



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: Banwell Financial Inc.

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, Banwell Financial Inc. (the “Respondent”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondents’ 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

6. Banwell Financial Inc. (“Banwell Financial”) is registered in Ontario and Alberta as a Mutual Fund Dealer and in Ontario as an Exempt Market Dealer. Banwell Financial became a Member of the MFDA on April 12, 2002. On January 2, 2017, Banwell Financial advised the MFDA of its intention to resign from membership in the MFDA. Banwell Financial’s resignation is pending the resolution of the matters described herein.

The Respondent Permitted Jain to Engage in Registerable Activity While Unregistered

7. Pursuant to MFDA Rule 1.1.1, Approved Persons cannot conduct business on behalf of the new Member until they are registered with the new Member. Approved Persons cannot complete the New Account Application Forms (“NAAFs”) or Know-Your-Client (“KYC”) forms

of the new Member prior to leaving their current Member and being registered with the new Member. This ensures that an Approved Person does not engage in registerable activity without appropriate registration.

8. From January 14, 2010 to January 15, 2016 when he resigned, Guatam Jain (“Jain”) was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with Monarch Wealth Corporation (“Monarch”), a Member of the MFDA. Jain has not been registered in any capacity since he resigned from Monarch. While at Monarch, Jain conducted business in Newmarket, Ontario area.

9. On or about January 18, 2016, Jain met with Banwell Financial to discuss becoming registered with Banwell Financial. Banwell Financial submitted an application to the Ontario Securities Commission (“OSC”) to register Jain as a Dealing Representative with Banwell Financial and reviewed his registration through the National Registration Search to confirm that he was indeed registered by the OSC with Monarch. At the time of Banwell Financial’s search on the National Registration Search, it was confirmed that Jain was registered without any terms and conditions. Therefore, at the time, Banwell Financial believed, there were no regulatory concerns and no reason to believe that there would be any delay in processing Jain’s registration. Shortly following this matter, Banwell Financial changed its policy and procedures with respect to vetting Dealing Representatives.

10. On the same date (and before Jain was registered with Banwell Financial), Banwell Financial assigned Jain a representative code, provided him with blank dealer change forms to transfer Jain’s client accounts held at Monarch, and authorized Jain to meet with clients to complete the dealer change forms.

11. Commencing on or about January 20, 2016 while not registered in the securities industry in any capacity, Jain met with Monarch clients, and completed and submitted approximately 45 Dealer Change Forms to Banwell Financial to transfer 23 client accounts with assets totaling approximately \$2 million from Monarch to Banwell Financial.

12. Jain also completed and submitted to Banwell Financial several KYC forms, dealer change forms (“B2B Bank Dealer Services”) and limited trading authorization forms for the clients he was seeking to transfer to Banwell Financial.

13. Banwell Financial delivered the 45 completed dealer change forms received from Jain to B2B Bank Dealer Services prior to opening the client accounts with Banwell Financial.

14. Banwell Financial compliance personnel approved the accounts forms submitted by Jain.

15. On January 24, 2016 while Jain was not registered in any capacity, he submitted a purchase trade form to Banwell Financial to process a \$21,000 purchase in PV’s Tax-Free Savings Account (“TFSA”) which Jain was seeking to transfer to Banwell Financial.

16. On January 25, 2016 (after it received the application from Banwell Financial to register Jain), the OSC advised Banwell Financial that, at the time of Jain’s resignation from Monarch, he had been found to have compliance issues related to pre-signed account forms and that Jain had not been truthful in his National Registration Database (“NRD”) disclosure with regards to his resignation from Monarch.

17. The OSC informed Banwell Financial that, as a result of the issues it had identified regarding Jain, it could not reinstate Jain’s registration in the ordinary course and his application for registration would be subject to additional requirements and review prior to approval.

18. On the same date, Banwell Financial advised Jain that he was to cease conducting any registerable activity immediately.

19. Notwithstanding the information provided by the OSC regarding Jain’s registration and that Jain continued to be unregistered, on or about January 27, 2016, Banwell Financial approved and processed the trade submitted by Jain relating to client PV’s TFSA as described in paragraph 15 above.

20. In addition, in at least two instances, Banwell Financial received but did not process account forms received from Jain after it had told him to cease conducting any registerable activity.

21. Banwell Financial later abandoned its sponsorship of Jain's registration with the OSC.

22. Commencing in March 2016, Banwell Financial delivered quarterly portfolio statements to Jain's former Monarch clients that had been transferred to Banwell Financial indicating that Jain was the mutual fund salesperson responsible for servicing their accounts at Banwell Financial.

