



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: Alan Roy Kruss

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, Alan Roy Kruss.

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 herein) 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 July 16, 2007 to the present, the Respondent has been registered in Ontario as a mutual fund salesperson in Ontario with Partners in Planning Financial Services Ltd. (“Partners in Planning”).

7. The Respondent was previously registered as a mutual fund salesperson in Ontario as follows:

- (a) from November 2004 to June 2007: Equity Associates Inc. (“Equity Associates”);
- (b) from November 1, 2002 to November 17, 2004: ASL Direct Inc. (“ASL Direct”); and

(c) from April 4, 2002 to October 21, 2002: IPC Investment Corporation.

8. Partners in Planning became a member of the MFDA on December 7, 2001.

The Maypoint Debentures

9. Maypoint Investments Inc. (“Maypoint”) is an Ontario company incorporated on July 14, 2004.

10. At the material time, Maypoint purportedly carried on business raising funds through the sale of debentures to investors. The Maypoint debentures were for a term of one year, required a minimum investment of \$25,000 and paid investors 14% annually.

11. The proceeds from the sale of the Maypoint debentures were purportedly invested by Maypoint in the secured notes of an entity known as GTA Financial Inc. (“GTA”), which in turn purportedly used those proceeds to advance consumer loans to individuals to finance the purchase of used vehicles.

12. The Maypoint debentures were sold by way of an offering memorandum in reliance upon the exemptions from the prospectus and registration requirements in the Securities Act (Ontario). The Maypoint debentures were distributed to investors in Ontario through limited market dealers, including PanFin Equicap Ltd.

13. The Maypoint debentures were not an investment product approved by Equity Associates or ASL Direct for sale by its representatives.

14. In or about September and October 2004, the Respondent, an Approved Person at ASL Direct, provided client KS (“KS”) with promotional documents and information regarding the Maypoint debentures and recommended that she invest in the Maypoint debentures.

15. Thereafter, on or about November 16, 2004, KS attended at the Respondent’s office, at which time the Respondent sold, referred or facilitated the sale of Maypoint debentures to KS for a total investment by KS in the amount of \$50,000.

16. In 2005, KS received interest payments on her Maypoint investment.

17. In or about November 2005, the Respondent, now an Approved Person at Equity Associates, met with KS and recommended to her that she reinvest her original capital of \$50,000 in Maypoint debentures.

18. In or about early 2006, acting on the Respondent's recommendation, KS reinvested her original capital of \$50,000 in Maypoint debentures.

19. The Respondent was paid referral fees in respect of the sales of the Maypoint debentures to KS at the time of her original investment and at the time she reinvested her original capital. The total referral fees received were approximately \$4,000. The Respondent did not disclose to either ASL Direct or Equity Associates that he had sold, referred or facilitated the sale of the Maypoint debentures to KS.

20. Neither the purchase of the Maypoint debentures by KS nor the resulting referral fees received by the Respondent were carried on for the account or through the facilities of the respective Members, ASL Direct and Equity Associates.

21. On June 9, 2006, shortly after KS reinvested her original capital in additional Maypoint debentures, GTA filed for bankruptcy. Maypoint has not made interest or principal payments to Maypoint debenture holders in several years and there is no reasonable prospect of it doing so.

V. CONTRAVENTIONS

22. The Respondent admits that between 2004 and 2006, while an Approved Person at two consecutive Members, he engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the sale of \$50,000 of an investment product to a client on two separate occasions, when that investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1.

VI. TERMS OF SETTLEMENT

23. The Respondent agrees to the following terms of settlement:
- (a) The Respondent shall pay a fine in the amount of \$10,000.00 pursuant to section 24.1.1(b) of MFDA By-law No. 1;
 - (b) The Respondent shall be suspended from acting as a mutual fund salesperson for a period of one month effective from the date of this Order pursuant to section 24.1.1(c) of MFDA By-law No. 1;
 - (c) The Respondent shall make a payment to client KS in the amount of \$50,000.00;
 - (d) The Respondent shall pay costs of the investigation in the amount of \$2,500.00 pursuant to section 24.2 of MFDA By-law No. 1;
 - (e) The Respondent shall successfully complete the IFSE (IFIC) Mutual Fund Dealer Compliance course (the “Course”), pursuant to section 24.1.1(f) of MFDA By-law No. 1;
 - (f) In the event that the Respondent does not successfully complete the Course by the end of one year after the date of the Order, the suspension shall resume until such time as the Respondent successfully completes the Course, pursuant to section 24.1.1(f) of MFDA By-law No. 1;
 - (g) The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder; and
 - (h) The Respondent shall attend in person at the Settlement Hearing.

VII. STAFF COMMITMENT

24. 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

25. 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.

26. 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.

27. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, 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.

28. 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

29. 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 proceedings 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

30. 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.

31. 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

32. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: December 15, 2009

Witness Signature: “M Darnbrough”

“Alan Roy Kruss”
Alan Roy Kruss

Witness Name (print): M Darnbrough

“Mark Gordon”
Staff of the MFDA
Per: Mark Gordon
Executive Vice-President



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Re: Alan Roy Kruss

ORDER

WHEREAS on _____, 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 Alan Roy Kruss (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated _____ (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 between 2004 and 2006, the Respondent, while an Approved Person at two consecutive Members, engaged in securities related business that was not carried on for the account of the Member and through the facilities of the Member by selling, referring or facilitating the sale of \$50,000 of an investment product to a client on two separate occasions when that

investment product had not been approved for sale by the Member, contrary to MFDA Rule 1.1.1;

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 exhibits in this proceeding that contain intimate financial or personal information, the Corporate Secretary shall prepare copies of the requested exhibits, redact any and all intimate financial or personal information therefrom, and provide the redacted copies to the non-party, pursuant to Rules 1.8(2) and (5) of the MFDA Rules of Procedure;
2. The Respondent shall pay a fine in the amount of \$10,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
3. The Respondent shall be suspended from acting as a mutual fund salesperson for a period of one month effective from the date of this Order pursuant to section 24.1.1(c) of MFDA By-law No. 1;
4. The Respondent shall pay costs of the investigation in the amount of \$2,500.00 pursuant to section 24.2 of MFDA By-law No. 1;
5. The Respondent shall successfully complete the IFSE (IFIC) Mutual Fund Dealer Compliance course (the "Course"), pursuant to section 24.1.1(f) of MFDA By-law No. 1;
6. In the event that the Respondent does not successfully complete the Course by the end of one year after the date of this Order, the suspension shall resume until such time as the Respondent successfully completes the Course, pursuant to section 24.1.1(f) of MFDA By-law No. 1; and
7. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder.

DATED this ____ day of December, 2009.

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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