



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: Dino DeRosa

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By press release, 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 MFDA 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, Dino DeRosa (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 accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

6. Since May 18, 2000, the Respondent has been registered in Ontario as a mutual fund salesperson / dealing representative.¹

7. From March 26, 2003 to May 17, 2013², the Respondent was an Approved Person of W. H. Stuart Mutuals Ltd. (“W. H. Stuart”). From November 19, 2002 to September 28, 2009, the

¹In September 2009, the registration category mutual fund salesperson was changed to “dealing representative” when National Instrument 31-103 came into force.

²On March 26, 2003, W. H. Stuart became a Member of the MFDA. On May 17, 2013, the MFDA and the Ontario Securities Commission (the “OSC”) approved the bulk transfer of client accounts and the registrations of Approved Persons of W. H. Stuart to Keybase Financial Group Inc.

Respondent was also registered as a trading officer of W. H. Stuart. From December 29, 2005 to May 16, 2013 when W. H. Stuart's membership in the MFDA was terminated, the Respondent was registered as the Chief Compliance Officer ("CCO") of W. H. Stuart.

8. For various periods, the Respondent was also registered in the provinces of New Brunswick, Newfoundland & Labrador, Nova Scotia, Prince Edward Island, Ontario, Manitoba, Alberta and British Columbia.

9. At all material times, the Respondent carried on business from the head office of W. H. Stuart located in Markham, Ontario.

10. Since May 17, 2013, the Respondent has been an Approved Person and dealing representative of Keybase Financial Group Inc., a Member of the MFDA.

Overview

11. From 2005 to May 2013, while the Respondent was the CCO of W. H. Stuart, Marilyn Dianne Stuart ("Dianne Stuart") who was the Ultimate Designated Person ("UDP"), co-founder and co-owner [with her husband Walter Howard Stuart ("Howard Stuart")] of W. H. Stuart, and other Approved Persons of W. H. Stuart, were soliciting and accepting millions of dollars from clients of W. H. Stuart for investment in promissory notes that typically promised clients a 7% annual rate of return (the "Note Program"). The promissory notes were issued by W. H. Stuart or W. H. Stuart & Associates, the trade name sometimes used when carrying on business on behalf of the Member and related companies such as W. H. Stuart Insurance Agency Ltd. ("Stuart Insurance"). Transactions associated with the Note Program were not recorded on the books and records of W. H. Stuart and liabilities associated with the Note Program were not reported on financial reports that were signed and submitted to the MFDA on a monthly basis. From December 2011 to May 2013, the Respondent was one of the signatories who certified that the monthly financial statements filed with the MFDA were accurate.

12. In addition to operating the Note Program for several years, on multiple occasions, Dianne Stuart also engaged in other activities such as processing unauthorized transactions in client accounts and misappropriated the proceeds of such transactions. Some of those transactions were also reported to W. H. Stuart's head office. The Respondent accepted Dianne Stuart's explanations without investigating further to verify the accuracy of her explanations or to determine whether other clients had been affected.

13. By failing to investigate or report red flags, including client complaints that came to his attention, with respect to the conduct of W. H. Stuart's Approved Persons and principals that could have revealed the existence of the Note Program and potentially exposed Dianne Stuart's practice of processing unauthorized transactions in client accounts and misappropriating the proceeds of those transactions, the Respondent breached his regulatory obligations and disregarded the risk of client harm.

14. In doing so, the Respondent failed to ensure that:

- a) appropriate reports were made to the MFDA on the Member Event Tracking System ("METS"), contrary to the requirements of MFDA Policy No. 6, MFDA Policy No. 3 and MFDA Rule 1.2.2;
- b) reasonable supervisory investigations were conducted into the subject matter of client complaints, contrary to the requirements of MFDA Policy No. 3 and MFDA Rules 2.5, 2.1.4 and 2.1.1; and
- c) clients complaints received by W. H. Stuart were handled promptly and fairly, contrary to the requirements of MFDA Policy No. 3 and MFDA Rules 2.11, 2.1.1 and 2.1.4.

15. As a result of deficiencies in the complaint handling and investigation process of W. H. Stuart, Dianne Stuart was able to conceal complaints and directly handle complaints associated with her misconduct. Such deficiencies likely delayed the detection of her misconduct and may have facilitated the continuation of her misconduct which resulted in substantial client harm.

