



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: Clayton Kurt Swerdelian

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Mutual Fund Dealers Association of Canada (the “MFDA”) will hold a hearing on February 26, 2015 to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Prairie 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, Clayton Kurt Swerdelian (“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 accepted by the Hearing Panel.

IV. AGREED FACTS

REGISTRATION

6. From October 30, 2008 to March 23, 2009, the Respondent was registered on the National Registration Database as a mutual fund salesperson with Armstrong & Quaile Associates Inc. (“Armstrong & Quaile”) in Calgary, Alberta.

7. From April 2008 to October 2008, the Respondent was registered as a mutual fund salesperson with Laurier Capital Planning Inc. (“Laurier”), which ceased to be a Member of the MFDA on March 2, 2009.

8. From February 2007 to April 2008, the Respondent was registered as a mutual fund salesperson with Portfolio Strategies Corporation (“Portfolio Strategies”), a Member of the MFDA.
9. From November 2004 to February 2007, the Respondent was registered as a mutual fund salesperson with WFG Securities of Canada Inc. (“WFG”), a Member of the MFDA.
10. At the material time and to present, the Respondent resided in Calgary, Alberta.
11. From November 2004 to present, the Respondent was licensed to sell insurance in multiple provinces.
12. The Respondent has not been registered in the mutual fund industry since March 2009.

OUTSIDE BUSINESS ACTIVITY / DUAL OCCUPATION / REFERRAL ARRANGEMENT

13. The Pacific Financial Group of Companies (“Pacific Financial”) was a Vancouver-based group of British Columbia incorporated companies which carried on business (under various named entities) selling exempt market bonds and providing loans.
14. Among the products and services that Pacific Financial offered was a lending program that utilized a client’s RRSP or LIRA, personal credit, and ability to repay as a means to determine the overall loan value available to a borrower (“Lending Program”). The loans were subject to interest at the rate of approximately 8% to 9% per annum and Pacific Financial also charged the borrower additional administrative and account fees. It later became clear (and as is further explained at para. 23 below) that in the opinion of the Canada Revenue Agency (“CRA”), the Lending Program purported to offer tax advantages to a borrower based on the fact that the borrower would not have to pay the taxes that would ordinarily be required to pay if the monies were otherwise withdrawn from the borrower’s RRSP or LIRA.

15. On or about December 9, 2007¹, the Respondent executed a Loan Referral Agreement [the “December 2007 Investec Agreement”] with Investec Solutions Inc. (“Investec”), a British Columbia corporation which acted as an agent for Pacific Financial.

16. Under the terms of the December 2007 Investec Agreement, the Respondent agreed to act as an Investec “Referral Representative” on the following terms, among others:

- (a) the Respondent would refer prospective borrowers to Investec; and
- (b) the Respondent would be paid a referral fee of 1% of the face value of each loan prospect the Respondent referred to Investec.

17. On or about January 1, 2008, the Respondent executed another Investec Loan Referral Agreement [the “January 2008 Investec Agreement”], wherein he again agreed to act as an Investec “Referral Representative” on the same terms as the December 2007 Investec Agreement.

18. Between January 2008 and March 2009, while an Approved Person, the Respondent, pursuant to the January 2008 Investec Agreement, referred a total of 13 clients and 12 individuals to Pacific Financial, who obtained loans totalling \$942,000.

19. In the course of referring the clients and other individuals to Pacific Financial, the Respondent:

- (a) assisted them in completing the required paperwork;
- (b) explained Pacific Financial’s Lending Program to them; and
- (c) assisted them in completing Pacific Financial documents, including witnessing their signatures.

¹ The December 2007 Investec Agreement was backdated to November 20, 2007.

20. The Respondent, while an Approved Person, personally or through his companies, received referral fees from Investec for each loan he facilitated, totalling \$9,420.

