



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: Joshua O'Brien

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, Joshua O’Brien (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 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 November 26, 2013 to January 31, 2019, when he was terminated as a result of the events described below, the Respondent was registered in Newfoundland and Labrador as a dealing representative with Scotia Securities Inc. (the “Member”), a Member of the MFDA.

7. From December 29, 2015 to January 31, 2019, the Member designated the Respondent as a branch manager.

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

9. At all material times, the Respondent conducted business in the Labrador City, Newfoundland area.

Misconduct

10. At all materials times, the Member’s policies and procedures, among other things:
- a) stipulated that only individuals registered as dealing representatives were authorized to discuss mutual fund investments with, or accept trade orders from, clients; and
 - b) prohibited stealth advising by requiring that all trades be entered and recorded in the name of the dealing representative who met with and advised the client.

11. At all material times, the Respondent carried on business from a Member branch located in Labrador City, Newfoundland, (the “Branch”). The Respondent was designated by the Member as the Branch Manager at the Branch.

12. From July 27, 2016 to June 4, 2018, TS was registered as a dealing representative with another MFDA Member. At all material times, TS was in the process of transferring his registration as a dealing representative to the Member.

13. Beginning in or about September 2018, TS worked for the Member in an unregistered capacity at the Branch. TS was not registered in the securities industry in any capacity and therefore was not permitted to engage in securities related business with clients for the account of the Member.

14. Commencing in September 2018, the Respondent allowed TS to meet with 22 clients (the “Clients”) in the absence of the Respondent. During those meetings, TS provided investment advice to Clients, recommended trades and obtained instructions and account forms from the Clients with respect to trading to be processed in their investment accounts at the Member (the “Stealth Advising Activities”).

15. Between September 6, 2018 and January 7, 2019, the Respondent signed trade order forms and arranged for them to be processed using his representative code and thereby facilitated the processing of 42 trades in investment accounts of the Clients based upon information that the Respondent received from TS without participating in any meetings or discussions with the Clients to provide investment advice to the Clients, obtain trading instructions from the Clients, assess the suitability of the proposed trades and ensure that the trades were authorized. Further detail about the 42 trades that the Respondent facilitated as described above is set out below:

Trade	Client	Account Type	Trade Date	Transaction Type	Amount
1.	Client #1	Registered Retirement Savings Plan (“RRSP”)	4-Dec-18	Buy PAC	\$18,008.13 \$350
2.	Client #2	Registered Education Savings Plan (“RESP”)	6-Sep-18	Sell	\$7,000.00
3.	Client #2	RESP	28-Nov-18	Sell	\$800.00
4.	Client #2	RESP	12-Dec-18	Sell	\$5,000.00
5.	Client #2	TFSA	4-Dec-18	Sell	\$25,380.51

Trade	Client	Account Type	Trade Date	Transaction Type	Amount
6.	Client #3	TFSA	5-Dec-18	Buy	\$4,481.37
7.	Client #4	TFSA	14-Sep-18	Sell	\$35,000.00
8.	Client #4	Open	25-Sep-18	Buy	\$24,000.00
9.	Client #5	TFSA	25-Sep-18	Buy	\$11,000.00
10.	Client #5	RRSP	14-Sep-18	Buy	\$49,000.00
11.	Client #6	RESP	19-Sep-18	Sell	\$5,000.00
12.	Client #7	TFSA	15-Oct-18	Buy	\$30,330.58
13.	Client #7	TFSA	15-Oct-18	Buy	\$22,000.00
14.	Client #7	Open	15-Oct-18	Buy	\$11,000.00
15.	Client #8	Open	30-Oct-18	Switch	\$151,779.70
16.	Client #8	Open	30-Oct-18	Buy	\$120,000.00
17.	Client #9	RRSP	13-Sep-18	Sell	\$20,000.00
18.	Client #9	Registered Retirement Income Fund ("RRIF")	13-Sep-18	Buy	\$20,000.00
19.	Client #10	RRSP	7-Dec-18	Buy Buy-PAC	\$12,812.7 \$100.00
20.	Client #10	RESP	20-Dec-18	Buy	\$120.00
21.	Client #11	TFSA	25-Oct-18	Buy	\$50.00
22.	Client #12	Open	5-Dec-18	Buy	\$12,800.00
23.	Client #13	RRSP	7-Jan-19	Buy Buy	\$2,500.00 \$2,500.00
24.	Client #14	TFSA	7-Jan-19	Buy	\$6,000.00
25.	Client #15	TFSA	7-Jan-19	Buy	\$6,000.00
26.	Client #15	RRSP	6-Nov-18	Buy	\$20,000.00
27.	Client #16	TFSA	22-Nov-18	Buy Buy-PAC	\$14,688.24 \$200.00
28.	Client #17	RRSP	4-Dec-18	Sell	\$5,000.00
29.	Client #17	RRSP	4-Dec-18	Sell	\$15,000.00
30.	Client #17	RRSP	11-Dec-18	Switch	\$213,492.18
31.	Client #17	RRIF	4-Dec-18	Transfer In	\$5,000.00
32.	Client #17	RRIF	4-Dec-18	Transfer In	\$15,000.00
33.	Client #17	RRIF	28-Dec-18	Sell	\$2,630.54
34.	Client #18	RRSP	19-Sep-18	Buy	\$24,740.66
35.	Client #18	RRSP	27-Sep-18	Buy	\$150.00
36.	Client #19	RESP	7-Jan-19	Sell	\$4,000.00
37.	Client #19	RESP	7-Jan-19	Sell	\$4,000.00
38.	Client #19	RESP	30-Nov-18	Buy	\$1,000.00
39.	Client #20	RRSP	3-Dec-18	Sell	\$39,199.08
40.	Client #20	RRIF	10-Dec-18	Sell	\$1,999.25
41.	Client #21	TFSA	7-Jan-19	Sell	\$3,563.11
42.	Client #22	RRSP	9-Oct-18	Sell	\$9,738.83