Related Proceedings Against Diane Stuart, Howard Stuart and W. H. Stuart

16. Dianne Stuart, Howard Stuart and W. H. Stuart were respondents to a separate but related disciplinary proceeding (MFDA File No. 201426). Prior to the commencement of that proceeding, Staff commenced a proceeding for interim orders against Dianne Stuart and W. H. Stuart by Notice of Application issued on April 29, 2013 (File No. 201308) that resulted in the termination of Dianne Stuart's registration as Ultimate Designated Person ("UDP") of W. H. Stuart and the suspension of W. H. Stuart from membership in the MFDA effective May 31, 2013.

17. A disciplinary proceeding against Dianne Stuart, Howard Stuart and W. H. Stuart (MFDA File No. 201426) resulted in the issuance of permanent prohibitions on the authority of Dianne Stuart and Howard Stuart to conduct securities related business in any capacity for a Member of the MFDA in the future, the imposition of substantial fines and costs against Dianne Stuart and Howard Stuart and the termination of W. H. Stuart's membership in the MFDA.

18. Among other things, the Hearing Panel determined that, between March 26, 2003 and March 2013, Dianne Stuart and W. H. Stuart solicited and accepted approximately \$6 million from more than 180 clients to be invested in the Note Program, which monies they used for the benefit of Dianne Stuart, W. H. Stuart and companies that they controlled and that they failed to repay or otherwise account for the money. The Hearing Panel also determined, among other things, that:

(1) between March 26, 2003 and May 2013, Dianne Stuart and W. H. Stuart:

- a) misappropriated or otherwise failed to account for more than \$800,000 obtained from more than 30 clients by way of conduct that was not connected with the Note Program;
- b) actively concealed their conduct from others at W. H. Stuart, external auditors and from the MFDA and other regulators;
- c) filed inaccurate and incomplete financial reports to the MFDA;

- d) failed to ensure that W. H. Stuart maintained the minimum capital required of a Level 4 dealer; and

(2) commencing on November 21, 2012, Howard Stuart failed to cooperate with Staff's investigation by failing to attend an interview with Staff.

19. An additional disciplinary proceeding against Gerald Daniel Rumball ("Rumball"), a former Approved Person of W. H. Stuart, was concluded by way of a Settlement Hearing that was held on January 14, 2016 (File No. 201521). Rumball solicited approximately 12 clients to invest in the Note Program and facilitated the investment of \$2,792,565.90 by those clients. Rumball admitted that he failed to exercise due diligence to ensure that opportunities that he presented to clients to participate in the Note Program were suitable for the clients, and understood the risks of the Note Program and properly explained those risks to clients who made investments in the Note Program.

20. The Settlement Agreement was accepted by the hearing panel and, as a consequence, Rumball was permanently prohibited from conducting securities related business for a Member of the MFDA, and paid a fine of \$25,000 and costs of \$5,000 to the MFDA.

The Respondent's Failure To Take Appropriate Supervisory Action

21. As CCO of W. H. Stuart, the Respondent was responsible for monitoring adherence by the Member and any person conducting business on account of the Member to the By-laws, Rules and Policies of the MFDA and to applicable securities legislation.

22. As set out in further detail below, the Respondent ought to have recognized the significance of red flags that if properly investigated would have increased the likelihood that the Note Program would have been detected at an earlier stage. In particular, the Respondent should have conducted further investigation as a result of the following facts:

- a) the Respondent who was one of the individuals who certified that monthly financial statements filed with the MFDA were true and correct, maintained a substantial cash balance in his own investment account at W. H. Stuart but the monthly financial reports that W. H. Stuart filed with the MFDA did not record a trust account balance sufficient even to cover his own personal cash on deposit with W. H. Stuart;
- b) from 2009-2013, an unlicensed individual named DH attended regularly at the head office of W. H. Stuart and was granted access to the office facilities of W. H. Stuart and to client files to solicit W. H. Stuart clients to invest in the Note Program; and
- c) Approved Persons and clients of W. H. Stuart communicated queries and complaints to the Respondent concerning investments in the Note Program and, in some cases, stated that they had dealings with DH in connection with their business with the Member.

23. The Respondent also became aware that unauthorized redemptions were processed in multiple client accounts at W. H. Stuart and the proceeds of those redemptions were neither directed to the clients nor deposited in the Member's trust account, but were treated as 'errors' when reported to Dianne Stuart.

