



**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: Byron H. Daues**

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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, Byron H. Daues.

**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 XI) 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 has been registered in the mutual fund industry since April 2000.

7. Since September 8, 2011, the Respondent has been registered in Ontario as a mutual fund salesperson with Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA.

8. From March 22, 2007 to July 22, 2011, the Respondent was registered in Ontario as a mutual fund salesperson with IPC Investment Corporation (“IPC”), a Member of the MFDA. From June 21, 2007 to December 31, 2009, the Respondent was also registered in British Columbia as a mutual fund salesperson with IPC.

9. At all material times, the Respondent conducted business in the Courtice, Ontario area.

**Allegation #1: Borrowing from a Client**

10. For many years, the Respondent provided investment and financial planning advice to client AS. The Respondent also provided investment and financial planning advice to client AS's sister.

11. On April 29, 2011, client AS's sister passed away and client AS inherited her sister's estate. The Respondent assisted with the transfer of the sister's estate to client AS and was therefore aware that client AS had recently inherited monies.

12. In July 2011, the Respondent approached client AS and asked her for a loan.

13. On or about July 18, 2011, the Respondent and client AS entered into a verbal agreement whereby client AS agreed to loan \$40,000 to the Respondent (the "Loan Agreement"). As a term of the Loan Agreement, the Respondent agreed to repay the loan over a period of 48 months by making monthly payments of \$835 to client AS (amounting to a total repayment of \$40,080 by approximately June 2015).

14. Client AS was 70 years old and retired at the time she entered into the Loan Agreement with the Respondent.

15. On July 20, 2011, in furtherance of the Loan Agreement, the Respondent processed a redemption in the amount of \$40,000 in client AS's account with IPC and the proceeds of the redemption were deposited in client AS's bank account.

16. The Respondent did not disclose to IPC that he had entered into the Loan Agreement with client AS, or that client AS had redeemed mutual funds in the client's account at IPC in order to lend the monies to the Respondent. At all material times, IPC's policies and procedures

prohibited its Approved Persons, including the Respondent, from borrowing monies from clients.

17. The Respondent resigned from IPC effective July 22, 2011, after IPC advised the Respondent that he had breached the terms of his Principal Agent Agreement by failing to perform certain administrative functions required by IPC.<sup>1</sup>

18. On July 25, 2011, client AS delivered a cheque in the amount of \$40,000 to the Respondent, payable to the Respondent personally, in respect of the loan.

19. On July 28, 2011, the Respondent deposited the cheque from client AS in his bank account. The Respondent subsequently used these monies to pay personal expenses.

20. On August 15, 2011, the Respondent made a monthly payment of \$835 to client AS, in accordance with the terms of the Loan Agreement. As described in greater detail below, the Respondent failed to make any further payments to client AS until after client AS obtained a judgment against him in June 2012.

21. On September 8, 2011, the Respondent became registered as a mutual fund salesperson with Keybase.

22. On October 5, 2011, client AS transferred her accounts from IPC to Keybase. The Respondent was the mutual fund salesperson responsible for servicing the accounts of client AS at Keybase. The Respondent did not disclose to Keybase that he had borrowed monies from client AS and remained substantially indebted to her when the Respondent became registered with Keybase, when client AS transferred her accounts to Keybase, or at any time thereafter.

23. At all material times, Keybase's policies and procedures prohibited its Approved Persons, including the Respondent, from borrowing monies from clients.

24. In each of September, October, November and December 2011, following the

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<sup>1</sup> The Respondent's resignation from IPC is unrelated to the events at issue in this proceeding.

Respondent's failure to pay the respective monthly installment owing under the terms of the Loan Agreement, client AS telephoned the Respondent requesting payment. On each occasion, client AS promised that he would make the next monthly payment, as well as pay all arrears owing, forthwith.

25. On January 18, 2012, client AS sent a letter to the Respondent requiring him to immediately provide an outline of how he intended to pay all arrears owing and make his regular future payments.

