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CASE SUMMARY #200711
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MFDA Case Summary

Enforcement

This case summary was prepared by Staff of the MFDA.

Hearing Panel approves Settlement Agreement with Altimum Mutuals Inc.

Nature of Proceeding A Hearing Panel of the Central Regional Council of the Mutual Fund Dealers Association of Canada (“MFDA”) has approved a Settlement Agreement between the MFDA and Altimum Mutuals Inc. (“Altimum”).

By-Laws, Rules, Policies Violated The Hearing Panel considered the Settlement Agreement at a hearing held on June 15, 2007 in Toronto. Under the Settlement Agreement, Altimum admitted that it acted contrary to the public interest by contravening MFDA Rules 2.7.2 and 2.1.1(c) by distributing misleading sales communications to clients.

Advertising and Sales Communications

MFDA Rule 2.7.2 states that:

No Member shall issue to the public, participate in or knowingly allow its name to be used in respect of any advertisement or sales communication in connection with its business which:

- (a) contains any untrue statement or omission of a material fact or is otherwise false or misleading, including the use of a visual image such as a photograph, sketch, drawing, logo or graph which conveys a misleading impression;
- (b) contains an unjustified promise of specific results;

- (c) uses unrepresentative statistics to suggest unwarranted or exaggerated conclusions, or fails to identify the material assumptions made in arriving at these conclusions;
- (d) contains any opinion or forecast of future events which is not clearly labeled as such;
- (e) fails to fairly present the potential risks to the client;
- (f) is detrimental to the interest of the public, the Corporation or its Members; or
- (g) does not comply with any applicable legislation or the guidelines, policies or directives of any regulatory authority having jurisdiction over the Member.

Standard of Conduct

MFDA Rule 2.1.1 states that:

Each Member and each Approved Person of a Member shall:

- (a) deal fairly, honestly and in good faith with its clients;
- (b) observe high standard of ethics and conduct in the transaction of business;
- (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and
- (d) be of such character and business repute and have such experience and training as is consistent with the standards described in this Rule 2.1.1, or as may be prescribed by the Corporation.

Altimum paid a fine of \$10,000, imposed pursuant to MFDA By-Law No. 1, Section 24.1.1(b).

Summary of Facts

Altimum is registered as a mutual fund dealer and a limited market dealer in Ontario. Altimum has been a Member of the MFDA since May 29, 2003.

On or about July 18, 2003, Altimum entered into a referral arrangement with Portus Alternative Asset Management Inc (“Portus”). The Agreement provided that Portus would pay Altimum’s referral fees based on the amount of assets invested by their clients in Portus securities.

Between December 2003 and January 2005, the Respondent received approximately \$117,000 in referral fees from Portus under the terms of the agreement.

In February 2005, the Ontario Securities Commission issued orders requiring Portus and its affiliates to cease trading in securities because of apparent breaches of the Securities Act, R.S.O. 1990, c. S.5 as amended. Bankruptcy and enforcement proceedings were commenced against Portus.

Securities dealers that referred clients to Portus in Ontario, including Altimum voluntarily agreed to terms and conditions on their registration stipulating that the Ontario Dealers would repay clients all referral fees received from Portus. In January 2006, Altimum repaid approximately \$117,000 in referral fees to its clients.

In March 2004, Altimum produced two pamphlets for the purpose of soliciting investments by clients in Portus securities and similar exempt securities. The features attributed to the investments described in the pamphlets were based primarily upon Altimum’s understanding of Portus securities.

One of the pamphlets purported to promote an investment product referred to as the Retirement Security Investment Plan (“R.S.I.P.”). Altimum had obtained a registered trademark for the term R.S.I.P. prior to publishing the pamphlet. The other pamphlet described and promoted the merits of what appeared to be a unique investment tool, software or methodology called the Portfolio navigator. Neither the R.S.I.P nor the Portfolio Navigator investment process existed. Both concepts were the creation of Altimum designed to induce clients to invest in Portus securities. The pamphlets did not acknowledge that Portus was the issuer of the underlying investments being promoted.