21. At no time did the Respondent obtain written approval from Portfolio Strategies, Laurier, or Armstrong & Quaille to refer clients or other individuals to, or to engage in outside business activities with, Pacific Financial and Investec.²

22. None of Portfolio Strategies, Laurier, or Armstrong & Quaille had entered into referral arrangements with either Pacific Financial or Investec in accordance with the requirements for such arrangements as set out in MFDA Rule 2.4.2.³

23. In or about October 2010, the CRA wrote to some or all of the clients and individuals who had participated Lending Program advising them, among other things, that the CRA had concerns about the Lending Program, and would be reassessing their taxes owing. As a result of CRA's concerns, many if not all of the participants in the Lending Program faced additional tax liabilities. The CRA review of the Lending Program is currently being disputed and challenged.

V. CONTRAVENTIONS

24. The Respondent admits that from January 2008 to March 2009, he referred 13 clients and 12 individuals to Pacific Financial and Investec to obtain loans in the total amount of \$942,000 and received referral fees in the amount of \$9,420 for doing so, such that he:

- i. had and continued in another gainful occupation for which he did not obtain written approval from the Members with whom he was registered, contrary to MFDA Rules 1.2.1(d)⁴ and 2.1.1; and

² The material time addressed herein is November 2007 to March 2009. As stated in the "Registration History" section above, the Respondent was registered with Portfolio Strategies commencing February 2007 until he transferred to Laurier in April 2008. He remained at Laurier until October 2008, when he transferred again to Armstrong & Quaille. He was terminated by Armstrong & Quaille on March 23, 2009.

³ There is no evidence that Portfolio Strategies, Laurier or Armstrong & Quaille had entered into referral arrangements of any kind with Pacific Financial or Investec, whether compliant with MFDA Rule 2.4.2 or otherwise.

- ii. entered into a referral arrangement as it related to the loans, contrary to MFDA Rules 2.4.2, 2.1.4 and Rule 2.1.1.

VI. TERMS OF SETTLEMENT

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

- i. 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 six months commencing from the date of the Hearing Panel's final Order herein, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- ii. the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iii. the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- iv. the Respondent shall attend in person at the Settlement Hearing; and
- v. the Respondent shall in future comply with MFDA Rules 1.2.1(c), 2.4.2, 2.1.4 and MFDA Rule 2.1.1.

VII. STAFF COMMITMENT

26. 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 contraventions that are not set out in Part IV of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions set out in Part IV, 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.

⁴ MFDA Rule 1.2.1(d) has since been re-numbered as MFDA Rule 1.2.1(c).

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

27. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on February 26, 2015.

28. 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.

29. 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.

30. 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

31. 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

32. 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.

33. 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

34. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 24th day of February, 2015.

“Joshua Sadovnick”

Witness – Signature

“Clayton Kurt Swerdelian”

Clayton Kurt Swerdelian

Joshua Sadovnick

Witness – Print name

“Shaun Devlin”

Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement

Schedule “A”

Order

File No. 201237



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: Clayton Kurt Swerdelian

ORDER

WHEREAS on March 21, 2014, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice Hearing in respect of Clayton Kurt Swerdelian (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated February __, 2015 (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 the Hearing Panel is of the opinion that the Respondent from January 2008 to March 2009, referred 13 clients and 12 individuals to outside entities to obtain loans in the total amount of \$942,000 and received referral fees in the amount of \$9,420 for doing so, such that he:

- i. had and continued in another gainful occupation for which he did not obtain written approval from the Members with whom he was registered, contrary to MFDA Rules 1.2.1(d) (since renumbered as Rule 1.2.1(c)) and Rule 2.1.1; and
- ii. entered into a referral arrangement as it related to the loans, contrary to MFDA Rules 2.4.2, 2.1.4 and Rule 2.1.1.

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

- i. 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 six months commencing from the date of this Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- ii. the Respondent shall pay a fine in the amount of \$10,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iii. the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1;
- iv. the Respondent shall in future comply with MFDA Rules 1.2.1(c), 2.4.2, 2.1.4 and MFDA Rule 2.1.1; and
- v. If at any time a non-party to this proceeding requests production of, or access to, any materials filed in, or 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*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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