



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: Hugh Blair Smilestone

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a proceeding pursuant to sections 20 and 24 of MFDA By-law No. 1 commencing a disciplinary proceeding against Hugh Blair Smilestone (the “Respondent”). A hearing was scheduled to proceed before a hearing panel of the Atlantic Regional Council (the “Hearing Panel”) of the MFDA on January 8-9, 2013.

2. By Notice of Settlement Hearing, the MFDA will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, the Hearing Panel of the MFDA should accept this settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent.

II. JOINT SETTLEMENT RECOMMENDATION

3. 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 MFDA By-law No.1.

4. 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”.

5. 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

6. 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 below) 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

7. From June 1, 2004 until March 10, 2010, the material time giving rise to the conduct described in this Settlement Agreement, the Respondent was registered in Nova Scotia and Ontario as a mutual fund salesperson with Dundee Private Investors Inc. (“Dundee”), a Member of the MFDA. The Respondent conducted business from a sub-branch located in Halifax, Nova Scotia.

8. In total, the Respondent was registered as a mutual fund salesperson in Nova Scotia and Ontario from January 5, 1996 to March 10, 2010 and in New Brunswick from March 2002 to

June 2004.

9. Dundee terminated the Respondent on March 10, 2010 as a result of the events described herein.

Falsification of Client Account Documents

10. In accordance with Dundee's policies and procedures, the Respondent was required to obtain a client's signature and/or initials on the following types of documents:

- (a) NCAFs containing a client's KYC information collected for the purpose of opening new accounts;
- (b) KYC update forms, which Dundee required Approved Persons to obtain from clients in the following circumstances:
 - (i) in the event of a material change to a client's KYC information at any time;
 - (ii) if a client account became active after more than a year of inactivity and a review with the client revealed changes in the client's financial resources or investment objectives; and
 - (iii) if a client account had been inactive for more than 2 years; and
- (c) Documents used for processing a trade in a client's account unless the trade was being processed using a limited trading authorization.¹

11. Between June 1, 2004 and March 10, 2010, the Respondent falsified client signatures and initials on account documents and falsified the content of certain other documents as described below:

- (a) he traced, or by other means imitated the client's signature on account documents that had not been signed by the client;
- (b) he reused trade documents that had previously been signed by a client by applying

¹ The Respondent acknowledged that he had obtained a limited trading authorization from only one of approximately 126 clients whose mutual fund accounts he serviced for Dundee.

correction fluid to change the date and trade directions and then resubmitting a copy or a fax of the altered document in order to process a new transaction in the client's account; and

- (c) he used correction fluid to alter photocopies of cheques that had previously been used to purchase investments in a client's account and then resubmitted the altered photocopies as 'void' cheques to mutual fund companies to make changes to PACs and SWiPs in the client's account.

12. The Respondent states that he falsified client signatures and initials in the following circumstances:

- (a) when clients did not respond to his requests for updated NCAF's or KYC information;
- (b) he feared he would be perceived by clients as bothersome if he contacted them to request that they complete and sign the required documentation;
- (c) he was concerned he would be criticized for delays in taking action; and
- (d) the client was unavailable to meet with him to sign required documentation.

13. The Respondent also falsified client signatures on trade documents and KYC update documents in circumstances where the holdings in a client's account did not match the risk tolerance stated in the client's documented KYC information. According to the Respondent, he engaged in this conduct to avoid or reverse the application of trade restrictions placed on the account by Dundee compliance staff.

14. During the Respondent's first meeting with a new client, it was his practice to describe what he referred to as the "annual migration", a practice followed by the Respondent whereby the Respondent would exercise the client's right to transfer annually without charge or penalty 10% of any units of a mutual fund purchased on a deferred sales charge ("DSC") basis to a non-DSC mutual fund within the same mutual fund family, which was usually the non-DSC version of the same mutual fund in which the client had initially invested.²

² The right of a client to transfer these "10% free" units without charge or penalty from a DSC mutual fund to a non-DSC mutual fund within the same mutual fund family is provided for in the simplified prospectus for the mutual fund family and is not itself a prohibited practice. The Respondent states that he explained the annual migration

15. In some instances, if the Respondent was unable to contact a client or if a client was unable to meet with the Respondent for the purpose of signing the documentation required for the processing of trades to carry out the annual migration, the Respondent falsified the client's signature and/or initials on the trade processing documentation.