23. As described above, Banwell Financial permitted Jain to engage in registerable activity without appropriate registration by, among other things:

- a) providing Jain with a representative code;
- b) authorizing Jain to meet with client to conduct registerable activity;
- c) receiving and approving dealer change forms, KYC forms and other accounts forms submitted by Jain;
- d) submitting dealer change forms received from Jain to mutual fund companies for clients that Jain was seeking to transfer to Banwell Financial;
- e) approving a trade submitted by Jain; and
- f) providing clients with quarterly portfolio statements indicating that Jain was the mutual fund salesperson responsible for servicing their accounts.

Failure to Supervise the Outside Activity of Tam

24. From December 8, 2009 to August 22, 2016 when he was terminated, Jeffrey Tam ("Tam") was registered in Ontario as a mutual fund salesperson with Banwell Financial. Tam has not been registered in any capacity since he was terminated by Banwell Financial. At all material times, Tam conducted business in the Toronto, Ontario area.

25. On December 12, 2012, Tam completed Banwell Financial's outside business questionnaire and disclosed that he was an insurance agent, as well as a mortgage agent with

Centro Mortgage Inc. (“Centro”). Tam attached a copy of his Centro business card which stated the name, “Fortress Real Capital”. At that time, Fortress Real Capital was one of the largest syndicated mortgage companies in Canada.

26. On December 14, 2012, Banwell Financial approved Tam’s outside business activity without speaking with Tam or conducting adequate inquiries to determine the nature and scope of Tam’s activities with respect to Fortress Real Capital.

27. On November 12, 2013, the MFDA issued Bulletin #0853-P, Transactions by Approved Person in Syndicated Mortgage Securities. The Bulletin provided guidance with respect to syndicated mortgages. The Bulletin specifically advised that all syndicated mortgages sold or referred by Approved Persons must be facilitated through the accounts and facilities of the Member in accordance with the requirement of Rule 1.1.1 and are subject to all applicable MFDA Rules.

28. On December 23, 2013, Tam completed Banwell Financial’s outside business questionnaire and disclosed that he was an insurance agent as well as a mortgage agent with FDS Broker Services Inc. (“FDS”). Tam attached a copy of his FDS business card which described his title as “Syndicated Mortgage Specialist”.

29. On the same date, Banwell Financial approved Tam’s outside business activity without speaking with Tam or conducting adequate inquiries to determine the nature and scope of Tam’s activities with respect to FDS.

30. In or about July 2014, Tam inquired with Banwell Financial compliance staff with respect to processing syndicated mortgages through Banwell Financial.

31. On August 16, 2014, Tam sent an email to Banwell Financial compliance staff stating:

I am following up on our conversation last month. So far what has been the progress between my Mortgage Broker (FDS Broker Services) and Banwell to process Syndicated Mortgage transactions and commission payment? What additional steps and actions do I need to take?

32. On August 16, 2014 Banwell Financial responded to Tam,: “Hi Jeffrey, You will have to refresh my memory please as I can’t recall this discussion.” Tam did not respond and Banwell Financial did not follow up with the inquiry.

33. On December 5, 2014, Tam completed Banwell Financial’s outside business questionnaire and disclosed that he was an insurance agent as well as a mortgage agent with FDS.

34. On December 5, 2014, Banwell Financial approved Tam’s outside business activity without speaking with Tam or conducting adequate inquiries to determine the nature and scope of Tam’s activities with respect to FDS.

35. On January 21, 2015, the MFDA issued Bulletin #0628-P Transactions in Syndicated Mortgage Securities. The Bulletin referenced MFDA Bulletin #0583-P and reminded Members and Approved Persons that Approved Persons who are also licensed as Mortgage Agents or Mortgage Brokers cannot sell syndicated mortgage investments under their Mortgage Agent or Mortgage Broker license outside the Member.

36. On January 21, 2015, Banwell Financial compliance staff sent the following email to the MFDA with respect to Bulletin #0628-P:

I just received the above-mentioned bulletin and would like some clarification. We have an AP who has disclosed an OBA as 'mortgage agent'. He conducts this business through FDS Broker Services who have an FSCO License # and the AP lists this number on his business card as well as his own License # (this card is separate to his mutual funds business card). Could you please confirm if the AP is required to conduct this business through Banwell Financial or can he continue to conduct it through FDS? We have no interest in becoming licensed as a 'Mortgage Broker'.

37. On January 27, 2015, Staff responded to the email and inquired, among other things, whether the Approved Person was offering mortgage investments or syndicated mortgages.

