



Settlement Agreement

File No. 200711

**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: Altimum Mutuals Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, 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 MFDA By-law No. 1 (the “By-law”), the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Altimum Mutuals Inc. (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 upon the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of the By-law.

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.

III. ACKNOWLEDGEMENT

4. 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 33) 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

5. The Respondent is registered as a mutual fund dealer and limited market dealer in Ontario. The Respondent’s head office is located in St. Catharines, Ontario. Between July 18, 2003 and February 14, 2005 (the “Material Time”), the number of mutual fund salespersons that were registered with the Respondent ranged between 2 and 7. The Respondent has been a Member of the MFDA since May 29, 2003.

6. The Respondent has no previous disciplinary history.

Background

7. This Settlement Agreement concerns misleading sales communications prepared and used by the Respondent to promote a referral arrangement between the Respondent and Portus Alternative Asset Management Inc., formerly Paradigm Alternative Asset Management Inc. (“Portus”).

8. On March 14, 2003, Portus was registered as an Investment Counsel and Portfolio Manager (“IC/PM”) in all Canadian jurisdictions except Quebec. Portus developed

investment products distributed directly and indirectly to both accredited and retail investors. Portus accepted client referrals from various sources, including Members of the MFDA and IDA.

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

10. Between December 2003 and January 22, 2005, the Respondent received approximately \$117,000 in referral fees from Portus under the terms of the Agreement.

11. Portus purported to rely on exemptions from the prospectus requirements available in the jurisdictions in which its securities were offered for sale to retail investors. Portus presented its securities to the Respondent and others as principal protected note products, structured such that: (i) a large proportion of the funds invested would be used to purchase a guaranteed instrument from a Canadian chartered bank at a discount which would mature at a value equivalent to the principal invested by clients; (ii) a second portion of the monies invested would be used to pay fees and expenses of the manager, including commissions for sales and referrals; and (iii) the remaining funds would be invested aggressively and actively managed in investments acquired for the purpose of supplementing the return for investors. Marketing materials prepared by Portus to promote its securities stated that Portus was targeting monthly returns of 0.5%-1% and annual returns of 8%-12% but noted that “[t]here is no guarantee of performance and past or projected performance is not necessarily indicative of future results”.

12. Staff of the Ontario Securities Commission (“OSC”) subsequently came to the view that: (i) Portus securities did not qualify for the prospectus exemptions that Portus relied upon; (ii) Portus securities were not structured in a manner that would provide principal protection directly to the investors who acquired Portus securities; and (iii) the funds invested in Portus securities were not administered or invested appropriately.

13. As a result, in February 2005, the OSC 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 (the “OSA”). Subsequently, bankruptcy proceedings were commenced against Portus and the OSC commenced enforcement proceedings against Portus, its affiliates and certain officers and directors of Portus.

OSC Terms & Conditions On Dealers That Referred Clients To Portus

14. Securities dealers that referred clients to Portus in Ontario, including the Respondent, (the “Ontario Dealers”) voluntarily agreed to terms and conditions on their registration stipulating that the Ontario Dealers would repay clients all referral fees received from Portus (the “OSC Terms & Conditions”). As part of the OSC Terms & Conditions, the OSC, the IDA and the MFDA agreed not to pursue enforcement proceedings against the Ontario Dealers for the failure of such dealers to: (i) exercise appropriate due diligence before entering into referral arrangements with Portus; or (ii) adequately supervise Approved Persons and Registered Representatives with respect to the appropriateness of specific referrals of their clients to Portus.

15. On January 23, 2006, the Respondent accepted the OSC Terms & Conditions and thereafter repaid approximately \$117,000 in referral fees to its clients.

Misleading Sales Communications

16. In March 2004, the Respondent produced two pamphlets for the purpose of soliciting investments by clients in Portus securities and similar exempt securities available from other issuers that offered some kind of principal guarantee at maturity. The features attributed to the investments described in the pamphlets were based primarily upon the Respondent’s understanding of Portus securities.

17. One of the pamphlets (the “RSIP Pamphlet”) purported to promote an investment product referred to as the Retirement Security Investment Plan (“R.S.I.P.”). The Respondent had obtained a registered trademark for the term R.S.I.P. prior to publishing the pamphlet. The other pamphlet (the “Portfolio Navigator Pamphlet”) described and

promoted the merits of what appeared to be a unique investment tool, software or methodology called the Portfolio Navigator. Neither the RSIP investment product nor the Portfolio Navigator investment process existed. Both concepts were creations of the Respondent designed to induce clients to invest in what were, in fact, Portus securities. The Respondent did not acknowledge in the pamphlets that Portus was the issuer of the underlying investments promoted in the pamphlets.