24. Commencing in 2012, Staff communicated detailed questions about the Note Program to the Respondent and alerted him to the circumstances of an elderly investor who had invested in the Note Program and Staff provided the Respondent with copies of documentation pertaining to the client's investment in the Note Program.

25. Even after receiving Staff's inquiries, the Respondent did not inform Staff about relevant information concerning the activities of DH at W. H. Stuart's office and the queries that had been received from clients concerning DH's dealings with them.

The Respondent's Account At W. H. Stuart

26. In 2002, the Respondent opened a locked-in retirement savings account (“LIRA”) and a retirement saving plan account (“RSP”) at W. H. Stuart. After 2002, the Respondent did not purchase mutual funds or exempt products in his own accounts. From 2002 to 2013, the Respondent maintained ‘cash on deposit’ totaling approximately \$200,000.³

27. Between December 2011 and April 2013, the Respondent signed and submitted an annual certificate on behalf of W. H. Stuart declaring, among other things, that the financial reports filed with the MFDA were true and accurate and fully disclosed all assets and liabilities of the Member, and that the Member was properly segregating clients’ cash and securities in accordance with MFDA Rules and Policies.

28. The Respondent knew or ought to have known that the approximately \$200,000 value of the cash holdings that he maintained in his own client account at W. H. Stuart should have comprised part of the balance showing in W. H. Stuart’s trust account on a monthly basis that was reported to Staff in the monthly financial questionnaire and report (“FQR / Form 1”) submitted to the MFDA. The trust account balance reported on the Form 1s filed with the MFDA frequently amounted to less than \$200,000.

2005 Correspondence With Gerald Rumball

29. On July 27, 2005, Gerald Rumball, a former Approved Person of W. H. Stuart and a respondent to an earlier disciplinary proceeding referenced above, sent an e-mail to the Respondent requesting guidance and direction from the Respondent concerning the paper work required to transfer client money from the “7% program” into mutual funds.

³ The Respondent states that after retiring from teaching in November 1999, he transferred his commuted Teacher’s Pension Plan to W. H. Stuart and invested the commuted value of approximately \$350,000 in mutual funds. After a significant downturn in the market led to significant losses in the LIRA, the Respondent liquidated his investments and maintained the remaining balance of approximately \$200,000 in ‘cash on deposit’ with W. H. Stuart.

30. The Respondent replied to Rumball's e-mail and provided instructions in response to his query but he did not question Rumball about the "7% program" investment, notwithstanding that it was not an investment product that had been approved for sale by Approved Persons of W. H. Stuart and Rumball had not requested authorization to be involved with promoting, referring or facilitating sales of the product.

An Unregistered Individual, DH, Regularly Worked at W. H. Stuart's Office

31. Commencing in the spring of 2009, DH, an unregistered individual began working at the office of W. H. Stuart on a regular basis soliciting investments in the Note Program from clients.

32. DH attended at the office multiple times each week for several hours at a time. He occupied office or boardroom space in the office on most occasions and was granted access to client files and telephoned many W. H. Stuart clients to encourage them to invest in the Note Program.

33. From time to time, DH also received messages that were recorded and delivered to him by the office receptionist. Many of the messages that he received were from clients of W. H. Stuart. DH also regularly corresponded with clients of W. H. Stuart by e-mail [using a W. H. Stuart e-mail address] and by letter. In his correspondence with clients, DH used the title "Manager of Sales and Marketing, Stuart & Associates."

34. Prior to receiving the February 2011 complaint from client SI that is described below, there is no evidence that the Respondent had actual knowledge of the details of DH's activities at the office of W. H. Stuart. However, as CCO of W. H. Stuart, the Respondent should have questioned what DH was doing at the W. H. Stuart office and the appropriateness of the business activities that DH was engaged in considering the fact that DH was an unregistered individual who was regularly accessing the office facilities and client files of W. H. Stuart.