16. The Member was not aware of the Stealth Advising Activities that TS was engaging in or that the Respondent was not obtaining instructions directly from the Clients with respect to the 42

transactions listed in paragraph 15 above and, as a consequence, the Member was not aware that no Approved Person of the Member had provided advice, received instructions or taken steps to ensure the suitability of the trades processed on behalf of the Clients that are listed in the chart in paragraph 15 above.

17. By signing trade order forms to facilitate the processing of the trades listed above in paragraph 15, without communicating with the Clients concerning the trades or the content of those trade order forms, the Respondent failed to fulfill his obligations to use due diligence to:

- a) learn the essential facts relative to each Client and each order or account accepted;
- b) ensure that the acceptance of each order was within the bounds of good business practice;
- c) ensure that each order accepted or recommendation made for each account was suitable for the Client, in keeping with the Client's investment objectives and authorized by the Client; and
- d) explain to the Clients the features and risks of the securities transactions that were processed on their behalf.

18. The Respondent did not report to the Member that TS, an unregistered individual, was meeting with clients to provide investment advice, recommend trades and accept client instructions with respect to clients and their investment accounts at the Member, as described above.

The Respondent Facilitated Stealth Advising

19. By allowing TS to meet with clients to provide investment advice and trade recommendations to Clients and accept instructions from Clients with respect to their investment accounts at the Member, as described above, the Respondent facilitated securities related business that was carried on for the account of the Member and through the facilities of the Member by an unregistered individual.

20. As noted above in paragraph 13, TS was not an Approved Person of the Member and was not in an employer-employee relationship, a principal-agent relationship or an introducing dealer-carrying dealer relationship with the Member as required by MFDA Rule 1.1.1(c).

21. By allowing TS to meet with clients in the absence of the Respondent for the purpose of engaging in securities related business with clients and by signing trade forms to facilitate the processing of trades recommended to Clients by TS or trade instructions received from Clients by

TS without personally communicating with the Clients or otherwise using the necessary due diligence to ensure that the recommendations were suitable and authorized, the Respondent facilitated stealth advising by TS.

Branch Manager Supervision

22. By allowing TS to meet with clients, as described above, and by failing to ensure that an Approved Person of the Member was advising the Clients and obtaining instructions from the Clients with respect to trades being processed in their investment accounts at the Member, the Respondent, in his capacity as branch manager, failed to adequately supervise the activities at the Branch to ensure compliance with MFDA Rules and with applicable securities legislation by the Member and its Approved Persons.

Additional Factors

23. In September 2018, the Member discovered the Respondent's misconduct described above when another dealing representative at the Branch informed it that the Respondent was permitting and facilitating Stealth Advising Activities by TS.

24. The Member contacted each Client and confirmed that the Clients had authorized the trades that were recommended by TS and processed in their investment accounts at the Member as described above, and also reviewed and confirmed the accuracy of Know-Your-Client information that was recorded in respect of their accounts.

25. No Clients complained to the Member or the MFDA about the Respondent or TS relating to the misconduct described herein.

