



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: Darragh John Anthony Pender

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 Central 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, Darragh John Anthony Pender.

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. From December 1997 to March 28, 2016, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative¹) with Quadrus Investment Services Ltd., a Member of the MFDA.

7. From April 8, 2016 to September 7, 2017, when he was terminated as a result of the events described below, the Respondent was registered in Ontario as a mutual fund salesperson with Olympian Financial Inc. (“OFI”), a Member of the MFDA.

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

8. The Respondent is not currently registered in the securities industry in any capacity.
9. At all material times, the Respondent carried on business in Tecumseh, Ontario.

Background

10. In early 2016, the Respondent entered into an arrangement with EC, an Approved Person with Worldsource Financial Management Inc. (“WFM”), a Member of the MFDA, to buy EC’s book of business. The Respondent and EC intended for the Respondent to become registered with OFI, following which EC would transfer his clients to OFI. EC would then transfer his registration to OFI and serve as the Respondent’s licensed assistant to assist him with the transferred clients.

11. On April 8, 2016, the Respondent became registered with OFI. At that time, the Respondent also moved into office space owned by EC, located in Tecumseh, Ontario.

12. The Respondent and EC entered into a Consulting Agreement dated August 31, 2016 to formalize the arrangement for the purchase of EC’s book of business. Pursuant to the Consulting Agreement, the Respondent agreed to compensate EC, beginning January 2017, based on the revenue generated by EC’s clients.

13. EC never became an Approved Person with OFI. Following the events described below, on December 30, 2016, EC surrendered his registration and retired from the mutual fund industry.

The Respondent Facilitated Securities Related Business by EC for a Member that EC was Not Registered With

14. To facilitate the transfer of clients, in or around the beginning of August 2016, the Respondent provided EC with his password to OFI’s back office system. With the password, EC, or an unlicensed assistant for whom EC was responsible, was able to access OFI’s back office system to generate and pre-populate OFI New Account Application/KYC Forms (“NAAF/KYC

Forms”), B2B Bank Financial Service Inc.² account application forms (“B2B Account Application Forms”), and transfer authorization forms (“Transfer Authorizations”) for EC’s clients.

15. The Respondent did not obtain permission from OFI to provide his password to EC. Neither EC nor his unlicensed assistant was authorized to have access to OFI’s back office system or the confidential information stored therein, or to use the system to generate OFI forms.

16. Indeed, when OFI approved the Respondent to share office space with EC, it did so on the following conditions:

- a) the Respondent’s and EC’s files had to be kept completely segregated;
- b) appropriate signage would be placed so that clients knew who they were dealing with;
- c) confidentiality of OFI information had to be maintained; and
- d) the Respondent was required to obtain new Know-Your Client (“KYC”) information from clients transferring accounts to OFI and the Respondent could not rely on previous KYC information.

17. From August 1, 2016 to December 31, 2016, EC met, personally or by telephone, with 344 clients and had them execute NAAF/KYC Forms, B2B Account Application Forms, and Transfer Authorizations to transfer their investment accounts to the Respondent at OFI. To facilitate the transfer of the clients, EC had the clients execute the forms undated.

18. After EC collected a batch of the NAAF/KYC Forms, B2B Account Application Forms, and Transfer Authorizations, he provided them to the Respondent, who executed them as the Approved Person of record for OFI.

19. The Respondent used the NAAF/KYC Forms, B2B Account Application Forms, and Transfer Authorizations collected by EC to transfer the relevant client accounts to OFI.

² B2B is OFI’s carrying broker.

The Respondent Falsely Represented that He had Met with Clients

20. Each of the NAAF/KYC Forms and B2B Account Application Forms contained a box that was check-marked to indicate that the Respondent had personally met with the clients who were opening new accounts with OFI. Such a personal meeting was required to: (1) collect the KYC information required by the NAAF/KYC Forms and the OFI Policies and Procedures Manual; and (2) to verify a client's identity for anti-money laundering purposes.

21. The Respondent did not, in fact, meet with any of the clients prior to executing the NAAF/KYC Forms and B2B Account Application Forms which falsely indicated that he had.

22. The Respondent also executed the NAAF/KYC Forms, B2B Account Application Forms, and Transfer Authorizations undated, so that the clients' and the Respondent's signatures could be later dated as of the same date, thereby creating the false appearance that the clients and the Respondent had met and signed the forms on the same date.

23. Prior to executing the NAAF/KYC Forms, B2B Account Application Forms and Transfer Authorizations, the Respondent did not:

- a) take any steps to learn the essential facts relative to each account he accepted or ensure the suitability of the investments within each of those client accounts; and
- b) verify the identity of any of the clients for which he was having new accounts opened as required by federal legislation.

Post-Transfer Conduct

24. By December 2016, the Respondent learned that EC had decided to resign from the mutual fund industry and that he would not be working as the Respondent's licensed assistant.

25. In 2017, the Respondent began meeting the clients that had been transferred from EC either by telephone or in-person. During these meetings, the Respondent updated KYC information

and/or facilitated the clients' transfer to another Member of their choosing. Before the Respondent's termination by OFI, he met with approximately 164 of the 344 clients transferred.

