



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: David George Rounthwaite

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (“MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to s. 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council of the MFDA (“Hearing Panel”) should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and David George Rounthwaite (“Respondent”) (“Settlement Agreement”).

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 XI) 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 History

6. From December 31, 1996 to February 23, 2010 (when he was terminated), the Respondent was registered in Ontario as a mutual fund salesperson with Worldsource Financial Management Inc. (“Worldsource”), a Member of the MFDA.

7. The Respondent was also registered as a Branch Manager with Worldsource in Ontario from October 10, 2003 until his termination. The Respondent carried on business in London, Ontario

8. The Respondent was also registered as a mutual fund salesperson with Worldsource in:

- Alberta since March 4, 2002;
- British Columbia since March 13, 2002; and
- Labrador & Newfoundland since November 10, 2008.

9. Commencing October 8, 2010, following his termination by Worldsource, the Respondent was re-registered as a dealing representative (formerly, mutual fund salesperson) in the categories of mutual fund dealer and exempt market dealer with Sterling Mutuals Inc. (“Sterling”), also a Member of the MFDA, and remains in that capacity with Sterling to date.

10. In light of Worldsource’s grounds for terminating the Respondent, the Ontario Securities Commission (“OSC”) approved the Respondent’s registration with Sterling subject to the following terms and conditions:

- the Respondent was required to be subject to strict supervision by Sterling for a period of two years;
- Sterling was required to complete and retain monthly written supervision reports for the OSC’s review; and
- the Respondent was required to complete the Canadian Investment Funds Course and the Conduct & Practices Handbook Course by October 31, 2011.

11. The Respondent has, to date, satisfied the OSC terms and conditions. The monthly supervision reports completed by Sterling to date represent that the Respondent has been fully compliant with regulatory requirements in his sales activities and dealings with clients.

12. On April 30, 2011, the Respondent successfully completed the Conduct & Practices Handbook Course. On September 10, 2011, the Respondent successfully completed the Canadian Investment Funds Course. In addition, although not required of him, the Respondent, of his own accord, completed the Exempt Market Products Course on March 12, 2011.

Respondent’s Misconduct

13. In February 2010, Worldsource supervisory staff identified irregularities in the Respondent’s client files including blank signed forms, evidence of discretionary trading, and an unauthorized referral arrangement.

14. Worldsource commenced a supervisory investigation, which included an interview with

the Respondent, and a review of all of the Respondent's client files. Further instances of discretionary trading were found.

15. MFDA Staff also conducted an investigation, which revealed that the Respondent had engaged in discretionary trading and an unauthorized referral arrangement or outside business activity in relation to sales of a tax shelter charitable donation program, ParkLane Donations for Canada ("ParkLane").

Discretionary Trading

16. The Respondent's general practice was to meet with a client and determine their general investing intentions and have the client sign a trade form without the particulars of the trade(s) indicated on the form. Once the client had left his office, the Respondent would decide on the particulars of the trade(s) and populate the appropriate fund codes, number of units and names of the mutual funds to be traded on the form. Alternatively, in some instances, the Respondent obtained a Limited Trading Authorization ("LTA") from the client with respect to their account, and then decided on the particulars of the trade and populated the details of the trade on the trade processing form. In both cases, the Respondent would then submit the trade for processing. In both cases, the client did not determine the specific elements of the trade(s).

17. Following the processing and confirmation of the trades, the Respondent would send the client a follow-up letter setting out the details of the completed transactions.

18. Twenty-nine specific instances of this form of 'authorized' discretionary trading were identified in accounts serviced by the Respondent during the period 2006 to 2009. These instances occurred in the accounts of 14 clients, seven of whom had provided the Respondent with a Limited Trading Authorization.

19. There have been no client complaints and no known client losses concerning the authorized discretionary trading engaged in by the Respondent.

Outside Business Activity / Conflict of Interest

20. From 2003 to 2007, the Respondent recommended and facilitated investments by 47 clients and four individuals in ParkLane, a tax shelter charitable donation program.

21. The Respondent also personally invested in ParkLane as follows: \$47,250 in 2003; \$27,900 in 2004; \$27,900 in 2005; and \$26,000 in 2006.

22. The Respondent earned approximately \$57,558 in sales commissions in relation to the clients and individuals to whom he sold or referred the ParkLane product.

23. In 2007, the Canada Revenue Agency (“CRA”) disallowed all donations to ParkLane, and the participants (including the Respondent) were reassessed.

24. In 2008, the Respondent facilitated one client investing in ParkLane notwithstanding that the Respondent had by then already been advised by CRA that it was disallowing ParkLane as a charitable donation program and that individuals who had invested in it were having their tax returns reassessed.

