



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: Domenic Fanelli

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, Domenic Fanelli.

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. The Respondent was registered as a mutual fund salesperson with Investors Group Financial Services Inc. (“IG”) from February 26, 1998 to September 30, 2003 when he resigned in good standing. Subsequently, the Respondent was registered with AXA Financial Services Inc. (“AXA”) from February 10, 2005 to October 20, 2005.

7. IG is registered in Ontario as a mutual fund dealer and became a Member of the MFDA on March 7, 2002.

8. AXA was registered in Ontario as a mutual fund dealer from April 2002 to October 2007. AXA became a Member of the MFDA on November 15, 2002.

Background

9. From 1998 to 2002, the Respondent, Michele Torchia (“Torchia”) and another mutual fund salesperson named GG worked together at the City Centre Drive branch of IG.

Undisclosed Outside Business Activity

10. In or about January 2002, without the knowledge or approval of IG, the Respondent, Torchia and GG entered into an arrangement to lease office space from a company whose principal was DG. The office was located in Etobicoke (the “Etobicoke Office”). The Respondent, Torchia and GG began working at the Etobicoke Office on a regular basis. They never disclosed the existence of the Etobicoke Office to IG or the fact that they were working from it.

11. In April 2002, KZ registered his business location at 900 The East Mall in Toronto as an AXA branch office (the “AXA Office”). KZ became registered as the branch manager in June 2002. KZ engaged in discussions with the Respondent, Torchia and GG about the possibility that they might transfer their registration from IG to AXA and become Approved Persons associated with KZ’s AXA Office and other business opportunities.

12. Between July 2002 and September 2003, the Respondent became involved with the following outside business activity in addition to being registered as a mutual fund salesperson with IG, as more particularly described below.

a) Mercantile Holdings – the Respondent becomes involved in business initiatives in collaboration with two business associates, VJ and AG prior to the

Spring of 2003. (Incorporated as Mercantile Holdings Inc. by the Respondent, VJ and AG on September 13, 2004. The Respondent, VJ and AG were directors.)

b) Kewl International Inc. (“Kewl”) (formerly **Presidential Holdings Inc.** – a Florida based company acquired by the Respondent, VJ and GG in June 2003. The Respondent was the Chairman of the Board, President and Chief Executive Officer.) – the Respondent was the Chairman of the Board, President and Chief Executive Officer of Kewl until about November 2004. At various times Kewl also carried on business under the names:

c) Synergistics International Inc.

d) Meg Athletics

e) Pure H2O Inc.

Securities Related Business

13. In June 2003, as described above, the Respondent, VJ and AG acquired a Florida based company called Presidential Holdings Inc. and changed the name to Kewl. They subsequently began describing Kewl as the sole U.S. distributor for a successful sports apparel company, KC, which had been conducting business in Canada since 1999.

14. However, even before their acquisition of Presidential Holdings Inc. and as early as December 2002, the Respondent, VJ and AG began approaching investors to recommend that they acquire shares in Kewl. Kewl was publicly traded on Nasdaq after July 2003.

15. In or about December 2002, an investor named AL was approached by the Respondent and AG and offered the opportunity to invest in Kewl. Between February 2003 and September 2003, the Respondent solicited and obtained 3 cheques from AL totalling approximately \$335,925 for investments in Kewl. The Respondent has failed to account for or return the money received from AL.

16. In or about March or April 2003, DG was approached by the Respondent to invest in shares of Kewl. At the Respondent's invitation, DG attended a Kewl promotional event on July 30, 2003. The purpose of the event was to persuade investors to purchase shares of Kewl. On July 31, 2003, the Respondent solicited and obtained \$7,800 from DG for investment in Kewl. The Respondent has failed to account for or return the money received from DG.

17. Following the recommendation of the Respondent, DG subsequently opened a discount brokerage account for the purpose of making additional investments in Kewl in or about the summer of 2003. Based on the Respondent's advice, DG made additional investments in shares of Kewl for himself and his close relatives and friends totalling approximately \$40,000 using the discount brokerage account.

18. The Respondent never disclosed to IG that he was promoting the purchase of shares in Kewl to investors outside of the Member.

Failure to Cooperate

19. By letters dated September 13, 2006 and March 16, 2007, MFDA Staff requested that the Respondent produce bank statements from February 2002 to September 2005 for all bank accounts to which he had signing authority or held a direct or indirect interest, including any corporate account. The Respondent failed to produce the requested bank statements.

20. On May 11, 2007, the Respondent attended an interview with MFDA Staff and undertook to produce the previously requested bank statements to MFDA Staff. By letter dated June 13, 2007, MFDA Staff sent a follow up request concerning the Respondent's undertaking to produce the requested bank statements. No bank statements were ever produced to MFDA Staff by the Respondent.

V. CONTRAVENTIONS

21. The Respondent admits that, between July 2002 and September 2003, he was involved with outside business activity that was not disclosed to or approved by IG, contrary to MFDA Rule 1.2.1(d)(iii).

22. The Respondent admits that, between February 2003 and September 2003, he recommended and facilitated the investment of funds in Kewl, a publicly traded company unknown to and unapproved by IG, outside the Member and thereby engaged in securities related business contrary to the terms of his registration as a mutual fund salesperson under the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as am. and MFDA Rule 2.1.1.

23. The Respondent admits that, commencing on or about September 13, 2006, by failing to provide MFDA Staff with copies of bank statements that were requested during the course of MFDA Staff's investigation of his conduct, the Respondent breached section 22.1 of MFDA By-law No. 1.

VI. TERMS OF SETTLEMENT

24. 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;
- (b) The Respondent shall pay a fine in the amount of \$5,000 upon the acceptance of this Settlement Agreement; and
- (c) The Respondent shall pay \$1,000 in respect of the costs of the investigation and settlement of this matter upon the acceptance of this Settlement Agreement.
- (d) the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

25. 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

26. 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.

27. 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.

28. 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.

29. 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

30. 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 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

31. 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.

32. 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

33. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: September 10, 2010

“Rose Fanelli”

Witness - Signature

Rose Fanelli

Witness - Print name

“Domenic Fanelli”

Domenic Fanelli

“Mark Gordon”

Staff of the MFDA
Per: Mark T. Gordon
Executive Vice-President



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**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: Domenic Fanelli

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 Domenic Fanelli (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:

- i. between July 2002 and September 2003, was involved with outside business activity that was not disclosed to or approved by the Member, Investors Group Financial Services Inc. ("IG"), contrary to MFDA Rule 1.2.1(d)(iii);

- ii. between February 2003 and September 2003, recommended and facilitated the investment of funds in Kewl International Inc., a publicly traded company unknown to and unapproved by IG, outside the Member and thereby engaged in securities related business contrary to the terms of his registration as a mutual fund salesperson under the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, as am. and MFDA Rule 2.1.1;
- iii. commencing on or about September 13, 2006, by failing to provide MFDA Staff with copies of bank statements that were requested during the course of MFDA Staff's investigation of his conduct, the Respondent breached 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. If at any time a non-party to this proceeding requests production of, or access to, the record of this proceeding, including all exhibits and transcripts, then the MFDA Corporate Secretary shall not provide copies of, or access to, the requested documents to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*;
2. 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;
3. The Respondent shall pay a fine in the amount of \$5,000; and
4. The Respondent shall pay \$1,000 in respect of the costs of the investigation and settlement of this matter.

DATED this [day] day of [month], 2010.

Per: _____
The Hon. John B. Webber, Q.C., Chair

Per: _____
Robert C. White, Industry Representative

Per: _____
Darcy M. Lake, Industry Representative

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