18. The Respondent prepared both pamphlets without participation by or authorization from Portus or any other third party. Some of the content in the pamphlets was borrowed from or influenced by marketing materials prepared by Portus but none of the content in the pamphlets was attributed to any party other than the Respondent.

19. The Respondent claims that it was under the misapprehension that MFDA Rules were not applicable to sales communications produced for the purpose of soliciting investor interest in non-mutual fund products.

20. Although the two different pamphlets were designed to solicit interest in the same Portus securities:

- (a) The RSIP Pamphlet was designed to appeal to clients over the age of 55 with conservative investment objectives who were approaching retirement and were concerned primarily with the safety of their principal; and
- (b) The Portfolio Navigator Pamphlet was designed to appeal to clients under the age of 55 who had more aggressive investment objectives and were attracted to sophisticated investment strategies.

The RSIP Pamphlet

21. The RSIP Pamphlet constituted a misleading sales communication issued to the public because:

- (a) The pamphlet contained untrue or misleading statements, contrary to MFDA Rule 2.7.2(a), as it stated or implied that an RSIP:

- (i) “is the perfect Retirement Security Investment Plan”;
- (ii) “was created for those 55 years of age and older who want to stop taking so much risk with their retirement funds”;
- (iii) “was designed to replace G.I.C.’s in a portfolio”;
- (iv) features benefits such as positive and consistent returns and broad diversification; and
- (v) 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.”
- (vi) is recognized by the Canadian government as an alternative to a Registered Retirement Savings Plan (“R.R.S.P.”) by:
 - (A) 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
 - (B) making use of a similar acronym, accompanied in places by a red maple leaf;
 - (C) stating that the RSIP was designed for individuals investing for their retirement years and seeking a tax advantaged return; and
 - (D) 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.
- (vii) 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.

- (b) 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”.
- (c) 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

22. 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;

(iv) 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:

(B) “With Portfolio Navigator as a guide, *we* invest for you”;

(C) 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

(D) “*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;”

[emphasis added].

(b) 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).

23. 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.

24. 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.

25. 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.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

26. The Respondent acted contrary to the public interest and contravened MFDA Rules 2.7.2 and 2.1.1(c) by distributing misleading sales communications to clients.

VI. TERMS OF SETTLEMENT

27. The Respondent agrees to pay a fine to the MFDA in the amount of \$10,000.

VII. STAFF COMMITMENT

28. 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 or any of its officers or directors 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 33 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

29. Acceptance of this Settlement Agreement shall be sought at a hearing of the Ontario Regional Council of the MFDA (the “MFDA Hearing Panel”) on a date agreed to by counsel for Staff and the Respondent.

30. 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 Hearing Panel, the Settlement Agreement and a joint brief of documents filed with 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, a judicial review hearing or any appeal of the matter before any court of competent jurisdiction.

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the MFDA Hearing Panel, then the Respondent shall be deemed to have been penalized by the Regional Council pursuant to s. 24.1.2 of the By-law for the purpose of giving notice to the public thereof in accordance with s. 24.5 of the By-law.

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

33. If this Settlement Agreement is accepted by the MFDA 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 or 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 which does constitute an agreement with the Corporation within the meaning of s. 24.1.2(i) of the By-Law.

34. If, for any reason whatsoever, this Settlement Agreement is not accepted by the MFDA Hearing Panel or an Order in the form attached as Schedule “A” is not made by the MFDA 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 the By-law, unaffected by this Settlement Agreement or the settlement negotiations.

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

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

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

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: May 11, 2007

“Robert E. Willford”

Witness- Signature

“Donald C. Reid”

Altimum Mutuals Inc.

Per: Donald Reid

By signing this Settlement Agreement, Donald Reid confirms that he is authorized to bind the Respondent.

“Frances Cekuta”

Witness- Print name

“Mark T. Gordon”

Staff of the MFDA

Per: Mark T. Gordon

Executive Vice-President



ORDER

File No. 200711

Schedule “A”

**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTIONS 24.4 OF BY-LAW NO. 1
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Altimum Mutuals Inc.

ORDER

WHEREAS on May 14, 2007, 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 disciplinary proceeding commenced against Altimum Mutuals Inc. (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA (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 24.1.2 of By-law No. 1;

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

- (a) The Respondent distributed misleading sales communications to clients and thereby acted contrary to the public interest and contravened MFDA Rules 2.7.2 and 2.1.1(c).

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

1. The Respondent, Altimum Mutuels Inc., shall pay a fine in the amount of \$10,000 pursuant to MFDA By-Law No. 1, section 24.1.1(b).

DATED at Toronto this 15th day of June, 2007.

Per: _____

, Chair

Per: _____

Per: _____

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