25. The Respondent advised Worldsource on his annual registration renewals that he was facilitating referrals to “ParkLane”; however, he did not elaborate on the nature of the referral in his disclosure and at no time did he properly seek or receive Worldsource’s authorization to sell or refer ParkLane in accordance with Worldsource’s policies and procedures for doing so and the requirements of MFDA Rule 1.2.1(d).¹

Respondent’s Personal Circumstances

26. The Respondent is 58 years old, and has worked in the financial services industry for most of his career.

27. There is no evidence of misappropriation or unauthorized trading by the Respondent. There is no evidence of client harm apart from the clients who were sold or referred the ParkLane investment and were subsequently reassessed by CRA.

¹ MFDA Rule 1.2.1(d) has since been renumbered as MFDA Rule 1.2.1(c). The wording of the Rule has not changed.

28. There is no evidence that the Respondent received any financial benefit from engaging in the discretionary trading beyond that to which he would have been ordinarily entitled had the transactions in the clients' accounts been carried out in the proper manner (i.e. sales commissions generated in the normal course). The Respondent earned sales commissions on the ParkLane referrals; however, he, like the individuals he referred, was subject to the CRA reassessment regarding his own donations.

29. The Respondent states that the following factors contributed to his misconduct:

- His belief that he was providing better service to his clients by not 'bothering' them to wait while he properly completed forms with all the required information; and
- The fact that he was not up to date with, and did not appreciate the importance of, an Approved Person's obligations under the current regulatory regime, as the system had changed significantly since he started in the mutual fund business.

30. Since the OSC requirement of monthly supervision reports was instituted as a term and condition of his registration in October 2010, the Respondent has, to present, had 'clean' reports and expects to continue in like manner.

31. The Respondent has successfully completed the two industry courses that were required of him by the OSC as a term and condition of his registration with Sterling. Of his own accord, the Respondent has additionally successfully completed another industry course that was not required by the OSC.

32. Staff is satisfied that the Respondent accepts his conduct was improper, and has undertaken a proactive course of action to comply with his regulatory obligations going forward.

33. The Respondent has no prior disciplinary history with the MFDA, and has been fully cooperative with Staff, thus reducing the need for a full hearing on the merits.

34. The Respondent has demonstrated best efforts in becoming knowledgeable and compliant with MFDA Rules and policies.

V. CONTRAVENTIONS

35. The Respondent admits that he:

- (i) engaged in discretionary trading as part of his general practice; and specifically, from 2006 to 2009, engaged in discretionary trading in 29 instances in the accounts of 14 clients, seven of whom had provided the Respondent with a Limited Trading Authorization, contrary to MFDA Rule 2.3 and Rule 2.1.1, and the terms of his registration as a mutual fund salesperson; and
- (ii) facilitated an investment by a client in 2008 in a charitable donation program which had not been approved for sale by Worldsource and after CRA had disallowed the charitable donation program in 2007, contrary to MFDA Rules 2.1.4, 1.2.1(d), and Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- (i) the Respondent shall pay a fine in the amount of \$20,000;
- (ii) the Respondent shall pay costs in the amount of \$5,000;
- (iii) the Respondent shall attend in person at the Settlement Hearing; and
- (iv) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations.

VII. STAFF COMMITMENT

37. 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 XI 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

38. 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 Staff and the Respondent.

39. 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.

40. 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.

41. 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

42. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honor any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under s. 24.3 of MFDA By-law No. 1 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

43. 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 ss. 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

44. 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

45. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: May 17th, 2012.

“Donna Smith”
Witness – Signature

Donna Smith
Witness – Print name

“David Rounthwaite”
David George Rounthwaite

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



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Re: David George Rounthwaite

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 [Respondent] (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:

- (i) engaged in discretionary trading as part of his general practice; and specifically, from 2006 to 2009, engaged in discretionary trading in 29 instances in the accounts of 14 clients, seven of whom had provided the Respondent with a Limited Trading

Authorization, contrary to MFDA Rule 2.3, Rule 2.1.1, and the terms of his registration as a mutual fund salesperson; and;

- (ii) facilitated an investment by a client in 2008 in a charitable donation program which had not been approved for sale by Worldsource and after CRA had disallowed the charitable donation program in 2007, contrary to MFDA Rules 2.1.4, 1.2.1(d), and Rule 2.1.1.

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 \$20,000;
2. the Respondent shall pay costs in the amount of \$5,000;
3. the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations; and
4. if at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or the record of, this proceeding, including all exhibits and transcripts, 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]