The RSIP pamphlet constituted a misleading sales communication issued to the public because it contained untrue or misleading statements, contrary to MFDA Rule 2.7.2(a), as it stated or implied that an RSIP:

- (a) “is the perfect Retirement Security Investment Plan”;
- (b) “was created for those 55 years of age and older who want to stop taking so much risk with their retirement funds”;

- (c) “was designed to replace G.I.C.’s in a portfolio”;
- (d) features benefits such as positive and consistent returns and broad diversification; and
- (e) operates such that an investor’s “\$10,000 portfolio will be constructed in the same way as a \$20,000,000 portfolio of a pension fund in Toronto if both are invested on the same day. Both portfolios will hold exactly the same investments in exactly the same proportions and both investors will pay exactly the same fees.”
- (f) is recognized by the Canadian government as an alternative to a Registered Retirement Savings Plan (“R.R.S.P.”) by:
 - i. expressly contrasting an R.S.I.P. to an R.R.S.P. in a manner that suggested both were retirement investment savings vehicles sanctioned by the government;
 - ii. making use of a similar acronym, accompanied in places by a red maple leaf;
 - iii. stating that the RSIP was designed for individuals investing for their retirement years and seeking a tax advantaged return; and
 - iv. including a maple leaf on the cover of the pamphlet in a manner which suggested that the R.S.I.P. was an investment product sanctioned by the government.
- (g) is a unique investment product and the Respondent is one of a select group of investment dealers authorized to offer it to investors, and stated that “[a]n R.S.I.P. is not available from your local bank ... credit union ... trust company ...[or] insurance agent” and “[m]any investment dealers are not yet authorized to offer an R.S.I.P.” because they have “to meet certain minimum standards” and “stringent requirements in terms of education, experience and amount of money under management” when in fact the pamphlet was a marketing tool to promote sales of Portus securities which were widely available for purchase from any one of the other sources referred to in the pamphlet and the Respondent had not satisfied any unique or stringent standards to become eligible to offer Portus securities to its clients.
- (h) The pamphlet contained unjustified promises of specific results, contrary to Rule 2.7.2(b), including “a nice, steady return of about 9% per year without a lot of volatility” and “steady growth higher than the rate of interest on G.I.C.’s”.

The RSIP Pamphlet failed to present the potential risks of investing in Portus securities, contrary to Rule 2.7.2 (e).

The Portfolio Navigator Pamphlet constituted a misleading sales communication that was issued to the public contrary to MFDA Rule 2.7.2 because:

- (a) The pamphlet contained untrue or misleading statements, contrary to Rule 2.7.2(a), as it stated or implied that:
 - i. “[Our elite managers] can make money whether the market is going up or down....Your portfolio is managed to generate a smooth, reliable rate of return that is significantly higher than fixed income investments” when there was no reasonable basis for making such claims;
 - ii. “Portfolio Navigator” is a special tool, software or methodology that is used exclusively by the Respondent when, in fact, the term “Portfolio Navigator” was conceived of by the Respondent and incorporated into the Respondent’s marketing pamphlet to promote interest among the Respondent’s clients in securities issued by Portus which were widely available from other market participants;
 - iii. “We use something called Portfolio Navigator to tell us when to buy and sell. It is a process in which tools are applied to your portfolio on a daily basis, to make sure that you are investing only when the risk is low and that you are selling when the risk in the market is high” when no such tool was being applied to the Respondent’s client portfolios and there was no basis for describing the administration of Portus securities in that manner;
- (b) The Respondent is registered as an IC/PM and actively manages the underlying investments as the Respondent is the only corporate entity referred to in the pamphlet and the pamphlet states among other things that:
 - i. “With Portfolio Navigator as a guide, *we* invest for you”;
 - ii. includes frequent references to “*Our* elite managers” who make use of “technical analysis”, “short selling, leverage, market timing and hedging” and “active, discretionary money management techniques, aiming to improve the performance of your portfolio while systematically reducing risk”; and

- iii. “We don’t bother you with the day-to-day decisions. *Our* elite managers take whatever initiative is necessary and make all of the trading decisions for you;”
- (c) The pamphlet makes no reference to any potential risks to a client who wishes to participate in the Portfolio Navigator investment strategy, contrary to Rule 2.7.2 (e).

The Respondent sent the RSIP Pamphlet and the Portfolio Navigator Pamphlet to approximately 150 clients and displayed the pamphlets in one of its offices and on its website, where clients or potential clients could obtain copies.

Of the total amount of \$3.3 million invested in Portus securities by clients of the Respondent, more than \$2,750,000 was invested by approximately 70 of the 150 clients to whom the Respondent mailed copies of the pamphlets.

The pamphlets remained on display and available on the Respondent’s website until MFDA Staff raised concerns about the pamphlets during a sales compliance review of the Respondent in February 2005. After being advised of MFDA Staff concerns, the Respondent voluntarily discontinued further distribution of the pamphlets.

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