



**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: Melvin Robert Penney

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing dated April 8, 2009, 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 Atlantic Regional Council (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Melvin Robert Penney.

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 23) 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 was registered in New Brunswick, Ontario, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador as a mutual fund salesperson with Legacy Associates Inc. ("Legacy") from March 1, 2003 until his termination on December 17, 2007 as a result of the events described below. The Respondent is not currently registered in the securities industry in any capacity.

7. Legacy became a Member of the MFDA on May 16, 2002.

The Respondent's Dealings with Walton

8. In December 2006, Legacy advised its Approved Persons, including the Respondent, in writing that Legacy did not have a referral arrangement with Walton and Approved Persons were not permitted to refer, sell or recommend purchases of real estate investment products offered by Walton (the “Walton Investments”).

9. On February 27, 2007, the Respondent facilitated the purchase of the Walton Investments by two clients, DS and CL. Collectively, DS and CL purchased 4,103 units of the Walton Investments for \$47,619.42 or \$11.61 per unit.

10. The Respondent received referral fees of approximately \$2,300.00 with respect to the purchase of the Walton Investments by DS and CL.

11. In October 2007, Legacy was notified by the New Brunswick Securities Commission that the Respondent had been paid referral fees for referring two clients to Walton. Legacy was not previously aware of the Respondent’s dealings with Walton.

12. On October 24, 2007, the Respondent admitted to Legacy that he had referred two clients to Walton and had received referral fees. Legacy placed the Respondent on close supervision for 6 months commencing October 31, 2007. During this period, the Respondent conducted only one trade through Legacy. The Respondent was subsequently terminated by Legacy on December 17, 2007.

V. CONTRAVENTIONS

13. By engaging in the conduct described above, the Respondent admits that he engaged in securities related business that was not carried on for the account of Legacy or through the facilities of Legacy, contrary to MFDA Rules 1.1.1(a) and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- (a) a fine in the amount of \$5,000.00 payable by the Respondent as follows:

- i. \$2,500 payable immediately; and
 - ii. \$2,500 payable on or before January 15, 2010;
- (b) if the Respondent complies with subparagraph (a), a 2 year suspension on the authority on the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(c) of MFDA By-law No. 1, commencing on the date this Settlement Agreement is accepted by the Hearing Panel;
- (c) if the Respondent fails to comply with subparagraph (a), a permanent prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

VII. STAFF COMMITMENT

15. 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 23 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

16. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on April 15, 2009.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

IX. DISCLOSURE OF AGREEMENT

23. 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.

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

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: April 8, 2009

“Douglas Smith”

Witness – Signature

“Melvin Penney”

Melvin Robert Penney

“Douglas Smith”

Witness – Print Name

“Mark Gordon”

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