The February 2011 Complaint Of Client SI

35. On February 20, 2011, SI, a longstanding client of W. H. Stuart, submitted a complaint to a mutual fund company and copied the Respondent. No other individual was copied on SI's complaint. In her complaint, the client alleged that:

- (1) an unauthorized trade had been processed in her account at W. H. Stuart;
- (2) she had never met or spoken with the W. H. Stuart Approved Person whose name regularly appeared on her W. H. Stuart mutual fund statements;
- (3) DH, the unregistered individual who regularly attended and worked at the W. H. Stuart office had contacted her and her husband to recommend that she sell a mutual fund investment and use the proceeds from the sale to purchase of a "one-year R&D term investment at a 7% annual rate";
- (4) she had received confirmation from the mutual fund company that her mutual fund investments had been sold even though she had not signed any documentation authorizing redemptions in her account; and
- (5) the proceeds from the sale of her mutual funds were unaccounted for.

36. Upon receipt of the complaint from SI, the Respondent failed to:

- a) acknowledge or otherwise respond to the complaint on behalf of W. H. Stuart as required by MFDA Rule 2.11 and MFDA Policy No. 3;
- b) report the complaint to the MFDA on METS as required by MFDA Policy No. 6 and MFDA Rule 1.2.2; or
- c) conduct a reasonable supervisory investigation into the subject matter of the complaint as required by MFDA Policy No. 3 and the supervisory obligations of the Member and the Respondent in accordance with MFDA Rules 2.5 and 2.1.1 and MFDA Policy No. 2.

37. The content of client SI's complaint should have alerted the Respondent to multiple concerns about potential regulatory violations including:

- a) unauthorized transactions processed in SI's investment account at W. H. Stuart;
- b) DH, an unregistered individual, appeared to be engaging in securities related business with clients of W. H. Stuart even though he was not an Approved Person of W. H. Stuart, contrary to MFDA Rules 1.1.4, 1.1.5 and 1.2.1;
- c) the advisor of record on the client's account [who the client had never met] could have been assisting DH to process transactions in the client's account [although this did not turn out to be the case];
- d) DH was recommending investments to clients of W. H. Stuart that may not have been approved for sale by the Member and the client seemed to believe that DH was acting on behalf of W. H. Stuart; and
- e) the proceeds from the redemption of SI's mutual funds were unaccounted for.

38. A few days after SI submitted her complaint, a promissory note was sent to client SI with a postage stamp dated February 23, 2011 that indicated that the proceeds from the sale of her mutual funds had been invested with W. H. Stuart & Associates at an annual interest rate of 7% and that the investment would be renewed automatically upon maturity (each year).

39. By e-mail dated February 24, 2011, the Respondent responded to client SI by stating: "I have relayed this message to [DH] who will contact you to answer all of your questions."

40. The Respondent failed to:

- a) promptly inform DH and client SI that DH was prohibited from engaging in securities related business with clients of W. H. Stuart but instead referred client SI's complaint to DH to address directly with client SI and thereby implied to both DH and client SI that DH was permitted to continue engaging in those activities;
- b) report client SI's complaint to the MFDA on METS (or otherwise) in contravention of MFDA Rule 1.2.2 and MFDA Policy No. 6;
- c) conduct a reasonable supervisory investigation into the subject matter and potential regulatory contraventions associated with client SI's complaint, contrary to

MFDA Policy No. 3 and the supervisory obligations of the Member, contrary to MFDA Rules 2.5, 2.1.1 and 2.1.4; or

- d) ensure that client SI's complaint was resolved promptly and fairly, as required by MFDA Rules 2.11, 2.1.1 and 2.1.4 and MFDA Policy No. 3.

The October 2012 Inquiry From A Client About The Role Of DH

41. On October 31, 2012, client DM sent an e-mail to the Respondent stating that she had an account with 'your company' (W. H. Stuart) and:

- a) asked the Respondent to clarify the address of the company's office;
- b) requested confirmation that DH did in fact work for the company; and
- c) expressed concern about the fact that she was "having a difficult time" obtaining information about her account.

42. Client DM's e-mail was not copied to Dianne Stuart or any other Approved Person at W. H. Stuart.

43. The Respondent did not respond to client DM's e-mail or question why she was seeking the information that she had requested. He also did not review her account records or determine what investments client DM held with W. H. Stuart.

44. On November 1, 2012, Dianne Stuart responded to the e-mail from client DM on behalf of the Respondent but did not copy him. In her e-mail response, Dianne Stuart informed client DM that:

- a) the office of W. H. Stuart had relocated to a new address;
- b) "[DH] works for WHS and is often available in off hours so that he can contact clients who work through the day"; and
- c) referred her to one of W. H. Stuart's technology experts to assist her to set up electronic access to her accounts.

