



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: Brodie James Pattenden

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, Brodie James Pattenden (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 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. The Respondent was employed as a financial advisor at the Bank of Nova Scotia (“Scotiabank”), and through that role, was registered as a mutual fund sales person with Scotia Securities Inc.¹ (“SSI”) from February 11, 2010 to May 17, 2012. At all material times, the Respondent conducted business out of a branch office located in Calgary, Alberta.

7. On or about May 17, 2012, the Respondent’s employment with SSI was terminated as a result of the events described herein.

¹ SSI has been a Member of the MFDA since November 15, 2001.

8. Prior to this, the Respondent was registered as a mutual fund sales person with Edward Jones from May to December 2009.

9. The Respondent is currently not registered in the securities industry in any capacity.

Background

10. A pre-authorized contribution program (“PAC”) is a type of trade authorized by a client whereby the client arranges for regular (e.g. bi-weekly or monthly) contributions to be made from the client’s bank or similar account to the client’s account at the Member and instructs the Member to use the contributions to purchase a pre-determined mutual fund(s) for the client’s account.

11. In accordance SSI’s policies and procedures, for those clients who entered into SSI’s Telephone/Facsimile/E-Mail Agreement (“TFEA”) upon or after opening their account, an Approved Person was permitted to obtain the client’s instructions by telephone, fax or e-mail when processing transactions in the client’s account (as opposed to the client being required to sign the actual account documents prior to the documents being submitted for processing). However, the TFEA did not (and could not under MFDA requirements) grant the Approved Person discretionary trading authority over the client’s account. The Approved Person was still required to obtain instructions from the client for all trades in the client’s account including, amongst other things, setting up a PAC in a client’s account.

12. For client instructions received by telephone, fax or e-mail, SSI’s policies and procedures required that the client’s instructions had to be recorded on an Investment Direction Form (“IDF”) and contain, amongst other things, a summary of the Approved Person’s discussion with the client.

Respondent’s Misconduct

13. Scotiabank established annual sales targets for deposits, creditor insurance and borrowing products for its financial advisors. SSI also established annual sales targets for its Approved

Persons which SSI monitored on a monthly basis.

14. While the Respondent was on track to meet his three targets for deposits, creditor insurance and borrowing products, he was rarely, if ever, on track to meet his mutual fund sales target.

15. In or around November 2011, the Respondent discovered that the system that SSI used to track the sales of its Approved Persons counted a PAC established in a client's account positively towards the Approved Person's sales target, even if the PAC was subsequently cancelled.

16. Thereafter, between November 19, 2011 and April 23, 2012, the Respondent entered PAC transactions into SSI's sales recording system for 15 different client accounts without the clients' knowledge, approval or instructions. In each case, the client had previously signed account opening documentation agreeing to the use of TFEA's for his or her account such that it was not necessary for the Respondent to obtain the client's signature on any account documents in order to establish the PAC in the client's account.

17. To enable the Respondent to enter the PAC's into SSI's sales recording system, the Respondent fabricated notes on IDF's detailing supposed instructions he had received from the clients directing him to create the PAC's.

18. The details of the PAC's established by the Respondent in the clients' accounts are as follows:

	Client Initials	Amount and frequency of PAC Respondent entered	Date Respondent stated he received client instructions	PAC Start Date
1.	CJ	\$150 every 2 weeks	November 19, 2011	December 9, 2011
2.	AM	\$250 every 2 weeks	December 13, 2011	December 23, 2011
3.	AK	\$200 every month	December 17, 2011	December 31, 2011
4.	VM	\$750 every month	January 26, 2012	March 15, 2012

5.	PS	\$150 every 2 weeks	February 27, 2012	March 9, 2012
6.	NZ 1	\$150 twice a month	February 29, 2012	March 15, 2012
7.	NZ 2	\$150 twice a month	February 29, 2012	March 15, 2012
8.	MB	\$700 every 2 weeks	March 12, 2012	March 22, 2012
9.	DM	\$600 every 2 weeks	March 19, 2012	April 13, 2012
10.	PV	\$400 every 2 weeks	March 26, 2012	April 13, 2012
11.	KS	\$200 every 2 weeks	March 27, 2012	April 5, 2012
12.	LN	\$200 every 2 weeks	April 10, 2012	April 19, 2012
13.	JM	\$800 every 2 weeks	April 18, 2012	May 3, 2012
14.	*AL	\$500 every 2 weeks	March 30, 2012	April 4, 2012
15.	*SB	\$250 every 2 weeks	April 23, 2012	May 11, 2012

19. With respect to the first 13 client accounts, the Respondent set up the PAC's and then cancelled them on or prior to the PAC start date, such that no contributions or purchases occurred. As a result, there was no financial impact on the clients.