38. January 27, 2015, Banwell Financial compliance staff sent an email to Tam requesting further information with respect to his outside business activity.
39. On January 27, 2015, Tam responded to Banwell Financial compliance staff advising that he offered “syndicated mortgages only”.
40. Banwell Financial made no further inquiries to Tam or the MFDA with respect to Tam’s activities.
41. On March 26, 2015, Banwell Financial approved Tam’s LinkedIn profile which described one of his skills as “Syndicated Mortgages”.
42. In August 2016, Staff completed a sales compliance examination of Banwell Financial’s head office and two sub-branch locations which included an assessment of compliance by Banwell Financial with MFDA By-laws, Rules and Policies for the period from February 1, 2013 to February 29, 2016 (the “2016 Examination”). As part of the sales compliance examination, Staff conducted a field review from April 11, 2016 to May 5, 2016. The findings of the 2016 Examination were reported to Banwell Financial in the MFDA Compliance Examination Report dated August 17, 2016 (the “2016 Examination Report”).
43. The 2016 Examination Report identified, among other things, deficiencies in Banwell Financial’s supervision of Tam’s outside business activity relating to syndicated mortgages.
44. As part of the 2016 Examination, on April 21, 2016, Staff conducted an interview of Tam at Banwell Financial’s head office. During the interview, Tam advised Staff that he was a mortgage agent licensed with FDS. Tam advised Staff that he had sold a Fortress Capital syndicated mortgage to a client through FDS (outside of Banwell Financial) approximately one year earlier and did not receive any compensation for this. Tam stated that he was unable to provide any records or details of the transaction.
45. The identity of the client is unknown to MFDA Staff.

46. Subsequent to the 2016 Examination, effective May 10, 2016, Tam's mortgage agent license with FDS was revoked. In addition, FDS sent correspondence to the Banwell Financial dated May 5, 2016 which stated that Tam had not conducted any business with or received any compensation from FDS since January 2015.

47. Since August 22, 2016, Banwell Financial has prohibited mortgage broker related outside business activities.

V. THE RESPONDENT'S POSITION

48. Banwell Financial has not been previously disciplined by the MFDA.

VI. CURRENT STATUS OF MEMBER

49. On January 2, 2017 Banwell Financial advised the MFDA of its intention to resign from membership from the MFDA. The resignation is pending the resolution of the matters described herein.

VII. CONTRAVENTIONS

50. Banwell Financial admits the following contraventions of the MFDA Rules, Policies or By-Law:

- a) commencing on or about January 20, 2017, Banwell Financial permitted an individual who was seeking to becoming registered with it to engage in registerable activities without being registered, contrary to MFDA Rules 1.1.1 and 2.5.1; and
- b) between December 2012 and August 2016, Banwell Financial failed to adequately supervise the outside business activities of its Approved Person, Tam, contrary to MFDA Rules 1.1.1, 1.2.1(d) (now MFDA Rule 1.3), and 2.5.1.

VIII. TERMS OF SETTLEMENT

51. The Respondents agrees to the following terms of settlement:

- a) Banwell Financial shall pay a fine in the amount of \$30,000 pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
- b) Banwell Financial shall pay costs in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-law No. 1; and
- c) the Respondent shall attend in person, on the date set for the Settlement Hearing.

IX. STAFF COMMITMENT

52. 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 or any of its officers or directors in respect of the facts set out in Part IV and the contraventions described in Part VII of this Settlement Agreement, subject to the provisions of Part XI 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 VII 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 VII, 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.

X. PROCEDURE FOR APPROVAL OF SETTLEMENT

53. 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.

54. 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 its 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.

55. 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.

56. 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 it.

XI. FAILURE TO HONOUR SETTLEMENT AGREEMENT

57. 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 or any of its officers or directors 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.

XII. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

58. 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.

59. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it 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.

XIII. DISCLOSURE OF AGREEMENT

60. 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.

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

XIV. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 3rd day of July, 2018.

“Michael Banwell”

Banwell Financial Inc.
Per: Michael Banwell

“SB”

Witness – Signature

SB

Witness – Print Name

“Shaun Devlin”

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: Banwell Financial Inc.

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 Banwell Financial Inc. (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that:

- a) commencing on or about January 20, 2017, permitted an individual who was seeking to becoming registered with it to engage in registerable activities without being registered, contrary to MFDA Rules 1.1.1 and 2.5.1; and

- b) between December 2012 and August 2016, failed to adequately supervise the outside business activities of its Approved Person, Tam, contrary to MFDA Rules 1.1.1, 1.2.1(d) (now MFDA Rule 1.3), and 2.5.1.

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

1. The Respondent shall pay a fine in the amount of \$30,000 pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$10,000 pursuant to s. 24.2 of MFDA By-law No. 1 and;
3. 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]