



**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: Kenneth Rattenbury**

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**SETTLEMENT AGREEMENT**

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**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, Kenneth Rattenbury.

**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.

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 X) 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. At all material times, the Respondent was the President and a shareholder of Rattenburry Financial Management Inc. (“RFM”), a Member of the MFDA located in Edmonton, Alberta.

7. The Respondent was registered in Alberta as an Officer (Trading) of RFM from March 14, 2003, and as the Ultimate Designated Person, Chief Compliance Officer and a Director of RFM from September 28, 2009, until October 28, 2011.

8. RFM became a Member of the MFDA on February 8, 2002 and was registered in Alberta and British Columbia. RFM resigned its membership in the MFDA effective October 28, 2011.

9. Since November 1, 2011, following the resignation of RFM, the Respondent has been registered as a mutual fund salesperson with FundEx Investments Inc., a Member of the MFDA.

## **MFDA Compliance Examination 2010**

10. Between November 22, 2010 and December 1, 2010, MFDA Compliance Staff attended at RFM's head office in Edmonton and a sub-branch located in Grande Prairie to conduct a compliance examination.

11. During the on-site examination of RFM, MFDA Compliance Staff found a total of 63 pre-signed trade instruction forms in the files for the accounts of 10 clients serviced by the Respondent. The pre-signed forms were photocopies of original blank trade instruction forms that had been signed by the clients.

12. The pre-signed forms consisted of Investment Order forms, which included a section to allow for the updating of a client's Know-Your-Client ("KYC") information, and Redemption Request forms.

13. MFDA Compliance Staff found evidence that the Respondent had used the photocopies of the pre-signed forms to execute trades in the clients' accounts.

14. MFDA Compliance Staff also found email correspondence dated May 10, 2010 from the Respondent to clients NH and PH requesting that the clients sign blank trade instruction forms that the Respondent could use to process trades in their accounts at a later date.

15. On October 12, 2011, the Respondent was interviewed by MFDA Staff Investigators. The Respondent admitted that he had used the photocopies of the blank pre-signed forms to execute trades in the clients' accounts. The Respondent stated that all of the trades were processed pursuant to the clients' instructions following discussions with the clients. In some instances, the Respondent was able to produce copies of emails from the clients authorizing the trades in their accounts that the Respondent had subsequently carried out using the pre-signed forms.

16. None of the clients have filed a complaint concerning the pre-signed forms or indicated to MFDA Staff that trades were processed in their accounts without their knowledge or instructions.

MFDA Staff did not find any evidence of unauthorized or discretionary trading in the clients' accounts.

17. By engaging in the conduct described above, the Respondent failed to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

### **Mitigating Factors**

18. The Respondent has not previously been subject to MFDA disciplinary proceedings.

19. The Respondent has cooperated with MFDA Staff's investigation into his conduct.

### **V. RESPONDENT'S REPRESENTATIONS**

20. The Respondent acknowledges that it was wrong to rely on pre-signed forms to service client accounts but states that he maintained the pre-signed forms as a convenience to clients, in order to provide timely trade execution and only on the instructions of the clients themselves.

21. The Respondent states that his conduct as described in this Settlement Agreement did not cause any harm to the clients involved, nor did he benefit from the conduct.

22. The Respondent states that he resigned his membership as a Member in order to focus on and better serve client accounts.

### **VI. CONTRAVENTIONS**

23. The Respondent admits that between August 26, 2004 and November 18, 2010, he maintained and used 63 photocopies of trade instruction forms signed by clients in blank to process trades in the accounts of 10 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

## **VII. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$6,250 pursuant to s. 24.1.1(b) of MFDA By-law No.1;
- (b) the Respondent shall write or re-write and pass an appropriate industry course acceptable to MFDA Staff within 6 months of the date of the Order in this matter, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
- (c) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- (d) 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 Rule 2.1.1;
- (e) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VIII. STAFF COMMITMENT**

25. 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 VI of this Settlement Agreement, subject to the provisions of Part X 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 VI 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 VI, 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.

## **IX. PROCEDURE FOR APPROVAL OF SETTLEMENT**

26. 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.

27. 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.

28. 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.

29. 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 him.

## **X. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

30. 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 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.

31. If the Respondent does not comply with paragraph 3 of the attached Order, Staff and the Respondent shall have the right to appear before the Hearing Panel, upon 10 days notice to the

parties, for additional guidance on fulfilling the terms of the Order. Notwithstanding paragraph 25 of the Settlement Agreement<sup>1</sup> the Hearing Panel may provide such further guidance and directions or impose such further and other terms, conditions, or penalties as allowed under section 24.1.2 of MFDA By-law No. 1, as the Hearing Panel considers appropriate in the circumstances.

## **XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

32. 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.

33. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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.

## **XII. DISCLOSURE OF AGREEMENT**

34. 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.

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

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<sup>1</sup> “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.”

**XIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated this 15<sup>th</sup> day of September, 2012.

“Brenda Chahley”  
Witness – Signature

“Kenneth Rattenbury”  
Kenneth Rattenbury

Brenda Chahley  
Witness - Print name

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



**Schedule “A”**

**Order**

**File No. 201219**



**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: Kenneth Rattenbury**

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**ORDER**

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**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 Kenneth Rattenbury (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 between August 26, 2004 and November 18, 2010, the Respondent maintained and used 63 photocopies of trade instruction forms signed by clients in blank to process trades in the accounts of 10 clients, thereby failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b).

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

1. 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, 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*;
2. The Respondent shall pay a fine in the amount of \$6,250 pursuant to s. 24.1.1(b) of MFDA By-law No.1;
3. The Respondent shall write or re-write and pass an appropriate industry course acceptable to MFDA Staff within 6 months of the date of the Order in this matter, pursuant to s. 24.1.1(f) of MFDA By-law No. 1;
4. The Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.1.1(b) of MFDA By-law No. 1.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]