45. If the Respondent had conducted a reasonable supervisory investigation to determine the reasons for client DM's inquiry about the role of DH at W. H. Stuart, it is likely that the Respondent would have been informed by client DM that:

- a) in July 2010, a letter was sent to client DM by DH that enclosed paperwork for client DM to sign to authorize the redemption of mutual funds and the investment of the proceeds with "WHS" at a 7% interest rate;
- b) client DM signed and dated a trade ticket on July 7, 2010 to authorize the redemption of her mutual fund investments and returned the signed paperwork to DH; and
- c) between 2010 and 2012, client DM received promissory note documentation annually indicating that the proceeds from her mutual fund redemption [\$7,000] had been invested with W. H. Stuart & Associates at a compound interest rate of 7% per year and was renewed annually (upon maturity).

The 2013 Complaint From Clients DR and JT

46. Clients DR and JT held investment accounts at W. H. Stuart that were serviced by the Respondent.

47. In June 2012, clients DR and JT submitted a request to have their investment accounts transferred in kind from W. H. Stuart to another Member of the MFDA.

48. On October 16, 2012, client DR contacted the Respondent to inquire about the status of her account transfer request.

49. The Respondent informed client DR that she had a registered account with a positive balance but that the other accounts that clients DR and JT maintained with W. H. Stuart had a zero balance but had not been closed. The Respondent stated that he would contact the 'transfer department' to inquire about the status of the transfer of their accounts from W. H. Stuart.

50. After consulting with Dianne Stuart, the Respondent attributed the delay in processing the account transfer to the fact that transfer fees owing were unpaid and the documentation required to process the transfer had not been received.

51. In response, client DR questioned how the investment accounts could show a zero balance if W. H. Stuart had not received paperwork concerning her transfer request.

52. On October 30, 2012, the Respondent reported by e-mail to Dianne Stuart that:

“[Client DR] is aware that there were redemptions done in this account in August and is now wondering how these redemptions were done without the transfer documents.”

53. The Respondent and Dianne Stuart disregarded client DR’s inquiry and asserted that the account transfers were being withheld pending receipt of payment for transfer out fees.

54. Upon further review of her account statements, client DR sent e-mails dated March 3, 2013 and April 11, 2013 questioning certain transactions that were processed in her accounts at W. H. Stuart. In particular, client DR alleged that:

- a) transactions processed in her account in October 2006 constituted churning; and
- b) an unauthorized transaction that had been processed in her account to purchase investments on November 15, 2012.

55. Upon receipt of the April 13, 2013 complaint from client DR, the Respondent failed to:

- a) report client DR’s complaint to the MFDA on METS, contrary to MFDA Policy No. 6 and MFDA Rules 1.2.2 and 2.1.1; or
- b) conduct a reasonable supervisory investigation into the subject-matter of the complaint or otherwise handle the complaint in compliance with MFDA Policy No. 3 and MFDA Rules 2.11, 2.1.4 and 2.1.1.

56. The Respondent sent a letter dated March 14, 2013 to client DR purporting to explain the transactions that were processed in her account in October 2006.

57. The Respondent failed to adequately investigate or explain the unauthorized transaction that was processed in client DR's account on November 15, 2012 even though the Respondent had observed a zero balance in the account in October 2012.

58. In February 2015, client DR reported to the MFDA that unauthorized transactions were processed in her account on August 28, 2012 and on November 15, 2012. The November 15, 2012 transaction that client DR reported to Staff was the same one that the Respondent had failed to report to the MFDA in April 2013.

59. Upon receiving client DR's report to the MFDA in February 2015, Staff asked the Respondent to investigate the 2012 transactions and explain how the transactions had been processed.

60. In response to Staff's request, the Respondent contacted the fund company and was informed by the fund company that, on August 28, 2012, documentation was submitted to the fund company by W. H. Stuart directing the fund company to process redemptions in client DR's account and to send the proceeds from the redemptions to W. H. Stuart. The proceeds from the redemptions totaling \$40,510.45 were sent to W. H. Stuart by cheque dated August 28, 2012 payable to the Member and the cheque was deposited into a bank account of Stuart Insurance.

61. The fund company also produced a trade confirmation document indicating that a purchase was processed in client DR's account on November 15, 2012 as the client had alleged.

