliance deficiencies set out in paragraphs 16-35 of the Settlement Agreement in accordance with Schedule “B” to the Settlement Agreement, pursuant to section 24.1.2(g) of MFDA By-Law No. 1;
- (c) pay costs in the amount of \$5,000 attributable to the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1.

DATED at Toronto, Ontario this _____ day of _____, 2008.

Per: _____
[NAME], Chair

Per: _____
[NAME], Industry Representative

Per: _____
[NAME], Industry Representative



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Re: Sterling Mutuals Inc.

TERMS OF THE INDEPENDENT MONITOR

1. In accordance with the terms of the Settlement Agreement dated July 24, 2008, and the Order of the Hearing Panel arising therefrom, Sterling Mutuals Inc. (the "Member") shall:
 - a. Resolve the following deficiencies as identified in paragraphs 16 to 35 of the Settlement Agreement (the "Deficiencies"):
 - i. The Member failed to establish, implement and maintain policies and procedures which ensure adequate account supervision by the Member's head office in accordance with MFDA Policy 2, including ensuring that evidence of trade reviews is maintained in accordance with MFDA Rule 2.5.4;
 - ii. The Member failed to establish, implement and maintain policies and procedures adequate to govern the use of business, trade or style names by the Member's Approved Persons and ensure that any such names are first approved by the Member and subsequently used in accordance with MFDA Rule 1.1.7;
 - iii. The Member failed to establish, implement and maintain policies and procedures which ensure that client name account statements which the Member produces and delivers to clients contain the information required by MFDA Rule 5.3.3(b) and (c); and
 - iv. The Member failed to establish, implement and maintain a two-tier

compliance structure to supervise client account activity in accordance with MFDA Policy 2, which in turn prevented the Member's branch managers from discharging their supervisory responsibilities under MFDA Rule 2.5.3(b)(ii) and MFDA Policy 2.

- b. Retain an independent consultant (the "Monitor"), at the Member's expense, to assist in resolving all of the Deficiencies on the following terms:
 - i. The Member will execute a retainer with the Monitor incorporating the requirements of the *Duties and Standards of the Independent Monitor* attached hereto as Appendix "1" (the "Duties and Standards") and provide a copy of the retainer to MFDA Staff ("Staff");
 - ii. The Member will fully co-operate with and provide full disclosure to the Monitor in a timely manner of all matters and information relevant to the activities of the Monitor hereunder and in accordance with the terms and conditions of the Duties and Standards; and
 - iii. Staff must be satisfied with the selection of the Monitor and the terms of the Member's retainer of the Monitor.
- c. Resolve all of the Deficiencies in accordance with the terms and conditions of the Duties and Standards and on the following terms:
 - i. The Member shall cause the Monitor to develop, in collaboration with the Member, a written plan containing proposed actions (and timeframes for implementation of the actions) to remedy the Deficiencies (the "Action Plan"). The Action Plan shall meet the requirements of the Duties and Standards and be completed and delivered to Staff by no later than September 30, 2008;
 - ii. Staff reserve the right to add, delete or change any part of the Action Plan that the Member is required to implement provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change;
 - iii. The Member shall fully implement the actions identified in the Action Plan within the time frames set out therein;
 - iv. The Member shall cause the Monitor to complete its final testing of actions implemented under the Action Plan by no later than March 31, 2009;
 - v. The Member shall cause the Monitor to provide a final written report to Staff summarizing the status of the implementation of the Action Plan and the results of its independent verification and testing (the "Final Report") by no later than May 29, 2009;

- vi. The Member shall provide its Board of Directors with copies of the Action Plan and the Final Report; and
- vii. Exceptions to any terms of these *Terms of the Independent Monitor* are permissible only with the prior express written consent of Staff.



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Re: Sterling Mutuals Inc.

**DUTIES AND STANDARDS OF
THE INDEPENDENT MONITOR**

A. Defined Terms

1. Terms defined in the *Terms of the Independent Monitor* shall have the same meaning in these *Duties and Standards of the Independent Monitor*.

B. Duties of the Independent Monitor

1. The Monitor shall perform its duties with unimpaired professional judgment and objectivity, and shall be seen to be doing so by a reasonable observer.
2. The Monitor shall be retained and remunerated by the Member.
3. The Monitor shall perform its services in accordance with these *Duties and Standards of the Independent Monitor*.
4. The Monitor:
 - i. May advise the Member of the results during the testing process;
 - ii. Shall prepare the Final Report in an independent manner without consultation with the Member as to the content of the report; and
 - iii. Shall provide the Final Report directly to Staff, with a copy to the Member.

C. Qualifications of the Independent Monitor

1. The Monitor must exhibit and apply:

- i. An understanding of MFDA requirements (i.e. By-laws, Rules, Policies, Notices and Bulletins);
- ii. Familiarity with mutual fund dealer operations and compliance issues; and
- iii. Familiarity with adequate Member compliance procedures (i.e. the Monitor should not be proposing procedures it develops at first instance without an understanding of procedures compliant Members have instituted to meet MFDA requirements).

D. Action Plan

1. The Action Plan must outline the actions that will remedy the Deficiencies and specific time frames for the completion of those actions.

E. Testing Procedures

1. The testing procedures determined by the Monitor shall:
 - i. Be sufficient to determine whether the Deficiencies have been resolved or remain unresolved;
 - ii. Specify the objective of the testing procedures, including citing which of the Deficiencies the testing will address; and
 - iii. Specify the sampling methodology, including the size of samples to be tested.
2. The Monitor shall prepare and maintain a file of its working papers regarding the testing, which shall be made available to Staff upon request. The file must contain sufficient information to enable an experienced individual, having no previous connection to the engagement, to re-perform the testing procedures and come to the same conclusions. The file must include appropriate documentation of the procedures performed and the evidence obtained, including copies of documents reviewed or sufficiently detailed information to identify the specific documents reviewed.

F. Final Report

1. When reporting on the results of testing, the Monitor must:
 - i. Specify the procedures performed and the details of the samples selected;
 - ii. State the factual results of performing the procedures and not express an opinion on the results;
 - iii. Link the factual findings to the Deficiency being tested;
 - iv. List any new deficiencies in compliance with MFDA requirements that are noted during the testing on the original Deficiencies;
 - v. Indicate any restrictions or limitations on the Monitor's ability to perform the procedures; and
 - vi. Provide recommendations to remedy any new deficiencies or any continuing Deficiencies.