



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 Allan Parker

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 Kenneth Allan Parker (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 MFDA 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. Between approximately February 20, 2008 and June 20, 2017, the Respondent was registered in Alberta, British Columbia, Ontario, Manitoba and Saskatchewan as the Chief Compliance Officer (“CCO”) and as a mutual fund salesperson / dealing representative¹ of Portfolio Strategies Corporation (“PSC” or the “Member”, a Member of the MFDA. He was also the Chief Financial Officer (“CFO”) of PSC during that period. Between May 29, 2008 and December 31, 2010, the Respondent was registered with PSC in the same categories in New Brunswick and between September 29, 2015 and June 20, 2017 in Quebec.

7. On June 20, 2017, PSC terminated the Respondent.

8. Between August 17, 2006 and January 25, 2008, the Respondent was an Approved Person, President and CCO of a different Member of the MFDA.

9. Between January 1988 and June 2005, prior to becoming a registrant, the Respondent worked for the Alberta Securities Commission.

¹On September 28, 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

10. Effective August 2017, the Respondent joined Belay Wealth Inc. (“Belay”). Belay became a Member of the MFDA on June 14, 2018 and the Respondent has been registered as the CFO and as a Director of Belay since that time. The Respondent also intended to serve as CCO or Ultimate Designated Person (“UDP”) of Belay but the Alberta Securities Commission (the “ASC”) imposed terms and conditions on his registration which did not permit the Respondent to be registered in either of those categories.

11. At all material times relevant to the conduct described in this Settlement Agreement below, the Respondent carried on business from the head office of PSC located in Calgary, Alberta.

Overview

12. As set out in more detail below, between April 2014 and February 2016, pursuant to his obligations as CCO of the Member, the Respondent submitted annual reports to the board of directors of the Member (the “Board”) reporting on the status of compliance by the Member with its regulatory obligations. In his annual reports to the Board, the Respondent failed to accurately report on the status of the Member’s efforts to conduct branch and sub-branch reviews in compliance with MFDA Policy No. 5. The inaccurate content in the Respondent’s reports hindered the ability of the Member to assess its compliance with its regulatory obligations.

Failure To Prepare Accurate Compliance Reports To The Member’s Board Of Directors

A. The 2012 MFDA Compliance Examination Report

13. Commencing on May 14, 2012, MFDA Compliance Staff (“MFDA Compliance”) attended at the Member’s head office and at a sample of the branches and sub-branches that the Member conducted business from at the time in order to evaluate the Member’s compliance with its regulatory obligations during the review period from May 1, 2009 to March 31, 2012 (the “2012 MFDA Compliance Examination”). In a report dated October 9, 2012 (the “2012 Compliance Examination Report”), MFDA Compliance summarized the findings made during the 2012 MFDA Compliance Examination.

14. In the 2012 Compliance Examination Report, MFDA Compliance made a finding that the Member had not implemented a branch and sub-branch review program that was compliant with

requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that, during the review period:

- a) 12 of the 14 branches that the Member operated during the review period and 85 of the 124 sub-branches that the Member operated during the review period had never been subject to a branch review;
- b) No branch review reports or other paperwork documented the review of the two branches that the Member claimed it had reviewed during the review period.

15. On November 14, 2012, the Respondent submitted an action plan to MFDA Compliance on behalf of the Member to address the findings that were set out in the 2012 MFDA Compliance Examination Report (the “2012 Action Plan”). Along with the 2012 Action Plan, the Respondent submitted a branch and sub-branch review schedule (the “Branch Review Schedule”) that contemplated the completion of branch and sub-branch reviews at each of the Member’s branch and sub-branch locations within a 3 year period.

16. Pursuant to MFDA Rule 2.5.3(b)(iv) and the policies and procedures of the Member, the Respondent was required as CCO to submit a report to the Board at least once each year providing an assessment of compliance by the Member and its Approved Persons with their regulatory obligations (the “CCO Report”). In his annual CCO Reports, the Respondent included updates on the status of the Member’s implementation of its Branch Review Program.

B. The 2012 CCO Report

17. In his 2012 CCO Report dated June 30, 2013, the Respondent reported to the Board that the branch and sub-branch audit schedule was a primary area of concern for the MFDA and that, during the calendar year 2012, “one branch was reviewed” and “[a]pproximately 31 sub-branch reviews were performed” by PSC staff. The Respondent further reported to the Board that he believed that the Member had “adequate staff to meet its compliance requirements” and that, in response to the branch review findings of MFDA Compliance, he had submitted the Branch Review Schedule (described above in paragraph 16) which had been accepted by the MFDA.