26. In February 2012, client AS transferred her accounts out of Keybase.

27. On March 8, 2012, client AS commenced a civil action in the Ontario Superior Court of Justice against the Respondent to recover the monies owing to her pursuant to the Loan Agreement. The Respondent did not disclose to Keybase that client AS had commenced a civil action against him.

28. The Respondent did not defend the civil action.

29. On June 26, 2012, client AS obtained default judgment against the Respondent in the amount of \$50,507.53 plus legal costs of \$1,474.59. The Respondent did not disclose to Keybase that client AS had obtained default judgment against him.

30. On October 9, 2012, Keybase first became aware of the events described above when it received a complaint from client AS.

31. On or about November 13, 2012, the Respondent and client AS entered into an agreement for the payment of the amounts owed pursuant to the default judgment against the Respondent (the "Settlement"). The terms of the Settlement required the Respondent to, among other things:

- a) make a payment of \$10,000 to client AS by November 23, 2012; and
- b) make monthly payments of \$1,500 to client AS commencing December 16, 2012

until the balance of the default judgment was paid in full.

32. On or about November 19, 2012, the Respondent filed for bankruptcy under the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3). In the course of filing for bankruptcy, the Respondent claimed that he had total debts of approximately \$595,000.

33. The Respondent did not pay \$10,000 to client AS by November 23, 2012, as required by the terms of the Settlement.

34. On November 27, 2012 the Ontario Securities Commission required, as a term and condition of his registration, that the Respondent be subject to strict supervision until he satisfied his debt obligations to client AS. On about November 29, 2012, Keybase placed the Respondent on close supervision in accordance with this requirement.

35. Between about February 2013 and June 2014, the Respondent made periodic payments to client AS totaling approximately \$24,000.

36. As a term of the settlement of this proceeding, on or about July 22, 2014, the Respondent made a lump sum payment to client AS of all remaining monies owed to her pursuant to the judgment. The Respondent advises Staff that he borrowed monies from a family member in order to make the lump sum payment to client AS.

**Allegation #2: Failure to Report Complaints in respect of Personal Financial Dealings**

37. Contrary to his obligations pursuant to MFDA Policy No. 6, subsection 4.1(b)(v), the Respondent failed to report the events described below to the Member within 2 business days or at all:

- a) client AS's verbal complaints to the Respondent in each of September, October, November and December 2011 in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS;

- b) client AS's written complaint to the Respondent dated January 18, 2012, in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS; and
- c) client AS's civil action commenced against the Respondent in March 2012 claiming damages of \$40,000 plus costs and interest, in respect of the monies the Respondent borrowed from client AS.

38. As stated above, Keybase did not become aware that the Respondent had borrowed monies from client AS until October 9, 2012, when it received a complaint directly from client AS.

### **Additional Factors**

39. On February 12, 2013, Keybase commenced an unannounced audit of the Respondent's client files. Keybase did not identify further instances of the Respondent borrowing monies from clients.

40. On April 3, 2013, Keybase sent letters to all of the Respondent's mutual fund and insurance clients to determine if he had engaged in any personal financial dealings (including borrowing monies or offering private investment schemes) with them. None of the clients communicated any concerns to Keybase.

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

42. The Respondent cooperated with Staff during its investigation into his conduct.

43. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time and expense associated with conducting a contested disciplinary proceeding.

44. The Respondent has expressed remorse for his actions.

## **V. CONTRAVENTIONS**

45. The Respondent admits the following contraventions of the By-laws, Rules and Policies of the MFDA:

- a) commencing in July 2011, the Respondent engaged in personal financial dealings with a client when he borrowed \$40,000 from client AS, which he failed to repay, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1;
- b) the Respondent failed to report the following events, each of which constituted a complaint in respect of personal financial dealings with a client, to the Member within 2 business days or at all:
  - (i) client AS's verbal complaint to the Respondent in each of September, October, November and December 2011 in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS;
  - (ii) client AS's written complaint to the Respondent, dated January 18, 2012, in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS; and
  - (iii) client AS's civil action commenced against the Respondent in March 2012 claiming damages of \$40,000 plus costs and interest, in respect of the monies he borrowed from client AS;

contrary to MFDA Policy No. 6, subsection 4.1(b)(v).

