



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: Gerard Campbell MacKinnon

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 Atlantic 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, Gerard Campbell MacKinnon.

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 accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. From March 6, 2003 to August 8, 2013, the Respondent was registered in Nova Scotia as a mutual fund salesperson (now known as a dealing representative) with Quadrus Investment Services Ltd. (“Quadrus”), a Member of the MFDA.

7. At all material times, the Respondent was also licensed as an insurance salesperson in Nova Scotia.

8. On August 8, 2013, Quadrus terminated the Respondent as a result of some of the events described below. The Respondent has not been registered in the securities industry since that time.

9. At all material times, the Respondent conducted business in and around Halifax, Nova Scotia.

The Respondent Accepts \$20,000 from a Client and Uses the Monies to Pay Personal Debts

10. At all material times, client AD was a client of Quadrus. The Respondent was the mutual fund salesperson responsible for servicing client AD's accounts at Quadrus.

11. In late 2009, the Respondent recommended that client AD redeem \$20,000 from his Registered Retirement Savings Plan ("RRSP") with Quadrus and invest the proceeds for a period of one year in an unspecified investment product which would be managed by the Respondent. The Respondent represented to client AD that the investment would produce better returns than the mutual funds he held with Quadrus.

12. On April 12, 2010, based upon the Respondent's recommendation, client AD redeemed \$20,713.48 from his RRSP with Quadrus. After the deduction of withholding taxes and the payment of deferred sales charges ("DSCs"), client AD received net proceeds from the redemption of approximately of \$14,000.

13. On April 20, 2010, Quadrus issued a cheque to client AD in the amount of \$14,000 which client AD deposited into his personal bank account.

14. On April 22, 2010, based upon the Respondent's recommendation, client AD redeemed a further \$7,812.50 from his RRSP with Quadrus. After the deduction of withholding taxes and the payment of DSCs, client AD received net redemption proceeds of approximately \$6,000.

15. On April 28, 2010, Quadrus issued a cheque to client AD in the amount of \$6,000 which client AD deposited into his personal bank account.

16. On May 14, 2010, client AD provided the Respondent with two certified cheques in the amounts of \$14,000 and \$6,000 payable to the Respondent personally for the purpose of investing in the investment product recommended by the Respondent as described in paragraph 11 above.

17. Shortly thereafter, the Respondent deposited the certified cheques provided by client AD into the Respondent's personal bank account.

18. The Respondent did not invest the monies received from client AD. Instead, the Respondent used these monies to pay his personal debts, without the knowledge or authorization of client AD.

19. In July 2013, Quadrus was notified of a complaint from an insurance client serviced by the Respondent which claimed that the Respondent had sold investments outside of Quadrus. Quadrus commenced an investigation into the Respondent's conduct. As part of its investigation, Quadrus sent letters on July 30 and August 29, 2013 to mutual fund clients serviced by the Respondent to determine if the Respondent had offered or sold any outside investments to them.

20. Quadrus terminated the Respondent on August 8, 2013.

21. On December 16, 2013, in response to Quadrus' letters, client AD complained to Quadrus with respect to the investment product sold by the Respondent and the whereabouts of the \$20,000 he had provided to the Respondent.

22. On February 3, 2014, the Respondent delivered a personal cheque to client AD in the amount of \$23,400, for the repayment of client AD's \$20,000 investment and a purported interest payment of \$3,400.

23. On May 26, 2014, the Respondent paid \$4,722.60 to Quadrus to reimburse it for additional compensation it paid to client AD in respect of his losses.

Misleading the Member

24. On March 5, 2013, Quadrus' compliance staff conducted an audit of the Respondent's practices as part of its Branch Review Program. Quadrus' compliance staff interviewed the Respondent as part of the audit.

25. Also as part of the audit, Quadrus' compliance staff explained the term conflicts of interest and presented the Respondent with various scenarios to ensure he understood its meaning during the interview.

26. During the interview, Quadrus' compliance staff asked the Respondent the following question, "Are you familiar with the concept of conflicts of interest and situations that are or which could lead to a real or perceived conflicts (*sic*) of interest? (Examples include acting on behalf of clients, financial or business dealings with clients, gift or favours)". In response to this question, the Respondent confirmed that he understood conflicts of interest and was not involved in any activity that would be considered a conflict of interest.

