



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: Portfolio Strategies Corporation

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 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, Portfolio Strategies Corporation (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 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) 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 is registered as a mutual fund dealer in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and New Brunswick.

7. The Respondent has been a Member of the MFDA since February 8, 2002.

Corporate Structure

8. The Respondent’s head office is located at 1850 – 14 Street S.W., Calgary, Alberta (the “Head Office”). At the time of the 2009 Examination conducted by MFDA Staff described below, the Respondent maintained 21 branches and 125 sub-branches.

Failure to Conduct Adequate Trade Supervision

9. Commencing on May 19, 2009, MFDA Compliance Staff conducted a compliance examination of the Respondent in order to assess the Respondent's compliance with MFDA by-laws, Rules and Policies during the period December 1, 2006 to April 2009 (the "2009 Examination").

10. The Respondent's Head Office and the following four of the Respondent's branches were examined during the 2009 Examination: (1) 331 - 3750 46 Avenue S.E., Calgary, Alberta; (2) 1836 Angus Street, Regina, Saskatchewan; (3) 211 80 Acadia Avenue, Markham, Ontario; and (4) Suite 560 5900 No. 3 Road, Richmond, British Columbia (collectively, the "Branches").

11. The results of the 2009 Examination were summarized and delivered to the Respondent in a report dated September 22, 2009 (the "2009 Report").

12. The 2009 Report identified a number of compliance deficiencies including the failure of the Respondent to conduct adequate supervision of trades by its Approved Persons.

Inadequate Head Office Supervision of Trades

13. During the 2009 Examination, MFDA Compliance Staff identified that the Respondent's Head Office trade supervision was deficient in that the Respondent's Head Office Compliance Staff:

- a) failed to maintain evidence of the review of some trades;
- b) failed to review some trades in a timely manner;
- c) failed to maintain a complete record of queries made, responses received from Approved Persons, and resolutions achieved as a result of supervisory queries of some trades; and
- d) reviewed trades based on potentially inaccurate information, as Know Your Client ("KYC") information contained on the Respondent's back office system did not correspond in some instances to the KYC information contained in clients' files.

Leveraging

14. During the 2009 Examination, MFDA Compliance Staff identified the failure of the Respondent to establish, implement and maintain adequate written policies and procedures (the “Procedures”) to supervise leveraging recommendations. The Respondent also failed to maintain records of queries made, responses received from Approved Persons, and resolutions achieved as a result of supervisory queries of leveraged trades.

15. As a result of the deficiencies outlined in paragraph 14 above, some leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision. Those leveraging recommendations have not been subject to full supervisory scrutiny in accordance with the Respondent’s current policies and procedures.

Additional Factors

16. The Respondent has cooperated with MFDA Staff’s investigation of the issues that form the subject matter of this Settlement Agreement.

Correcting Deficiencies in Policies and Procedures

17. The Respondent has revised and represents that it will continue to revise its policies and procedures with regard to supervision of trades and leveraging, and has provided a copy of those policies and procedures to MFDA Staff. The Respondent asserts that it has implemented, and will continue to implement those revised policies and procedures. The Respondent (hereby) undertakes to comply with those policies and procedures in the future.

Addressing Historical Leveraging

18. The Respondent has developed a plan, which has been reviewed by MFDA Staff, to address existing leveraged accounts (the “Leverage Review Action Plan”). The Respondent asserts that it will fully carry out the terms of the Leverage Review Action Plan to the satisfaction of MFDA Staff. The Respondent may be subject to further disciplinary action should it fail to adequately implement the Leveraged Review Action Plan

V. CONTRAVENTIONS

19. By engaging in the conduct described above, the Respondent admits that between December 1, 2006 and April 2009:

- a) the Respondent's Head Office Compliance Staff failed to adequately supervise some trades, contrary to MFDA Rules 2.2.1, 2.5, and MFDA Policy No. 2; and
- b) the Respondent failed to establish adequate policies and procedures to supervise leveraging recommendations, and also failed to maintain, in respect of some leveraged trades, adequate records of trade supervision, including records of trades reviewed, inquiries made, responses received and resolutions achieved, contrary to MFDA Rules 2.2.1, 2.5, 2.10 and MFDA Policy No. 2.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$35,000 upon the acceptance of this Settlement Agreement;
- b) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.5, and 2.10, and MFDA Policy No. 2;
- c) the Respondent shall pay the costs of this proceeding in the amount of \$5,000 upon the acceptance of this Settlement Agreement; and
- d) a senior officer of the Respondent will attend the settlement hearing in person.

VII. STAFF COMMITMENT

21. 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 contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling, or preclude Staff from investigating and initiating proceedings in respect of, any continuing regulatory obligations, including, for greater certainty, any obligations regarding the handling of client complaints arising out of the facts and contraventions set out in Parts IV and V.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

22. 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.

23. 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 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, or a judicial review or appeal of the matter before any court of competent jurisdiction.

24. 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.

25. 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 it.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

26. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to comply with any of the terms of the Settlement Agreement, 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 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

27. If, for any reason, 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.

28. Whether or not this Settlement Agreement is accepted by the 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.

XI. DISCLOSURE OF AGREEMENT

29. 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, 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: January 3, 2013

“Lynette Linkletter”
Witness – Signature

Lynette Linkletter
Witness – Print name

“Ken Parker”
Ken Parker

“Shaun Devlin”
Staff of the MFDA
Per: Shaun Devlin
Vice-President, Enforcement

Schedule “A”

Order

File No. 201122



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Re: Portfolio Strategies Corporation

ORDER

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 Portfolio Strategies Corporation (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 the Respondent has failed to comply with or carry out the provisions of MFDA Rules and Policies to the extent described in the agreed facts and contraventions admitted in Parts IV and V of the Settlement Agreement;

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 \$35,000 upon the acceptance of this Settlement Agreement;
2. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.5, 2.10, and MFDA Policy No. 2.
3. The Respondent shall pay the costs of this proceeding in the amount of \$5,000 upon the acceptance of this Settlement Agreement; and
4. If at any time a non-party to this proceeding requests production of, or access to, the record of this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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