



**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: W. H. Stuart Mutuals Ltd.**

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**SETTLEMENT AGREEMENT**

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**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, W. H. Stuart Mutuals Ltd. (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 approved by the MFDA.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent is registered as a mutual fund dealer in all Canadian provinces except for Quebec.

7. The Respondent has been a Member of the MFDA since March 4, 2003.

#### **Corporate Structure**

8. The Respondent’s head office is located in Unionville, Ontario (the “Head Office”). In 2009, the Respondent had one other branch office which was located in Burlington, Ontario. The Burlington branch is no longer open. As of September 30, 2011, the Respondent had 229 sub-branches located throughout Canada.

## **The 2009 Compliance Examination**

9. Commencing on March 23, 2009, MFDA Compliance Staff conducted a compliance examination (the “2009 Examination”) in order to assess compliance by the Respondent with the By-laws, Rules and Policies of the MFDA during the period from October 1, 2006 to February 28, 2009. During the 2009 Examination, MFDA Compliance Staff conducted a review of the Respondent’s operations at the Respondent’s Head Office in Unionville, at a branch office located in Burlington, Ontario and at three sub-branch offices of the Respondent located in Orangeville, Markham and Toronto, Ontario.

10. The results of the 2009 Examination were summarized and delivered to the Respondent in a report dated August 21, 2009 (the “2009 Report”).

11. The 2009 Report identified compliance deficiencies, including the fact that the Respondent failed to establish, implement and maintain adequate policies and procedures for conducting trade supervision including supervision of leveraged trading or to ensure the suitability of leveraging recommendations made by Approved Persons to clients.

### *Inadequate Trade Supervision*

12. During the 2009 Examination, MFDA Compliance Staff identified deficiencies in the trade supervision conducted by the Respondent’s branch managers and Head Office Compliance Staff insofar as they failed to maintain records of queries made, responses received from Approved Persons, and resolutions achieved as a result of any supervisory inquiries that were made.

13. As a result of deficiencies in the Respondent’s trade supervision practices, there is no evidence that the Respondent was conducting adequate trade supervision to prevent the processing of trades which may have been unsuitable for clients.

### *Inadequate Supervision of Leveraged Trading and Leveraging Recommendations*

14. During the 2009 Examination, MFDA Compliance Staff also identified deficiencies in the Respondent’s internal controls and policies and procedures for the supervision of leveraged

accounts and leveraging recommendations. In particular, the Respondent's branch managers and head office compliance staff failed to document evidence of supervisory reviews of leveraging recommendations including records of suitability queries made, responses received and resolutions achieved as a result of supervisory inquiries.

15. As a result, leveraging recommendations which may have been unsuitable were processed by the Respondent without being subjected to a full supervisory review in accordance with MFDA Rules and Policies.

### **Financial Compliance Deficiencies**

16. By letter dated February 12, 2009, MFDA Financial Compliance Staff notified the Respondent that the Respondent had been designated in early warning pursuant to MFDA Rule 3.4.2(a)(iii) because the operating loss revealed by the Respondent's monthly financial statement filings for the quarter ending December 31, 2008 exceeded the Respondent's Risk Adjusted Capital ("RAC").

17. As a consequence of its designation in early warning, the early warning restrictions described in MFDA Rule 3.4.2(b) became applicable to the Respondent until MFDA Financial Compliance Staff determined that early warning restrictions were no longer required in accordance with MFDA Rule 3.4.4.

18. By letter dated February 18, 2009, senior officers of the Respondent acknowledged that the Respondent had been designated in early warning and was required to comply with the early warning restrictions set out in MFDA Rule 3.4.2(b)(iv).

### *Unauthorized Payments*

19. When the Respondent submitted its monthly filings of Financial Questionnaires and Reports ("FQRs") in accordance with MFDA Rules 3.5.1(a) and 3.4.2(b)(ii)(B) for the months ended February 28, 2009 and July 31, 2009, desk reviews of the FQRs completed by MFDA Financial Compliance Staff revealed that:

- a) in its February 2009 FQR, the Respondent reported that a discretionary bonus expense was incurred after the Respondent was designated in early warning. The bonus expense included 2 cash payments totaling \$5,500 that were made to or on behalf of an officer and shareholder of the Respondent; and
- b) in its July 2009 FQR, the Respondent reported a decrease of \$94,141 in accounts payable and accrued expenses that resulted from a payment to a related party called W.H. Stuart Insurance Agency.

20. The Respondent made the payments described in paragraph 19 above without the prior written consent of the MFDA, contrary to the early warning restrictions set out in MFDA Rule 3.4.2(b)(iv) which were applicable to the Respondent at the time.

21. On March 27, 2009, after becoming aware of the cash payments reported in the February 2009 FQR, Financial Compliance Staff informed the Respondent in writing that the February 2009 payments appeared to be in contravention of early warning conditions and that enforcement action might be warranted as a consequence.

22. Neither one of the payments described in paragraph 19 above resulted in a RAC deficiency.

23. By letter dated September 28, 2009, MFDA Financial Compliance Staff informed the Respondent that it was no longer designated in early warning.