C. The 2013 CCO Report

18. According to the National Registration Database (the “NRD”), as of January 1, 2013, the Member was conducting business from 15 branch locations and 150 sub-branch locations.

19. In his 2013 CCO Report dated April 1, 2014, the Respondent reported that, during 2013, 7 branches and 20 sub-branches had been reviewed by PSC staff. The Respondent further reported that he believed that the Member had adequate staff to meet its compliance requirements, and “[t]he review schedule previously given to the MFDA is being met”.

20. Contrary to the Respondent’s statement in the 2013 CCO Report, the Branch Review Schedule that was submitted to MFDA Compliance in 2012 was not being met.

D. The 2014 MFDA Compliance Examination Report

21. Commencing on May 26, 2014, MFDA Compliance attended at the Member’s head office and at a sample of the 16 branches and 173 sub-branches from which the Member conducted business at that time in order to evaluate the Member’s compliance with its regulatory obligations during the review period from April 1, 2012 to March 31, 2014 (the “2014 MFDA Compliance Examination”). In a report dated September 10, 2014 (the “2014 Compliance Examination Report”), MFDA Compliance summarized the findings made during the 2014 MFDA Compliance Examination.

22. In the 2014 Compliance Examination Report, MFDA Compliance made findings (similar to the findings in the 2012 Compliance Examination Report) that the Member had not implemented a branch and sub-branch review program that was compliant with requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that:

- a) the Member had not completed 1 branch review and 34 sub-branch reviews that had been scheduled for completion during 2013 (according to the 2012 Branch Review Schedule) and none of those locations had ever been reviewed;
- b) 13 additional sub-branches that had previously been subject to a branch review in 2010 had not been reviewed during the 3 years preceding the 2014 compliance examination; and

- c) the primary compliance person responsible for conducting branch reviews had other compliance responsibilities that appeared to limit the person's availability to conduct and complete branch reviews.

E. The 2014 CCO Report

23. In his 2014 CCO Report dated April 21, 2015, the Respondent reported to the Board that the branch and sub-branch audit schedule, and the Member's compliance resources to complete branch and sub-branch reviews, were primary areas of concern for the MFDA. The Respondent reported that "[s]eventeen sub-branch reviews were performed" by PSC staff during 2014 and that "[f]ollowing discussions with MFDA [Compliance] coming out of the 2014 [MFDA Compliance Examination], we expect to add one more head office compliance person to ensure that PSC has adequate staff to meet its compliance requirements." The Respondent reported to the Board that "[t]he review schedule previously given to the MFDA is being met."

24. Contrary to statements made by the Respondent in the 2014 CCO Report, the Branch Review Schedule that was submitted to MFDA Compliance in 2012 was not being met.

F. The 2015 CCO Report

25. According to the NRD, as of January 1, 2015, the Member was conducting business from 15 branch locations and 166 sub-branch locations.

26. In 2015, the Member hired one additional head office compliance person. It was anticipated that among other duties, this new employee would provide additional support to the Member's branch review program.

27. In his 2015 CCO Report dated February 11, 2016, the Respondent inaccurately reproduced the statement that he had recorded in his 2014 CCO Report that "[s]eventeen sub-branch reviews were performed" by PSC staff during 2015, when in fact 13 sub-branch reviews had been completed. The Respondent reported to the Board that "one more head office compliance person . . . was added to ensure that PSC has adequate staff to meet its compliance requirements" and that "[t]he review schedule previously given to the MFDA is being met."

28. Contrary to statements in the 2015 CCO Report, the Branch Review Schedule that the Respondent had submitted to MFDA Compliance in 2012 was not being met.

G. The 2016 MFDA Compliance Examination Report

29. Commencing on September 19, 2016, MFDA Compliance attended at the Member's head office and at a sample of the 10 branches and 203 sub-branches from which the Member conducted business at that time in order to evaluate the Member's compliance with its regulatory obligations during the review period from April 1, 2012 to July 31, 2016 (the "2016 MFDA Compliance Examination"). In a report dated March 22, 2017 (the "2016 Compliance Examination Report"), MFDA Compliance summarized the findings made during the 2016 MFDA Compliance Examination.