20. With respect to client AL, the Respondent received instructions from client AL in March 2012 to set up a PAC commencing April 4, 2012 in the amount of \$250 every two weeks. However, the Respondent set up two PAC's for client AL in the same account: one as client AL had instructed and another for \$500 every two weeks, the latter without AL's knowledge or authorization.

21. Both PAC's were processed in client AL's account on April 4, 2012. Shortly after, SSI flagged the two purchases for client AL and contacted him, believing there may be a system error. Client AL told SSI that he wanted to keep the \$250 PAC he had instructed to be set up in his account, as well as the first \$500 contribution and purchase made on April 4, 2012 (as a result of the \$500 PAC established by the Respondent), but directed SSI to thereafter cancel the \$500 PAC.

22. With respect to client SB, the Respondent's employment with SSI was suspended before he could cancel the PAC he had set up in client SB's account. SSI reversed the first contribution made pursuant to this PAC and canceled it on May 16, 2012.

SSI Review and Investigation

23. On April 25, 2012, during a branch sales activity review, SSI noticed the Respondent's PAC set-up activity was higher than normal and began a review of the Respondent's client files.

24. On May 8, 2012, the Respondent verbally admitted to SSI's Investigations Group that he had set up and cancelled PAC's in client accounts without their knowledge or authorization, and provided SSI with a written statement admitting the conduct.

25. On May 9, 2012, SSI suspended the Respondent's employment and advised him that they were investigating procedural irregularities on some of his client files. On May 17, 2012, SSI terminated the Respondent's employment.

26. In response to Staff's request for a written statement, the Respondent provided a written statement dated June 4, 2012, wherein he admitted the aforementioned conduct; on November 1, 2012, the Respondent verbally reiterated these admissions during an interview with Staff.

27. Staff did not find any evidence that the Respondent received any financial benefit from engaging in the misconduct.

28. There was no evidence of client loss. In the two instances in which at least one contribution was made under the unauthorized PAC before it was discovered and cancelled, the client either agreed to continue with the contribution (client AL), or SSI reversed it (client SB).

29. The Respondent has no prior disciplinary history with the MFDA and cooperated with Staff during the course of its investigation.

THE RESPONDENT'S POSITION

30. At the time of the misconduct the Respondent was 26 years old and was relatively new to the industry.

31. According to the Respondent, during the material time, he was preoccupied with significant personal and work stresses and cites this as one of the reasons for his lapse in good judgment.

32. According to the Respondent he believed his job was threatened because he was not meeting his mutual funds sales target, and this contributed to his stresses.

33. According to the Respondent, he never intended to harm or adversely affect his clients, nor did he seek any financial benefit from his actions.

V. CONTRAVENTIONS

34. The Respondent admits that between November 19, 2011 and April 23, 2012, he established pre-authorized contribution programs (PAC's) in the accounts of 15 clients without the clients' knowledge, approval or instructions, 13 of which he cancelled before the first contribution was made, in an attempt to meet a sales target, thereby engaging in conduct unbecoming an Approved Person and failing to observe high standards of ethics and conduct in the transaction of business, contrary to MFDA Rule 2.1.1(b) and (c).

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall pay a fine in the amount of \$5,000 pursuant to s.24.1.1(b) of MFDA By-law No.1;
- b) 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 one year, commencing from the date of the Hearing Panel's Order, pursuant to s.24.1.1(e) of MFDA By-law No. 1;
- c) the Respondent shall pay costs in the amount of \$1,500 pursuant to s.24.2 of MFDA By-law No.1
 - d) the Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.3.1(a); and
 - e) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

36. 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 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 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 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

37. 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.

38. 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 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.

39. 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.

40. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

41. 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.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

42. 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.

43. 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

44. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 9th day of December, 2013.

“Kelly Kennedy”
Witness – Signature

Kelly Kennedy
Witness – Print name

“Brodie James Pattenden”
Brodie James Pattenden

“Shaun Devlin”
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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Re: Brodie James Pattenden

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 Brodie James Pattenden (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 November 19, 2011 and April 23, 2012, established pre-authorized contribution programs ("PACs") in the accounts of 15 clients without the clients' knowledge, approval or instructions, contrary to MFDA 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 \$5,000 pursuant to s.24.1.1(b) of MFDA By-law No.1;
2. 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 one year, commencing from the date of the Hearing Panel's Order, pursuant to s.24.1.1(e) of MFDA By-law No. 1;
3. The Respondent shall pay costs in the amount of \$1,500 pursuant to s.24.2 of MFDA By-law No. 1;
4. The Respondent shall in the future comply with MFDA Rules 2.1.1 and 2.3.1(a); and
5. 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*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]