26. There is no evidence of financial harm to Clients as a result of the Respondent's misconduct described above.

27. On January 31, 2019, the Member terminated the Respondent as a result of the misconduct described above.

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

29. The Respondent has cooperated with MFDA Staff throughout the investigation and the disciplinary proceedings herein.

30. The Respondent states that he has limited financial means and as a result he is unable to pay a monetary penalty that is greater than the total of the fine and costs amounts set out in this Settlement Agreement. The Respondent has provided evidence to MFDA Staff which confirms that he is currently unemployed, has high levels of personal debt, has effectively no borrowing room available on his line of credit, has a Locked-In Retirement Account that contains a modest balance and has negligible other personal savings.

V. CONTRAVENTIONS

31. The Respondent admits that:

- a) between September 6, 2018 and January 7, 2019, he:
 - i. allowed an unregistered individual to meet with clients in the absence of the Respondent in order to discuss and recommend trades to the clients; and
 - ii. signed trade forms to process the trades recommended to 22 clients by the unregistered individual without communicating with the clients or otherwise using the necessary due diligence to ensure that the recommendations were suitable and authorized;

thereby facilitating stealth advising by the unregistered individual, contrary to the Member's policies and procedures and MFDA Rules 1.1.1(c), 2.2.1, 2.1.1, 2.5.1 and 1.1.2; and

- b) between September 6, 2018 and January 7, 2019, in his capacity as branch manager, he failed to adequately supervise the activities at a branch to ensure compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons, contrary to MFDA Rules 2.5.5(f) and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- a) 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 2 years from the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No.1;

- b) 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, which shall be payable by post-dated cheques as follows:
 - (i) \$833.34 on June 9, 2022;
 - (ii) \$833.34 on July 9, 2022;
 - (iii) \$833.33 on August 9, 2022;
 - (iv) \$833.33 on September 9, 2022;
 - (v) \$833.33 on October 9, 2022; and
 - (vi) \$833.33 on November 9, 2022;
- c) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by a Hearing Panel;
- d) the Respondent shall in the future comply with MFDA Rules 1.1.1(c), 2.2.1, 2.1.1, 2.5.1, 1.1.2 and 2.5.5(f); and
- e) the Respondent will attend by videoconference on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

33. 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 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

34. 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. 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.

35. 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 any rights to a full hearing, a review hearing or appeal 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.

36. 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.

37. 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

38. 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

39. 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.

40. 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

41. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 1st day of December, 2021.

“Joshua O’Brien”

Joshua O’Brien

“JM”

Witness – Signature

JM

Witness – Print Name

“Charles Toth”

Staff of the MFDA

Per: Charles Toth

Vice-President, 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: Joshua O'Brien

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 MFDA By-law No. 1 in respect of Joshua O'Brien (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 admitted in Part IV of the Settlement Agreement and the contraventions admitted in Part V of the Settlement Agreement, the Hearing Panel is of the opinion that:

- (a) between September 6, 2018 and January 7, 2019, the Respondent:
 - i. allowed an unregistered individual to meet with clients in the absence of the Respondent in order to discuss and recommend trades to the clients; and
 - ii. signed trade forms to process the trades recommended to 22 clients by the unregistered individual without communicating with the clients or otherwise

using the necessary due diligence to ensure that the recommendations were suitable and authorized;

thereby facilitating stealth advising by the unregistered individual, contrary to the Member's policies and procedures and MFDA Rules 1.1.1(c), 2.2.1, 2.1.1, 2.5.1 and 1.1.2; and

- (b) between September 6, 2018 and January 7, 2019, in his capacity as branch manager, the Respondent failed to adequately supervise the activities at a branch to ensure compliance with the By-laws, Rules and Policies and with applicable securities legislation by the Member and its Approved Persons, contrary to MFDA Rules 2.5.5(f) and 2.1.1.

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

1. 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 2 years from the date that this Settlement Agreement is accepted by the Hearing Panel, pursuant to section 24.1.1(e) of MFDA By-law No.1;

2. 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, which shall be payable by post-dated cheques as follows:

- (i) \$833.34 on June 9, 2022;
- (ii) \$833.34 on July 9, 2022;
- (iii) \$833.33 on August 9, 2022;
- (iv) \$833.33 on September 9, 2022;
- (v) \$833.33 on October 9, 2022; and
- (vi) \$833.33 on November 9, 2022;

3. The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1, which shall be payable in certified funds on the date that this Settlement Agreement is accepted by the Hearing Panel; 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 859866