## **VI. TERMS OF SETTLEMENT**

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



- (a) the Respondent will make a lump sum payment to client AS of all the monies owed to her pursuant to the judgment she obtained against the Respondent<sup>2</sup>;
- (b) the Respondent shall, for a period of two (2) months, be suspended from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- (c) 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, payable in 10 installments of \$1,000 due on or before the final business day of each month commencing November 28, 2014;
- (d) the Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1 payable in 10 installments of \$500 due on or before the final business day of each month commencing November 28, 2014;
- (e) if the Respondent fails to comply with subparagraphs (c) or (d), then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1 until all amounts due in accordance with subparagraphs (c) and (d) have been paid in full;
- (f) the Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1; and
- (g) the Respondent will attend in person, on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

47. 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 or

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<sup>2</sup> Client AS has confirmed receipt of all the monies owed to her by the Respondent.

contraventions described in Parts IV and V of this Settlement Agreement, subject to the provisions of Part X below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts or 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**

48. 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.

49. 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.

50. 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.

51. 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**

52. 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**

53. 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.

54. 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**

55. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

DATED this 19<sup>th</sup> day of August, 2014.

“Lisa L. Windsor”  
\_\_\_\_\_  
Witness – Signature

Lisa L. Windsor  
\_\_\_\_\_  
Witness – Print name

“Byron H. Daues”  
\_\_\_\_\_  
Byron H. Daues

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – 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: Byron H. Daues**

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**ORDER**

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**WHEREAS** on November 18, 2013, the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Hearing pursuant to section 24 of By-law No. 1 in respect of Byron H. Daues (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA (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**, as a term of the Settlement Agreement, the Respondent paid client AS all the monies owed to her pursuant to a civil judgment that she obtained against the Respondent;

**AND WHEREAS** the Hearing Panel is of the opinion that:

- a) commencing in July 2011, the Respondent engaged in personal financial dealings with a client when he borrowed \$40,000 from client AS, which he failed to repay, thereby giving rise to a conflict or potential conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the client, contrary to MFDA Rules 2.1.4 and 2.1.1;
  
- b) the Respondent failed to report the following events, each of which constituted a complaint in respect of personal financial dealings with a client, to the Member within 2 business days or at all:
  - (i) client AS's verbal complaint to the Respondent in each of September, October, November and December 2011 in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS;
  - (ii) client AS's written complaint to the Respondent, dated January 18, 2012, in respect of the Respondent's failure to make payments on account of the monies he borrowed from client AS; and
  - (iii) client AS's civil action commenced against the Respondent in March 2012 claiming damages of \$40,000 plus costs and interest, in respect of the monies he borrowed from client AS;

contrary to MFDA Policy No. 6, subsection 4.1(b)(v).

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

1. The Respondent shall, for a period of two (2) months, be suspended from conducting securities related business while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.;
  
2. 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, payable in 10 installments of \$1,000 due on or before the final business

day of each month commencing November 28, 2014.

3. The Respondent shall pay costs in the amount of \$5,000 pursuant to s. 24.2 of MFDA By-law No. 1 payable in 10 installments of \$500 due on or before the final business day of each month commencing November 28, 2014.

4. If the Respondent fails to comply with paragraphs 2 or 3, then without further notice to the Respondent, the Respondent shall summarily be suspended from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to s. 24.1.1(e) of MFDA By-law No. 1 until all amounts due in accordance with paragraphs 2 and 3 have been paid in full.

5. The Respondent shall in the future comply with MFDA Rules 2.1.4 and 2.1.1.

6. 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]