62. If the Respondent had reported client DR's complaints to the MFDA when he received her complaints dated March 3, 2013 and April 11, 2013, and if he had completed a reasonable supervisory investigation to investigate client DR's complaints in compliance with MFDA Rules 2.11, 2.1.4 and 2.1.1 and MFDA Policy No. 3, it is more likely that the processing of unauthorized

redemptions in the accounts of client DR would have been discovered prior to the suspension of W. H. Stuart in May 2013.

The Complaint From Client MD

63. NN was an Approved Person of W. H. Stuart who worked at an office located in Manitoba.

64. In March 2013, NN noticed that the account of client MD which he serviced on behalf of W. H. Stuart had disappeared from his client list. Upon further investigation, he observed that a transaction had been processed in client MD's account liquidating the account. NN was aware that client MD was traveling abroad at the time and did not think it was likely that she would have arranged for a transaction to be processed in her account without his knowledge.

65. When NN made inquiries about the transaction that had been processed in client MD's account, he discovered that client MD's signature had been falsified on a transaction document dated February 20, 2013 to facilitate the processing of an unauthorized redemption in her account.

66. Although the matter came to the attention of the Respondent, the Respondent took no steps to address it. In particular, the Respondent failed to:

- a) conduct a reasonable supervisory investigation to determine how the transaction came about, whether it was an isolated incident and to ensure that appropriate remedial action was taken; or
- b) record the details of the investigation that was conducted and the resolution of the matter.

67. If the Respondent had conducted a reasonable supervisory investigation, he would have discovered that a transaction form with a falsified signature of the client was submitted to a fund company from W. H. Stuart's head office with instructions to send the redemption proceeds to W. H. Stuart. The redemption proceeds were deposited into a bank account of Stuart Insurance.

The client was not informed about the transaction and the proceeds of the redemption were not forwarded to the client before the matter was reported by NN.

68. After the matter was reported to W. H. Stuart's head office, Dianne Stuart claimed that the redemption transaction had been processed 'in error' and on March 16, 2013, she compensated the client by repurchasing the redeemed investment in client MD's account.

69. On March 20, 2013, Staff of the MFDA attended at W. H. Stuart's head office to commence an investigation into the unauthorized transactions in client MD's account after the conduct was reported to the Manitoba Securities Commission and to the MFDA by NN.

70. The MFDA investigation of the conduct of W. H. Stuart and Dianne Stuart, and the subsequent Investor Protection Corporation ("IPC") claims process that was implemented following the bankruptcy and insolvency of W. H. Stuart, revealed that Dianne Stuart processed dozens of unauthorized transactions in client accounts including many which were the subject of client complaints to the Member. These complaints were typically referred to Dianne Stuart to be addressed when the complaints were received by Approved Persons of W. H. Stuart including the Respondent. These complaints were not:

- a) reported to the MFDA, contrary to MFDA Policy No. 6;
- b) investigated by W. H. Stuart by means of a complaint handling process that was compliant with MFDA Policy No. 3; or
- c) addressed by way of any transparent and documented resolution process.

71. If the Respondent had:

- a) ensured that the allegations of unauthorized trading were reported on METS in compliance with MFDA Policy No. 6 and MFDA Rule 1.2.2; and
- b) ensured that reasonable supervisory investigations were conducted when complaints were made about alleged unauthorized transactions in client accounts

in compliance with MFDA Rules 2.5, 2.11, 2.1.1 and 2.1.4 and MFDA Policy No. 3;

it is likely that Dianne Stuart's misconduct would have been detected sooner and further client harm could have been prevented.

72. As it turned out, in addition to paying more than \$6 million to former clients of W. H. Stuart in connection with investments in the Note Program that were unaccounted for, the IPC received approximately 47 claims alleging losses resulting from the misappropriation of, or failures to account for, client funds unrelated to the Note Program. The 47 claimants alleged losses totaling approximately \$1.6 million. IPC determined that compensation in the amount of \$919,366.34 was payable to such claimants under its Coverage Policy.

Further Developments Since 2013

The Respondent's Role After Proceedings Were Commenced Against W. H. Stuart By The MFDA

73. After the MFDA commenced disciplinary action against W. H. Stuart and Dianne Stuart on April 29, 2013 (MFDA Hearing No. 201308), the Respondent was assigned responsibility initially for complaint handling and subsequently for all management functions of W. H. Stuart until the client accounts of W. H. Stuart could be transferred to Keybase on May 17, 2013 in accordance with an agreement of purchase and sale.

