

# Settlement Agreement

File No. 201609



**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: Jack L. Comeau**

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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 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 the Respondent, Jack L. Comeau.

### **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 with a view of compromise, and further agree that this agreement of facts, admissions made herein, consent to contraventions and penalty, or otherwise, is made without prejudice to the Respondent or Staff, and may not be utilized in any way in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA 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**

#### **Registration History**

6. From January 1996 until November 7, 2011 when he resigned, the Respondent was registered in Saskatchewan, British Columbia, Manitoba, and Alberta as a mutual fund salesperson (now known as a dealing representative) with Sentinel Financial Management

Corp. (“Sentinel”), a Member of the MFDA. At the time of his resignation, the Respondent was under a 90 day suspension by Sentinel starting on August 26, 2011.

7. At all material times, the Respondent conducted business in Saskatoon, Saskatchewan and operated under the approved trade name, of Comeau Financial Inc. (“Comeau Financial”).

8. Since January 16, 2012, the Respondent has been registered in Saskatchewan, Alberta, British Columbia, and Manitoba as a dealing representative with an exempt market dealer.

9. In 1998, client JR became a client of Sentinel. The Respondent was the mutual fund salesperson responsible for servicing his accounts at Sentinel.

10. In about February 2010, the Respondent and client JR discussed investing client JR’s pension monies.

11. On or about February 19, 2010, the Respondent prepared, and delivered to client JR, a memorandum with the subject line, “Information on alternative investments for [JR’s] pension” (the “Memorandum”). The Memo stated, among others, the following:

As discussed last Tuesday, I am enclosing some information on the various alternative investment opportunities that are currently available, and which I think would be appropriate for you to consider for your pension. As mentioned, I am recommending alternative investments to most of my clients for the following reasons:

1. The alternative investments have no or little correlation to the stock market, so they provide optimal diversification to investors who currently hold mutual funds and/or individual stocks. Greater diversification = lower overall level of risk for the portfolio.
2. The alternative investments that I deal with generally have potential for above-average returns. Invesotrs (sic) are eager to invest into investments that are generating good – excelelnt (sic) returns, as their mutual funds have not sone (sic) so in the last 10 years.

3. The risk level of the alternative investments is generally low. There is no volatility. The biggest risk is typically illiquidity and time. The risk/reward profile of the alternative investments that I offer my clients is very attractive (low risk...high returns).
4. The alternative investments that I deal with allow investors to participate in business venture that they normally would not be able to do so on their own (due to lack of funds, lack of time and/or lack of expertise). Ventures such as land development, oil production, and commercial properties are generally very profitable ventures that few investors can partake in.

I have enclosed some information on several land deals (Westbridge – Riverband project in Saskatoon; Walton Verona project in Pheonix (sic), Arizona). With both of these projects they will be converting land which is not very arable into urban land, therefore increasing their values substantially.

In addition, I have enclosed some information on the Standard Capital Resources fund. This is a very exciting investment opportunity investing in oilwells. This investment is projected to pay out a quarterly cashflow of 18 – 25% per year. I am very bullish on the price of crude oil, and therefore believe that this will be a very strong investment opportunity.

Lastly, I am enclosing some information on the Optimus U.S. Real Estate fund. This fund has been purchasing real estate properties in Pheonix (sic) and Las Vegas for crazy bargain-basement prices. The fund plans to pay out a yearly distribution in the 6-8% range, and sell the properties at greatly enhanced prices on the U.S. real estate market has turned around. This is anticipated to take 3-5 years, but the expectations are for very large returns (possibly in the range of doubling to tripling).

So, you can see that these alternative investments are very diversified, and all have great potential. They are a great compliment to mutual funds, and have the benefit of greatly enhancing the risk/reward ratio of your investment portfolio. I am recommending that you consider investing all or a good portion of your pension fund into these ideas. The remainder (if you don't want to put it all into alternative investments could be invested into more mutual funds).

12. The “alternative investments” described in the Memorandum, including the Standard Capital Resources fund (“Standard Resources”) and the Optimus U.S. Real Estate fund (“Optimus”), are exempt market products.

13. The Memorandum constituted a “client communication” within the meaning of MFDA Rule 2.8.1.

14. The Memorandum contained statements or conclusions with respect to the risks and features of the exempt market products that were misleading, unwarranted or exaggerated. Among other things, the Memorandum improperly stated or implied that:

- (a) the exempt market products provided “optimal diversification” which would “lower the overall level of risk for the portfolio”;
- (b) “the risk level of the alternative investments is generally low”; and
- (c) the “risk/reward profile” of the exempt market products was “low risk...high returns”.