Additional Factors

26. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

27. The Respondent has cooperated with Staff throughout the course of Staff's investigation and these proceedings.

28. There is no evidence that any clients suffered a loss as a result of the Respondent's misconduct.

29. By entering into this Settlement Agreement, the Respondent has saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

30. The Respondent has expressed remorse for his actions.

V. CONTRAVENTIONS

31. The Respondent admits that, between August 1, 2016 and December 31, 2016, he enabled Approved Person EC to complete new account application forms ("NAAFs") and Know-Your-Client ("KYC") forms to facilitate the transfer of 344 clients to the Respondent's Member when EC was not registered with the Member, thereby permitting EC to engage in registerable activity and securities related business outside the scope of his registration, contrary to MFDA Rules 1.1.1, 1.1.3(a), and 2.1.1.

32. The Respondent admits that, between August 1, 2016 and December 31, 2016, he executed NAAF and KYC forms for 344 clients as the Approved Person of record for the Member without meeting any of the clients and without taking any steps to learn the essential facts relative to each client or to ensure the suitability of the investments within each client's account, contrary to the

Member's policies and procedure and MFDA Rules 2.2.1(a), 2.2.1(e)(i), 2.2.2, 2.1.1, 2.5.1, and 1.1.2.

33. The Respondent admits that, between August 1, 2016 and December 31, 2016, he executed NAAFs and KYC forms for 344 clients as the Approved Person of record for the Member, in which he falsely represented that he had met with the clients, contrary to MFDA Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) the Respondent shall be prohibited for a period of 3 months, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-Law No. 1;
- b) the Respondent shall pay a fine of \$25,000, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.1.1(b) of MFDA By-Law No. 1;
- c) the Respondent shall write or rewrite and pass the Ethics and Professionalism Conduct Course offered by the IFSE Institute prior to being re-registered in the mutual fund industry, pursuant to section 24.1.1(f) of MFDA By-Law No. 1;
- d) the Respondent shall pay costs in the amount of \$5,000, in certified funds upon acceptance of the Settlement Agreement, pursuant to section 24.2 of MFDA By-Law No. 1;
- e) the Respondent shall in the future comply with MFDA Rules 1.1.1, 1.1.3(a), 2.1.1, 2.2.1(a), 2.2.1(e)(i), 2.2.2, and 2.5.1 and 1.1.2; and
- f) the Respondent will attend in person on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

35. 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 X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part 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

36. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central 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.

37. 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.

38. 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.

39. 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

40. 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.

41. If the Respondent does not comply with paragraph 3 of the draft Order attached as Schedule “A”, Staff and the Respondent shall have the right to appear before the Hearing Panel, upon a minimum of 10 days’ notice, for additional guidance on fulfilling the terms of the Order. Notwithstanding paragraph 35 of the Settlement Agreement 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.

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 6th day of November, 2018.

“Darragh John Anthony Pender”

Darragh John Anthony Pender

“MT”

Witness – Signature

MT

Witness – Print Name

“Shaun Devlin”

Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

Schedule “A”

**Order
File No.**



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**IN THE MATTER OF A SETTLEMENT HEARING
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF
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Re: Darragh John Anthony Pender

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 Darragh John Anthony Pender (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:

- a) between August 1, 2016 and December 31, 2016, enabled Approved Person EC to complete new account application forms (“NAAFs”) and Know-Your-Client (“KYC”) forms to facilitate the transfer of 344 clients to the Respondent’s Member

when EC was not registered with the Member, thereby permitting EC to engage in registerable activity and securities related business outside the scope of his registration, contrary to MFDA Rules 1.1.1, 1.1.3(a), and 2.1.1;

- b) between August 1, 2016 and December 31, 2016, executed NAAFs and KYC forms for 344 clients as the Approved Person of record for the Member without meeting any of the clients and without taking any steps to learn the essential facts relative to each clients or to ensure the suitability of the investments within each client's account, contrary to the Member's policies and procedure and MFDA Rules 2.2.1(a), 2.2.1(e)(i), 2.2.2, 2.1.1, 2.5.1, and 1.1.2; and
- c) between August 1, 2016 and December 31, 2016, he executed NAAFs and KYC forms for 344 clients as the Approved Person of record for the Member, in which he falsely represented that he had met with the clients, 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 be prohibited for a period of 3 months, commencing from the date the Settlement Agreement is accepted by the Hearing Panel, from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-Law No. 1;
2. The Respondent shall pay a fine of \$25,000, pursuant to section 24.1.1(b) of MFDA By-Law No. 1;
3. The Respondent shall write or rewrite and pass the Ethics and Professionalism Conduct Course offered by the IFSE Institute prior to being re-registered in the mutual fund industry, pursuant to section 24.1.1(f) of MFDA By-Law No. 1;
4. The Respondent shall pay costs in the amount of \$5,000, pursuant to section 24.2 of MFDA By-Law No. 1;

5. The Respondent shall in the future comply with MFDA Rules 1.1.1, 1.1.3(a), 2.1.1, 2.2.1(a), 2.2.1(e)(i), 2.2.2, and 2.5.1 and 1.1.2; and

6. 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 649558