Branch review and detection

16. During the fall of 2009, the Respondent's branch manager became suspicious that client signatures and initials had been falsified on account documents filed in respect of six clients. After confirming with one client that the client had not filled out the net worth information recorded on the NCAF and had not signed the NCAF that had been submitted by the Respondent on the client's behalf, the branch manager reported her concerns to Dundee's compliance department.

17. In December 2009, Dundee compliance staff conducted a review of the Respondent's sub-branch (the "December 2009 review"). On December 17-18, 2009, Dundee compliance staff reviewed 126 files of clients whose accounts were serviced by the Respondent and observed suspicious signatures that may have been falsified in approximately 83% of the files. The Respondent was immediately suspended pending further investigation by Dundee. Dundee subsequently terminated the Respondent in March 2010.

18. During the course of a subsequent MFDA investigation of the Respondent's conduct, the Respondent admitted that he had engaged in the practice of falsifying client signatures on documents when he thought it was necessary to do so to facilitate transactions or update KYC information. The Respondent estimated that in one third of the cases in which he falsified client signatures on documents, the clients were aware that he intended to do so. In the other two thirds of the cases, the Respondent admitted that he falsified client signatures on documents without the knowledge or authorization of the clients.

program to clients during his initial meeting with them and if the clients did not object to it, then the Respondent believed that the clients had implicitly granted him authority to exercise the right on their behalf without seeking the clients' instructions whenever DSC free units were available.

19. By falsifying client signatures and initials on account documents and falsifying the content of certain other documents as described above, the Respondent engaged in conduct contrary to MFDA Rule 2.1.1.

False Signature Guarantees

20. On November 16, 2009, the Respondent falsified the signature of client MH on the trade tickets required to process the sale of one mutual fund and the purchase of two other mutual funds in client MH's account. The Respondent then provided his signature guarantee on each of the documents, thereby falsely representing to anyone reviewing or processing the trade tickets that the signature of client MH on the document was authentic.

21. By falsifying the signature of client MH on the trade tickets and then falsely providing signature guarantees of client MH's signature, the Respondent contravened Dundee's policies and procedures designed to address the risk of unauthorized trades being processed in a client's account and failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

Discretionary Trading

22. From time to time, the Respondent processed authorized and unauthorized discretionary trades in client accounts in circumstances where he states he was unable to reach clients or he did not want to bother clients to obtain their instructions to process trades that he believed the clients would want him to execute in their accounts. The trades constituted discretionary trades because the Respondent determined one or more of the following elements of the trades without adequate instructions from the client:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases, the securities to be traded.

23. The Respondent processed these discretionary trades in client accounts in the following

situations:

- (a) As part of the Respondent's annual migration practice (as described in paragraph 8 above), the Respondent processed:
 - (i) switches of DSC-free units to a non-DSC version of the same mutual fund without obtaining instructions from the client with respect to the amount of the DSC free units to be switched (if any) and the timing of the switch;
 - (ii) switches of DSC-free units to a non-DSC mutual fund with a composition and management style similar to the initially purchased DSC mutual fund if a non-DSC version of the same mutual fund did not exist. The Respondent sometimes processed such trades without obtaining instructions from the client with respect to the amount of DSC free units to be switched (if any), the selection of the non-DSC mutual fund, and the timing of the switch.

- (b) In order to reverse the application of trade restrictions imposed by Dundee on a client's account as a consequence of discrepancies between the risk levels of the mutual funds held in the client's account and the client's documented risk tolerance, the Respondent sometimes processed trades in the client's account to rebalance the client's holdings without obtaining adequate instructions from the client with respect to all elements of the trade.

24. By processing switches and other trades in client accounts without obtaining adequate instructions from the clients with respect to one or more of the elements of the trade, the Respondent engaged in authorized and unauthorized discretionary trading contrary to MFDA Rules 2.3.1(a) and 2.1.1(b) and (c).

