



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Byron H. Daues

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario on January 21, 2014 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Byron H. Daues (the “Respondent”).

DATED this 18th day of November, 2013.

“Jason D. Bennett”

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Telephone: 416-943-7431
Facsimile: 416-361-9781
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: 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.

Allegation #2: 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:

- (a) 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;
- (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 he borrowed from client AS;

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

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. The Respondent has been registered in the mutual fund industry since April 2000.

2. Since September 9, 2011, the Respondent has been registered in Ontario as a mutual fund salesperson with Keybase Financial Group Inc. (“Keybase”), a Member of the MFDA.

3. 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.

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

Allegation #1: Borrowing from a Client

5. 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.

6. 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.

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

8. 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).

9. Client AS was 70 years old and retired at the time she entered into the Loan Agreement with the Respondent. By virtue of her age, client AS was a vulnerable client.

10. 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.

11. 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.

12. 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.¹

13. 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.

14. 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.

15. 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.

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

17. 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.

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

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

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

20. 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.

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

22. 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.

23. The Respondent did not defend the civil action.

24. 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 had obtained default judgment against him.

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

26. 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.

27. 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.

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

29. Following his bankruptcy, the Respondent has made some payments on account of the Settlement. The Respondent continues to owe approximately \$42,000 to client AS.

30. By engaging in the conduct described above, the Respondent engaged in personal financial dealings with client AS that created 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 client AS, contrary to MFDA Rules 2.1.4 and 2.1.1.

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

31. As described in paragraphs 19 - 25 above, the Respondent did not disclose to Keybase that client AS had complained to him about his failure to make payments on account of the loan or that client AS had commenced a civil action against him and obtained default judgment. Keybase did not become aware of the personal financial dealings between the Respondent and client AS until October 9, 2012, when it received a complaint directly from client AS.

32. MFDA Policy No. 6, subsection 4.1(b)(v) requires an Approved Person to report to his or her current Member, within 2 business days, whenever the Approved Person becomes aware of a complaint from any person, whether in writing or any other form, and with respect to him or herself, or any other Approved Person, involving allegations of personal financial dealings with a client.

33. The following events constituted complaints in respect of the Respondent engaging in personal financial dealings with client AS, each of which events the Respondent was required to report to Keybase within 2 business days of being made aware of the event in accordance with the requirements of MFDA Policy No. 6, subsection 4.1(b)(v):

- (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.

34. The Respondent failed to report all of the events described above to the Member within 2 business days or at all.

35. By engaging in the conduct described above, the Respondent failed to comply with the requirements of MFDA Policy No. 6, subsection 4.1(b)(v).

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;

- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Charles A. Toth
Fax: 416-361-9073
Email: ctoth@mfd.ca

A **Reply** shall be **filed** by:

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
Attention: Office of the Corporate Secretary; or

- (b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

(a) to **serve** and **file a Reply**; or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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