



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: Michael Rosenfelder

SETTLEMENT AGREEMENT

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 Central 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, Michael Rosenfelder.

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 Part IX herein) 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 and Background History

6. From September 1, 2001 to the present, the Respondent has been registered in Ontario as a mutual fund salesperson with Assante Financial Management Ltd. (“Assante”), a Member of the MFDA since May 30, 2002. The Respondent has resigned from Assante, effective April 20, 2010.

7. The Respondent is 74 years old and lives much of the year outside of Canada. He is retired, and has sold his book of mutual fund business.

8. The Respondent worked for much of his career in the financial services industry, and in particular, as an actuary in the insurance industry.

9. The Respondent has had no prior disciplinary history with the MFDA.

The Maypoint Debentures

10. Maypoint Investments Inc. (“Maypoint”) is an Ontario company incorporated on July 14, 2004.

11. At the material time, Maypoint purportedly carried on business raising funds through the sale of debentures to investors (the “Maypoint debentures”).

12. The Maypoint debentures were for a term of one year, required a minimum investment of \$25,000 and paid investors 14% annually.

13. The proceeds from the sale of the Maypoint debentures were purportedly invested by Maypoint in the secured notes of an entity known as GTA Financial Inc. (“GTA”), which in turn purportedly used those proceeds to advance consumer loans to individuals to finance the purchase of used vehicles.

14. The Maypoint debentures were sold by way of an offering memorandum in reliance upon the exemptions from the prospectus and registration requirements in the Securities Act (Ontario). The Maypoint debentures were distributed to investors in Ontario through limited market dealers.

15. The Maypoint debentures were not an investment product approved by Assante for sale by its representatives.

16. At the material time, the Respondent was licensed in Ontario to sell life and health insurance.

17. In 2004, the Respondent attended a meeting in Toronto at which Maypoint made a presentation about the Maypoint debentures and provided attendees, including the Respondent, with a package of Maypoint materials that included a subscription agreement, the offering memorandum and other documents.

18. The Respondent was advised by Maypoint that he would earn a fee of up to 4% to 5% of the amounts invested by any individuals he referred to Maypoint.

19. In January 2005, following the Maypoint presentation, the Respondent personally invested \$50,000 in Maypoint debentures, and contacted at least two Assante clients, BK and IR, who were also insurance clients of the Respondent, and told them about the opportunity to invest in the Maypoint debentures and left them with the material he had been given by Maypoint.

20. Thereafter, between January 2005 and September 2005, the Respondent referred or facilitated the sale of Maypoint debentures to client BK on three occasions, for a total investment by client BK in the amount of \$100,000.

21. In May 2005, the Respondent referred or facilitated the sale of \$50,000 of Maypoint debentures to client IR.

22. The Respondent was paid the following referral fees in respect of the clients' purchases of the Maypoint debentures:

- (a) \$2,400 in total on BK's investments;
- (b) \$1,200 on IR's investment; and
- (c) \$2,000 on his own investment.

23. None of the transactions involving the Maypoint debentures nor the resulting referral fees received by the Respondent were carried on for the account or through the facilities of Assante.

24. GTA filed for bankruptcy in or about June 9, 2006. Maypoint has not made interest or principal payments to Maypoint debenture holders in several years and there is no reasonable prospect of it doing so.

25. BK and IR are aware of the circumstances surrounding the Maypoint debentures and have not sought any form of compensation or reimbursement from the Respondent.

V. CONTRAVENTIONS

26. The Respondent admits that between January and September 2005, he engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by referring or facilitating the sale of a total of \$150,000 of an investment product to two clients, when that investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1.

VI. TERMS OF SETTLEMENT

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

- (a) The Respondent shall pay a fine in the amount of \$10,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (b) The Respondent has resigned as a mutual fund salesperson effective April 20, 2010 and does not have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
- (c) The Respondent shall undertake not to re-apply or to seek to have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA;
- (d) The Respondent shall pay costs of the investigation and the hearing in the amount of \$2,500.00, pursuant to section 24.2 of MFDA By-law No. 1;
- (e) The Respondent shall tender to Staff an affidavit sworn or affirmed by him, confirming that there are not historically or currently any claims, demands,

or civil actions commenced against him by Maypoint investors with respect to them seeking to be compensated or reimbursed; and

- (f) The Respondent shall attend in person at the Settlement Hearing.

VII. STAFF COMMITMENT

28. 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. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Parts IV and V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

29. 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.

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 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.

31. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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.

32. 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

33. 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. If such additional enforcement action is taken, the Respondent agrees that the proceedings 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

34. 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.

35. 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

36. 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.

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

XII. 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: April 20, 2010

“Gary Luftspring”

Witness – Signature

“Gary Luftspring”

Witness – Print name

“Michael Rosenfelder”

Michael Rosenfelder

“Mark T. Gordon”

Staff of the MFDA

Per: Mark Gordon

Executive Vice-President



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Re: Michael Rosenfelder

ORDER

WHEREAS on April 16, 2010, 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 Michael Rosenfelder (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated _____ (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 Respondent has resigned as a mutual fund salesperson effective April 20, 2010;

AND WHEREAS the Respondent has delivered certified cheques to the MFDA in the amounts of \$10,000.00 and \$2,500.00 representing the fine and costs to be paid, being held in escrow by the MFDA, pending acceptance of the Settlement Agreement;

AND WHEREAS the Hearing Panel is of the opinion that from January to September 2005, the Respondent engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by referring or facilitating the sale of \$150,000.00 of an investment product to clients BK and IR, when that investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1;

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

1. The Respondent shall pay a fine in the amount of \$10,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs of the investigation and the hearing in the amount of \$2,500.00, pursuant to section 24.2 of MFDA By-law No. 1;
3. The Respondent shall undertake not to re-apply or to seek to have authority to conduct securities related business while in the employ of or associated with a Member of the MFDA; and
4. If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, the Corporate Secretary shall prepare copies of the requested exhibits, redact any and all intimate financial or personal information therefrom, and provide the redacted copies to the non-party, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure.

DATED this day of April, 2010.

Per: _____
The Honorable Fred Kaufman, Q.C., Chair

Per: _____
Robert White, Industry Representative

Per: _____
Guenther Kleberg, Industry Representative

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