Contravention of Policies Concerning Outside Business Activities

25. In accordance with its regulatory obligations pursuant to (then) MFDA Rule 1.2.1(d)³, Dundee established policies and procedures governing the approval and conduct of outside

³ Since re-numbered as MFDA Rule 1.2.1(c).

business activities engaged in by Approved Persons.

26. Dundee approved the Respondent's participation in an outside business activity providing tax return preparation services to clients, subject to the following conditions:

- (a) The Respondent was required to provide each customer of the outside business activity with a disclosure and acknowledgement form indicating that the outside business activity was not part of the business or responsibility of the Member; and
- (b) The Respondent was required to maintain documentation associated with the outside business activity separate and apart from and not integrated with Dundee client files.

27. The Respondent's failure to comply with these conditions was identified as a deficiency in his business practices following a review of his sub-branch conducted by Dundee in 2007. At that time, Dundee reminded the Respondent of the conditions for approval of his outside business activity and directed him to rectify the deficiencies in the future.

28. During the December 2009 Branch Review, Dundee compliance staff determined that the Respondent failed to obtain signed outside business activity acknowledgement forms from many of the customers to whom the Respondent provided tax preparation services. Dundee compliance staff also found documents for customers of the tax preparation service comingled with documents in their Dundee client files.

29. In response to questioning by MFDA Staff investigators, the Respondent acknowledged that he did not always adhere to the conditions imposed on him by Dundee with respect to the approval of his outside business activity.

30. By failing to adhere to the conditions of Dundee's approval of his outside business activity, the Respondent contravened (former) MFDA Rule 1.2.1(d)(iii), (iv) and (vi) and MFDA Rule 2.1.1(b).

Providing False Responses To Dundee Compliance Staff

31. During the December 2009 review, Dundee compliance staff conducted an interview with the Respondent during which they asked him about some of his business practices. The Respondent provided false responses to many of the questions that were asked by Dundee compliance staff when he:

- (a) denied that he had falsified client signatures on documents;
- (b) denied that he had ever altered client documents including NCAFs or signed/initialed documents on behalf of clients; and
- (c) stated that he never used correction fluid to alter client documents.

32. The results of the December 2009 review raised doubts about the accuracy of the Respondent's answers.

33. During the course of the MFDA's investigation of the Respondent, the Respondent admitted that some of the statements that he provided to Dundee compliance staff were not truthful.

34. By providing false responses to Dundee compliance staff investigating his conduct, the Respondent attempted to mislead or deceive the Member and undermined the ability of the Member to supervise the Respondent's activities, contrary to MFDA Rules 2.1.1(b) and (c).

V. CONTRAVENTIONS

35. Between June 1, 2004 and March 10, 2010, the Respondent:

- 1) falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:
 - (a) complete new client application forms ("NCAFs");
 - (b) update Know-Your-Client ("KYC") and banking information
 - (c) implement changes to pre-authorized contributions ("PACs") and systematic withdrawal plans ("SWiPs"); and

(d) execute trades in client accounts; and

- 2) in November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MH after he had falsified the signature of client MH on the trade tickets;

contrary to MFDA Rule 2.1.1(b) and (c).

36. Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;
- (b) the amount of the trade; and
- (c) in some cases the securities to be traded,

contrary to MFDA Rules 2.3.1(a) and 2.1.1 (b) and (c).

37. Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MFDA Rule 1.2.1(d) (iii), (iv) and (vi)⁴ and MFDA Rule 2.1.1(b).

38. On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

VI. TERMS OF SETTLEMENT

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

- (a) The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period

⁴ On December 3, 2010, amendments to the numbering and wording of certain MFDA rules came into effect as a consequence of which, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

- of two years, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (b) The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - (c) Following the two year period during which the Respondent is prohibited from conducting securities related business, if the Respondent wishes to conduct securities related business while in the employ of or associated with a Member of the MFDA:
 - (i) prior to doing so, the Respondent shall successfully complete an ethics course acceptable to the MFDA;
 - (ii) the Respondent shall be subject to close supervision by the Member with whom he is employed or associated for the first 12 months during which he conducts securities related business in the future; and
 - (iii) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 2.1.1, 2.2.1, 2.3.1(a) and 1.2.1(c).
 - (d) The Respondent shall pay costs in the amount of \$5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1; and
 - (e) the Respondent shall attend the Settlement Hearing in person.