27. The Respondent's statement to Quadrus' compliance staff that he was not involved in any activity that would be considered a conflict of interest was false and misleading having regard to the Respondent's conduct described above.

28. The Respondent did not contact Quadrus' compliance staff, following his interview, to correct his statement to them.

Failure to Cooperate

29. On September 29, 2014, Staff sent a letter to the Respondent, by registered and regular mail, requesting his attendance at an interview for the purpose of investigating his activities while he was registered as a dealing representative.

30. On October 21, 2014, the Respondent contacted Staff by telephone to schedule a date for an interview.

31. On October 28, 2014, Staff sent a letter to the Respondent, by regular mail and email, confirming that an interview had been scheduled for November 19, 2014 in Halifax, Nova Scotia.

32. On November 4, 2014, the Respondent sent a letter to Staff advising that he would not be attending the scheduled interview.

33. On November 7, 2014, Staff sent a letter to the Respondent, by registered and regular mail and email, advising the Respondent that if he failed to attend the interview, Staff may commence a disciplinary hearing against him for failing to cooperate with the MFDA's investigation into his activities, pursuant to section 22.1 of MFDA By-law No. 1.

34. On November 12, 2014, the Respondent contacted Staff, by telephone, to further discuss his attendance at an interview. During the telephone call, the Respondent acknowledged that he understood the implications of failing to attend the interview with Staff.

35. The Respondent failed to attend the interview with Staff on November 19, 2014.

V. CONTRAVENTIONS

36. The Respondent admits that between April 12, 2010 and June 11, 2014, he solicited and accepted \$20,000 from client AD for an investment he purported to offer outside the Member, but instead used the monies to pay his personal debts and failed to invest it on behalf of client AD, thereby misappropriating or failing to account for client monies, and engaging in conduct which gave rise to a conflict of interest between the Respondent and the client that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.1 and 2.1.4.

37. The Respondent admits that in March 2013, he misled the Member when he falsely stated, in response to a question asked by the Member's compliance staff during a branch audit, that he was not involved in any activities which could give rise to a conflict or potential conflict of interest with a client, thereby interfering with the Member's ability to supervise his activities, and failing to observe high standards of ethics and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 1.1.2, 2.5.1, 2.1.4, and 2.1.1.

38. The Respondent admits that beginning on November 4, 2014, he failed to attend for an interview with Staff for the purpose of investigating the Respondent's conduct, contrary to section 22.1 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member pursuant to section 24.1.1(e) of MFDA By-law No. 1;
- b) the Respondent shall pay a fine in the amount \$15,000;
- c) the Respondent shall pay costs in the amount of \$7,500; and
- d) the Respondent will attend in person, on the date set for the Settlement Hearing.

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 Part[s] 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

41. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

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. 24.1.1 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 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

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 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 22nd day of September, 2016.

“BC”

Witness – Signature

“Gerard C. MacKinnon”

Gerard C. MacKinnon

BC

Witness – Print name

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – 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: Gerard Campbell MacKinnon

ORDER

WHEREAS on March 14, 2016, 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 Gerard Campbell MacKinnon (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 misappropriated or failed to account for client monies, and engaged in conduct which gave rise to a conflict of interest between the Respondent and the client that the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.1 and 2.1.4;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent misled his Member when he falsely stated that he was not involved in any activities which could give rise to a conflict or potential conflict of interest with a client, thereby interfering with the Member's ability to supervise his activities, and failing to observe high standards of ethics and engaging in conduct unbecoming an Approved Person, contrary to MFDA Rules 1.1.2, 2.5.1, 2.1.4, and 2.1.1;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent failed to attend for an interview with Staff for the purpose of investigating the Respondent's conduct, contrary to section 22.1 of MFDA By-law No. 1;

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

1. the Respondent shall be permanently prohibited from conducting securities related business in any capacity while in the employ of, or in association with, any MFDA Member pursuant to section 24.1.1(e) of MFDA By-law No. 1;
2. the Respondent shall pay a fine in the amount \$15,000;
3. the Respondent shall pay costs in the amount of \$7,500; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]

DM 505417 v1