### **Current Practices**

24. Since the 2009 Report was received by the Respondent, the Respondent has established and implemented revisions to its policies and procedures, including its policies and procedures with respect to trade supervision and the supervision of leveraging recommendations in order to enhance its compliance with MFDA By-Laws, Rules and Policies. The Respondent undertakes to comply with its revised policies and procedures in the future. The Respondent has not been designated in early warning since September 28, 2009.

### **Historical Leveraging**

25. The Respondent has developed a plan (the “Leverage Review Action Plan”), which has been reviewed by MFDA Staff, in order to identify and address cases in which unsuitable leveraging recommendations may have been made to clients of the Respondent prior to the implementation of the Respondent’s revised policies and procedures. The Respondent has agreed to fully carry out the terms of the Leverage Review Action Plan to the satisfaction of MFDA Staff. The Respondent understands and agrees that it may be subject to further disciplinary action if the Leverage Review Action Plan is not adequately implemented.

## **V. CONTRAVENTIONS**

26. The Respondent admits that prior to February 28, 2009, it failed to establish, implement, maintain and adhere to adequate policies and procedures to ensure that branch managers and head office compliance staff maintained adequate records of trade supervision that was conducted including records of inquiries made, responses received and resolutions achieved and as a result, the Respondent was not able to demonstrate the suitability of all trades and leveraging strategies that were processed on behalf of its clients, contrary to MFDA Rules 2.2.1, 2.5 and 2.10 and MFDA Policy No. 2.

27. The Respondent admits that while it was designated in early warning from February 12, 2009 to September 28, 2009, the Respondent breached early warning restrictions that were applicable to it by paying a bonus to an officer of the Respondent in February 2009 and by making a direct or indirect payment to a related party in July 2009 without the prior written consent of MFDA Staff, contrary to MFDA Rule 3.4.2(b)(iv)(C).

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$45,000 upon the acceptance of this Settlement Agreement;
- (b) the Respondent shall pay the costs of this proceeding in the amount of \$2,500 upon the acceptance of this settlement;
- (c) The Respondent agrees that the fine and costs shall be payable as follows:
  - i) \$20,000 of the fine and \$2,500 in costs shall be payable immediately upon

acceptance of the Settlement Agreement; and

ii) the remaining \$25,000 of the fine shall be paid by 10 monthly installments of \$2,500 per month payable on the last day of each month commencing on January 31, 2012;

(d) the Respondent shall implement the revised policies and procedures and the Leverage Review Action Plan referenced in this Settlement Agreement;

(e) the Respondent acknowledges that its obligations to handle complaints promptly and fairly in accordance with MFDA Rule 2.11 and MFDA Policy No. 3 are unaffected by this Settlement Agreement;

(f) in accordance with s. 24.4.2 of the By-law, the Respondent agrees that in the future, it shall comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including, MFDA Rules 2.2.1, 2.5, 2.10, 3.4.2(b)(iv) and MFDA Policy No. 2; and

(g) a senior officer of the Respondent will attend the settlement hearing in person.

## **VII. STAFF COMMITMENT**

29. 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 or any of its officers or directors 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 including any possible contraventions associated with the Respondent's complaint handling obligations 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**

30. 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.

31. 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 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.

32. 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.

33. 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.

#### **IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

34. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff reserves the right to bring proceedings against the Respondent and any of its officers or directors under section 24.3 of the MFDA By-law 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 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**

35. 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.

36. Whether or not, this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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**

37. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated: December 16, 2011

“Kel Tonner”  
\_\_\_\_\_  
Witness- Signature

“Dino DeRosa”  
\_\_\_\_\_  
W. H. Stuart Mutuals Ltd.  
Per: Dino De Rosa, Chief Compliance Officer

Kel Tonner  
\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Vice-President, Enforcement



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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: W. H. Stuart Mutuals Ltd.**

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**ORDER**

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**WHEREAS** on December 16, 2011, 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 W. H. Stuart Mutuals Ltd. (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated December 16, 2011 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to sections 20 and 24.1 of MFDA By-law No. 1;

**AND WHEREAS** on the basis of the agreed facts contained in Part IV of the Settlement Agreement and the contraventions admitted by the Respondent in Part V of the Settlement Agreement, the Hearing Panel is of the opinion that:

- a) prior to February 28, 2009, the Respondent failed to establish, implement, maintain and adhere to adequate policies and procedures to ensure:

- i) that branch managers and head office compliance staff conducted adequate trade supervision;
- ii) that adequate records were maintained of trade supervision that was conducted including records of inquiries made, responses received and resolutions achieved; and
- iii) the suitability of leveraged trades and leveraging recommendations that Approved Persons made to the Respondent's clients;

contrary to MFDA Rules 2.2.1, 2.5 and 2.10 and MFDA Policy No. 2; and

- b) while the Respondent was designated in early warning from February 12, 2009 to September 28, 2009, the Respondent breached early warning restrictions that were applicable to it by paying a bonus to an officer of the Respondent in February 2009 and by making a direct or indirect payment to a related party in July 2009 without the prior written consent of MFDA Staff, contrary to MFDA Rule 3.4.2(b)(iv)(C).

**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 \$45,000 upon the acceptance of this Settlement Agreement;
2. The Respondent shall pay the costs of this proceeding in the amount of \$2,500 upon the acceptance of this Settlement Agreement;
3. The Respondent shall implement the revised policies and procedures and the Leverage Review Action Plan referenced in the Settlement Agreement.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]