VII. STAFF COMMITMENT

40. 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.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

41. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on Tuesday, January 8, 2013 at 10:00 a.m. or as soon thereafter as the matter can be heard.

42. 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.

43. 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.

44. 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

45. 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 section 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

46. 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 MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

47. 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

48. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 20th day of December, 2012.

“Hugh Blair Smilestone”
Hugh Blair Smilestone

“Brian Awad”
Witness - Signature

Brian Awad
Witness Name: Brian Awad

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



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: Hugh Blair Smilestone

ORDER

WHEREAS on June 29, 2012, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 in respect of Hugh Blair Smilestone (the "Respondent");

AND WHEREAS a first appearance in this proceeding was held by teleconference before a hearing panel of the Atlantic Regional council of the MFDA (the "Hearing Panel") on August 17, 2012;

AND WHEREAS a schedule for the proceeding was established on consent at the first appearance and the hearing of this matter on its merits was scheduled to commence in Halifax, Nova Scotia at 10:00 a.m. on January 8, 2013 or as soon thereafter as the matter could be heard;

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 on [DATE], the MFDA issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 concerning the intention of the parties to present the Settlement Agreement to the Hearing Panel on January 8, 2013;

AND WHEREAS on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

(1) Between June 1, 2004 and March 10, 2010, the Respondent:

- I. falsified client signatures and initials on account documents and falsified the content of certain other documents in order to:
 - (a) complete new client application forms (“NCAFs”);
 - (b) update Know-Your-Client (“KYC”) and banking information
 - (c) implement changes to pre-authorized contributions (“PACs”) and systematic withdrawal plans (“SWiPs”); and
 - (d) execute trades in client accounts; and

- II. in November 2009, the Respondent falsely provided signature guarantees on trade tickets processed for the account of client MH after he had falsified the signature of client MH on the trade tickets;

contrary to MFDA Rule 2.1.1(b) and (c);

(2) Between January 2008 and March 10, 2010, the Respondent engaged in authorized and unauthorized discretionary trading by determining one or more of the following elements of trades that were executed in client accounts:

- (a) the timing of the trade;

- (b) the amount of the trade; and
- (c) in some cases the securities to be traded;

contrary to MFDA Rules 2.3.1(a) and 2.1.1 (b) and (c);

- (3) Between January 2007 and March 10, 2010, the Respondent failed to comply with conditions imposed on him by the Member with respect to the approval of his outside business activity, contrary to former MFDA Rule 1.2.1(d) (iii), (iv) and (vi)⁵ and MFDA Rule 2.1.1(b); and
- (4) On December 17 and 18, 2009, the Respondent provided false responses to the Member's compliance staff during the course of a branch review, contrary to MFDA Rule 2.1.1(b) and (c).

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

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member for a period of two years, commencing from the date of the Hearing Panel's Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
2. The Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
3. Following the two-year period during which the Respondent is prohibited from conducting securities related business, if the Respondent wishes to conduct securities related business while in the employ of or associated with a Member of the MFDA:

⁵ On December 3, 2010, amendments to the numbering and wording of certain MFDA rules came into effect as a consequence of which, former MFDA Rule 1.2.1(d) was renumbered as MFDA Rule 1.2.1(c).

- (a) prior to doing so, the Respondent shall successfully complete an ethics course acceptable to the MFDA; and
 - (b) the Respondent shall be subject to close supervision by the Member with whom he is employed or associated for the first 12 months during which he conducts securities related business in the future; and
 - (c) the Respondent shall comply with all MFDA By-laws, Rules and Policies and all applicable securities legislation and regulations made thereunder including MFDA Rules 2.1.1, 2.2.1, 2.3.1(a) and 1.2.1(c); and
4. The Respondent shall pay costs in the amount of \$5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1.

DATED this [DAY] day of [MONTH], 20[].

Edward W. Keyes,
Chair

Robert G. Malcolm,
Industry Representative

John R. Maguire,
Industry Representative