30. In the 2016 Compliance Examination Report, MFDA Compliance made findings (similar to the findings in the 2012 and 2014 Compliance Examination Reports) that the Member had not implemented a branch and sub-branch review program that was compliant with requirements set out in MFDA Policy No. 5. In particular, MFDA Compliance made findings that:

- a) 33 of the Member's 203 sub-branches had never been subject to a branch review²; and
- b) 3 of the Member's 10 branches and 43 additional sub-branches that had previously been subject to a branch review³ had not been subject to a subsequent review during the 3 year period preceding the 2016 MFDA Compliance Examination.

31. At the time when the Respondent submitted the 2013, 2014 and 2015 CCO Reports to the Board, he knew or ought to have known that the number of branch and sub-branches reviews performed during the relevant periods did not meet the requirements of the Branch Review Schedule. The Respondent's inaccurate statements to the Board hindered the Member's ability to assess its compliance with applicable regulatory requirements.

²Including 16 sub-branches that had been scheduled for completion during 2014 or 2015 according to the Branch Review Schedule but were not reviewed and 17 sub-branches that had been registered with the Member since 2012 but had not been included on the Branch Review Schedule.

³Sometime between 2010 and 2013.

Additional Factors

32. Prior to this proceeding, the Respondent had no previous disciplinary history.
33. The Respondent and PSC are engaged in on-going litigation.
34. On February 5, 2013, PSC added the registration category of Investment Fund Manager (“IFM”) to its registration as a mutual fund dealer and thereafter began providing IFM services to issuers. The Respondent states that he was responsible for some additional compliance responsibilities as a result of this change.
35. The Respondent fully cooperated with Staff’s investigation of this matter and has saved the MFDA the time and expense associated with a contested Hearing.

V. CONTRAVENTIONS

36. The Respondent admits that between April 2014 and February 2016, the Respondent submitted annual reports to the Board which failed to accurately report on the status of branch and sub-branch reviews required to be completed by the Member in order to comply with MFDA Policy No. 5, thereby failing to carry out his responsibilities as CCO, and hindering the ability of the Member to assess its compliance with MFDA By-laws, Rules, Policies, and applicable securities legislation, contrary to MFDA Rule 2.5.3(b)(iv).

VI. TERMS OF SETTLEMENT

37. The Respondent agrees to the following terms of settlement:
 - a) the Respondent shall pay a fine in the amount of \$20,000 which shall be payable on the date that this Settlement Agreement is accepted by an MFDA Hearing Panel, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
 - b) the Respondent shall pay costs in the amount of \$5,000 which shall be payable on the date that this Settlement Agreement is accepted by an MFDA Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1;
 - c) if the Respondent becomes registered as Chief Compliance Officer of a Member of the MFDA in the future, he shall comply with MFDA Rule 2.5.3(b); and

- d) the Respondent will attend via video-conference, on the date of the Settlement Hearing.

VII. STAFF COMMITMENT

38. 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. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

39. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

40. 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.

41. 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 MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of MFDA By-law No. 1.

42. 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

43. 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

44. 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.

45. 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

46. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 6th day of August, 2020.

“Kenneth A. Parker”

Kenneth A. Parker

“CP”

Witness – Signature

CP

Witness – Print Name

“Charles Toth”

Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

Schedule "A"

Order

File No. 202025



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 Allan Parker

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 Kenneth Allan Parker (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 MFDA By-law No. 1;

AND WHEREAS on the basis of the facts and contraventions that the Respondent has admitted in the Settlement Agreement, the Hearing Panel is of the opinion that:

- 1) between April 2014 and February 2016, the Respondent submitted annual reports to the board of directors of the Member which failed to accurately report on the status of branch and sub-branch reviews required to be completed by the Member in order to comply with MFDA Policy No. 5, thereby failing to carry out his

responsibilities as Chief Compliance Officer, and hindering the ability of the Member to assess its compliance with MFDA By-laws, Rules, Policies, and applicable securities legislation, contrary to MFDA Rule 2.5.3(b)(iv).

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 which shall be payable on the date that this Settlement Agreement is accepted by an MFDA Hearing Panel, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of \$5,000 which shall be payable on the date that this Settlement Agreement is accepted by an MFDA Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1; and

3. 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]