74. Between May 10, 2013 and December 31, 2013, the Respondent worked diligently with Staff of the MFDA and with management at Keybase to help to facilitate:

- a) the processing of transactions in the accounts of clients of W. H. Stuart prior to the transfer of accounts to Keybase;
- b) the transfer the client accounts, books and records and investment assets of clients from W. H. Stuart to Keybase after a bulk transfer of client accounts was approved by the OSC and the MFDA; and

- c) the reconciliation of W. H. Stuart's records of client assets with the actual assets and accounts that were transferred to Keybase.

The Bankruptcy Of W. H. Stuart

75. On September 18, 2013, a bankruptcy order was made against W. H. Stuart and a Trustee in Bankruptcy was appointed.

76. Following the bankruptcy and insolvency of W. H. Stuart, the MFDA Investor Protection Corporation (the "IPC") implemented a claims process to compensate eligible clients of W. H. Stuart who could establish that they suffered losses attributable to the bankruptcy of W. H. Stuart.

77. Following the implementation of the IPC claims process, the Respondent assisted IPC staff to obtain documents and records relevant to the evaluation by IPC staff of 252 claims for compensation submitted by former clients of W. H. Stuart. To date, the IPC has paid out compensation totaling approximately \$7.2 million to former clients of W. H. Stuart who sustained losses attributable to the conduct of W. H. Stuart and Dianne Stuart and were eligible for compensation under the terms of the IPC Coverage Policy.

The Respondent's Personal Financial Loss Following The Bankruptcy of W. H. Stuart

78. As noted in paragraph 26 above, between 2002 and 2013, the Respondent maintained the proceeds from the LIRA that the Respondent had transferred to W. H. Stuart in the form of 'cash on deposit' with W. H. Stuart. This money comprised most of the Respondent's retirement savings. None of the Respondent's money was transferred from W. H. Stuart to Keybase.

79. In May, 2013, the Respondent sent an e-mail to Dianne Stuart to ask her to account for the \$201,337.79 that he had previously held at W. H. Stuart. The Respondent received no response from Dianne Stuart to his inquiries.

80. On August 15, 2013, the Respondent submitted his own claim to the IPC seeking \$201,337.79 in compensation for the loss of money that the Respondent claims he had on deposit with W. H. Stuart at the time of its bankruptcy as described above.

81. To date, the IPC has not paid any compensation to the Respondent with respect to his claim and has reserved its decision concerning the Respondent's entitlement to compensation pending the completion of this proceeding.

The Respondent's Financial Circumstances

82. Since the Respondent's registration was transferred to Keybase, the Respondent has serviced client accounts as an Approved Person of Keybase. Pending the outcome of this proceeding, Keybase has not permitted the Respondent to work in a compliance or supervisory role. As a result, the Respondent's income at Keybase was substantially lower than his former income at W. H. Stuart.

83. The Respondent has produced financial information to MFDA Staff including tax returns and banking records to support his assertion that as a result of the reduction of his income since 2013 and the loss of approximately \$200,000 in retirement savings as a consequence of the bankruptcy and insolvency of W. H. Stuart, the Respondent lacks the financial resources to pay substantial financial penalties.

The Respondent Has Co-operated With Staff's Investigation

84. The Respondent has cooperated with Staff's investigation and has substantially reduced the length and complexity of this proceeding by entering into a settlement agreement with Staff.

V. CONTRAVENTIONS

85. The Respondent admits that between 2006 and April 2013, the Respondent, in his capacity as CCO of W. H. Stuart, failed to identify regulatory concerns and take adequate

supervisory action including completing reasonable supervisory investigations in response to red flags that indicated, or could have revealed, that W. H. Stuart's principals and Approved Persons were soliciting off-book investments in promissory notes issued by W. H. Stuart, its principals and related entities, contrary to MFDA Rules 1.1.1, 2.5.3 and 2.1.1.

86. The Respondent admits that between February 2011 and April 2013, the Respondent, in his capacity as CCO of W.H. Stuart, received complaints concerning the accounts of clients SI, DR and MD but failed to ensure that:

- a) the complaints were reported to the MFDA on the Member Event Tracking System ("METS");
- b) reasonable supervisory investigations into the subject matter of the complaints were conducted;
- c) the complaints were dealt with promptly and fairly; and
- d) records were maintained of the investigation and proposed resolution of the complaints;

contrary to MFDA Rules 1.2.2⁴ (now 1.4), 2.1.1, 2.11, 2.1.4, 2.5.3 and MFDA Policy Nos. 3 and 6.