15. In addition, the Memorandum contained statements or conclusions with respect to the anticipated rates of return for the exempt market products which were misleading, unwarranted or exaggerated, and failed identify the material assumptions made in arriving at those statements or conclusions.

16. The Respondent recommended that client JR invest his pension monies in exempt market products, as described in the Memorandum, and client JR was influenced in his decision by the representations in the Memorandum.

17. Based upon the Respondent’s recommendations, client JR invested his pension monies as described below.

18. On or about March 1, 2010, client JR transferred approximately \$41,633 from his group Registered Retirement Savings Plan (“RRSP”) with his former employer to his Sentinel RRSP account. On the same day, client JR also signed a subscription form to purchase \$23,000 of Standard Resources in his RRSP account. Client JR signed a Risk Acknowledgment dated March 1, 2010 prior to making the investment.

19. On or about April 7, 2010, client JR signed a New Account Application Form to open a Locked-In Retirement Account (“LIRA”). On the same day, client JR transferred the commuted value of his company pension, which was approximately \$84,181, to the LIRA.

20. On June 28, 2010, shortly after the pension transfer to the LIRA was completed, client JR signed subscription forms to invest \$59,850 in Standard Resources and \$18,900 in Optimus. Client JR signed Risk Acknowledgments dated, June 29, 2010, and June 28, 2010 prior to making these investments.

21. On September 22, 2011, the Alberta Securities Commission issued a cease trade order with respect to Standard Resources.

22. Client JR suffered significant investment losses as a result of the Respondent’s investment recommendations described in the Memorandum. Client JR has been compensated for his investment losses.

23. The Respondent is 59 years of age and in poor health, having undergone a heart bypass operation, as well as 5 heart stents procedures, including one in October of 2016. The Respondent states that he has not conducted MFDA regulated business for over 5 years and is not desirous of ever conducting any other MFDA regulated business, and looks to retire from business in the next short while

## **V. CONTRAVENTIONS**

24. The Respondent admits that, in February 2010, he delivered a client communication which contained statements or conclusions with respect to the risks, features and rates of return of exempt market products he was recommending to the client that were misleading, unwarranted or exaggerated, or that failed to identify the material assumptions made in arriving at those statements or conclusions, contrary to MFDA Rules 2.8 and 2.1.1.

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) there shall be no order as to a fine or costs; and
- (c) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

26. 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 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 shall relieve the Respondent from fulfilling any continuing regulatory obligations.

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

27. 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.

28. 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 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.

29. 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. 24.1.1 and/or 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.

30. 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 him.

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

31. 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.

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

32. 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. Furthermore, the Respondent having engaged in such negotiations shall not be deemed as having attorned to the jurisdiction of the MFDA and Staff, and the Respondent maintains his right to assert that the MFDA lacks jurisdiction over him pursuant to section 24.1.4(b) of By-law No. 1 in the event that this Settlement Agreement is not accepted by the Hearing Panel.

33. Whether or not this Settlement Agreement is accepted by the Hearing Panel, 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.

## **XI. DISCLOSURE OF AGREEMENT**

34. 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.

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

## **XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 19<sup>th</sup> day of June, 2017.

“Jack L. Comeau”  
Jack L. Comeau

“DG”  
Witness - Signature

DG  
Witness - Print name

“Charles Toth”  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President, Member Regulation – Enforcement



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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 Jack L. Comeau (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, in February 2010, the Respondent delivered a client communication to client JR which contained statements or conclusions with respect to the risks, features and rates of return of exempt market products he was recommending to the client that were misleading, unwarranted or exaggerated, or that failed to identify the material assumptions made in arriving at those statements or conclusions, contrary to MFDA Rules 2.8 and 2.1.1;

**AND WHEREAS** client JR has been compensated for investment losses;

**AND WHEREAS** the Respondent is 59 years of age and in poor health, and is not desirous of ever conducting any business over which the MFDA has jurisdiction;

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

1. The Respondent shall be permanently prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.
2. No fine or costs shall be paid by the Respondent.
3. 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.

**DATED** this [day] day of June, 2017.

\_\_\_\_\_  
Name,  
Chair

\_\_\_\_\_  
Name,  
Industry Representative

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Name,  
Industry Representative

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