87. The Respondent admits that between December 2011 and April 2013, the Respondent signed the certificate of partners or directors on behalf of W. H. Stuart that accompanied the submission of the Member's monthly and annual financial reports to the MFDA when he knew or ought to have known that the financial reports contained inaccurate financial information, contrary to MFDA Rules 3.5.1 and 1.1.2 and MFDA Rule 2.1.1.

⁴From December 3, 2010 to March 17, 2016, Rule 1.2.2 listed certain requirements with respect to reporting to the MFDA. On March 17, 2016, the requirements in that rule were renumbered and are now in Rule 1.4. At the time when the Respondent's obligation to make reports the MFDA arose, this requirement was set out Rule 1.2.2.

VI. TERMS OF SETTLEMENT

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

- a) from the date of an order accepting this Settlement Agreement, the Respondent shall be permanently prohibited from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;
- b) The Respondent shall pay a fine in the amount of \$10,000 which shall be payable on the date of an order accepting this Settlement Agreement, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- c) The Respondent shall pay costs in the amount of \$5,000 which shall be payable on the date of an order accepting this Settlement Agreement, pursuant to s. 24.2 of MFDA By-law No. 1;
- d) the Respondent will attend in person on the date when a Settlement Hearing is scheduled to take place.

VII. STAFF COMMITMENT

89. 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 potential 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

90. 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. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

91. 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.

92. 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. 24.1.1 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.

93. 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

94. 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

95. 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 MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

96. 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

97. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 2nd day of October, 2018.

“Dino DeRosa”

Dino DeRosa

“ZZ”

Witness – Signature

ZZ

Witness – Print Name

“Shaun Devlin”

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

Schedule “A”

Order

File No. 201751



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: Dino DeRosa

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 Dino DeRosa (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 on the basis of the facts and contraventions that the Respondent has admitted in the Settlement Agreement, the Hearing Panel is of the opinion that:

- a) between 2006 and April 2013, the Respondent, in his capacity as Chief Compliance Officer (“CCO”) of W. H. Stuart Mutuals Ltd. (“W. H. Stuart”), failed to identify regulatory concerns and take adequate supervisory action including completing a

reasonable supervisory investigation in response to red flags that indicated, or could have revealed, that W. H. Stuart's principals and Approved Persons were soliciting off-book investments in promissory notes issued by W. H. Stuart, its principals and related entities, contrary to MFDA Rules 1.1.1, 2.5.3 and 2.1.1;

- b) between February 2011 and April 2013, the Respondent, in his capacity as CCO of W.H. Stuart, received complaints concerning the accounts of clients SI, DR and MD but failed to ensure that:
- i. the complaints were reported to the MFDA on the Member Event Tracking System ("METS");
 - ii. reasonable supervisory investigations into the subject matter of the complaints were conducted;
 - iii. the complaints were dealt with promptly and fairly; and
 - iv. records were maintained of the investigation and proposed resolution of the complaints;
- contrary to MFDA Rules 1.2.2¹ (now 1.4), 2.1.1, 2.11, 2.1.4, 2.5.3 and MFDA Policy Nos. 3 and 6.
- c) between December 2011 and April 2013, the Respondent signed the certificate of partners or directors on behalf of W. H. Stuart that accompanied the submission of the Member's monthly and annual financial reports to the MFDA when he knew or ought to have known that the financial reports contained inaccurate financial information, contrary to MFDA Rules 3.5.1 and 1.1.2 and MFDA Rule 2.1.1.

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

1. From the date of this Order, the Respondent shall be permanently prohibited from conducting securities related business in any capacity as an Approved Person of, or in association with, any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1.;

¹ From December 3, 2010 to March 17, 2016, Rule 1.2.2 listed certain requirements with respect to reporting to the MFDA. On March 17, 2016, the requirements in that rule were renumbered and are now in Rule 1.4. At the time when the Respondent's obligation to make reports the MFDA arose, this requirement was set out Rule 1.2.2.

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;

3. The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1 which shall be payable on the date of this order

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all 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]

DM 639829