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: Jennifer Lynn Killins

Heard: November 21, 2011 in Toronto, Ontario
Reasons for Decision: February 9, 2012

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.	Chair
Selwyn Kossuth	Industry Representative
Anne Traczuk	Industry Representative

Appearances:

David Halasz	)	For the Mutual Fund Dealers Association of Canada
Jennifer Lynn Killins	)	In Person

A. Background

1. By Notice of Hearing, dated the 28th day of July, 2011, the following Allegations were made against Jennifer Lynn Killins ("Respondent"):

    1. Allegation #1: Between October 2007 and June 2009, the Respondent engaged in personal financial dealings with client RZ by soliciting and accepting monies from client RZ on at least seven occasions in the total amount of approximately $97,966.22 to be invested on behalf of client RZ in a company owned and controlled by the Respondent, thereby giving rise to an actual or potential conflict of interest between the Respondent and client RZ which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client RZ, contrary to MFDA Rules 2.1.4 and 2.1.1.

    2. Allegation #2: Commencing on January 22, 2010, the Respondent failed or refused to provide documents and information requested by MFDA Staff in the course of an investigation, which information she undertook and agreed to provide during the course of an interview with MFDA Staff, contrary to s. 22.1 of MFDA By-law No. 1

2. The Notice of Hearing was personally served on the Respondent on August 6, 2011, as shown by the Affidavit of Eugene Shchukin, sworn August 10, 2011, and the exhibits attached thereto.

3. The First Appearance in this proceeding took place before the Hearing Panel on September 14, 2011.

4. At the First Appearance, both the Respondent and Counsel for Staff of the MFDA, made submissions to the Hearing Panel with respect to scheduling and other procedural matters.

5. After considering the submissions, the Hearing Panel ordered, *inter alia*, that the Hearing on the Merits would commence on November 21, 2011, at 10:00 a.m., in the MFDA hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario.

6. On September 14, 2011, the MFDA Hearings Coordinator issued a News Release advising the public of the date, time and location of the commencement of the Hearing on the Merits in this matter.

B. Settlement

7. On November 18, 2011, the Hearing Panel was advised that the parties had reached a settlement in principle.

8. At the commencement of the proceedings on November 21, 2011, the Hearing Panel was presented with an executed Settlement Agreement. We were advised that it had been prepared in accordance with Section 24.4 of MFDA By-law No. 1, with the exception that no Notice of Settlement Hearing had been prepared and publicized in accordance with Rule 15.2(1) of the MFDA Rules of Procedure.

9. Rule 15.2(1) provides as follows:

> ***"15.2 Notice and Public Access***
> (1) Except where a settlement is reached after the commencement of the hearing of a proceeding on its merits, a Hearing Panel shall not consider a Settlement Agreement unless at least 10 days notice of the settlement hearing has been given by the Corporation in the same manner as a notice of penalty pursuant to section 24.5 (Publication of Notice and Penalties) of
> MFDA By-law No. 1 specifying:
>
> (a) the date, time and place of the settlement hearing; and
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> (b) the purpose of the settlement hearing with sufficient information to identify the Member or person involved and the general nature of the allegations which are the subject matter of the settlement."

10. The Hearing Panel then reviewed Rules 1.3(1) and 1.5(1)(b) of the Rules of Procedure. These provide as follows:

> "***1.3 General Principles***
> (1) These Rules shall be liberally construed to secure the most expeditious and cost-effective determination of every proceeding on its merits consistent with the requirements

of fairness.

1.5 General Powers of a Panel
(1) A Panel may:
(b) waive or vary any of these Rules at any time, on such terms as it considers appropriate."

11. After consideration, the Hearing Panel decided to proceed and consider the Settlement Agreement. Our reasoning for so doing is as follows:

12. On July 28, 2011, the MFDA had issued a public Notice of Hearing detailing the Allegations against the Respondent. On September 14, 2011, this Hearing Panel had issued an Order which gave notice of the date, time and location of the Hearing on the Merits. These details were contained in a News Release issued the same day by the MFDA.

13. Consequently, at least 10 days notice had been provided, identifying the person involved, the general nature of the Allegations which were the subject matter of the Settlement Hearing, as well as the date, time and place where a consideration of these Allegations would occur.

14. In our view, under all the circumstances, it was appropriate to waive certain of the provisions of Rule 15.2 of the Rules of Procedure so that the Settlement Agreement could be considered by the Hearing Panel on the first day set for the Hearing on the Merits.

15. This approach is consistent with that adopted by previous Hearing Panels, in similar but not identical circumstances, in the cases of Melvin Robert Penney, Ben Alden Kaley and Adrian Samuel Leemhuis.

Re: *Melvin Robert Penney (Re)*, [2009] MFDA File No. 200831

Re: *Ben Alden Kaley (Re)*, [2010] MFDA File No. 200923.

Re: *Adrian Samuel Leemhuis (Re)*, [2011] MFDA File No. 200832.

16. We also considered a joint Motion by Staff and the Respondent to move the proceedings "in camera". This Motion was brought pursuant to Rule 15.2(2) of the Rules of Procedure, which provides as follows:

"15.2 *Notice and Public Access*

(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8."

17. Rule 1.8(2) of the Rules of Procedure provides as follows:

"1.8 *Hearings Open to the Public*

(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public."

18. We granted the Motion on the condition, which was acceptable to both Staff and the Respondent, that, should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision, which, along with the record of the Settlement Agreement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the Rules of Procedure.

C. Settlement Agreement

19. The Hearing Panel then considered the provisions of the Settlement Agreement, the salient portions of which are as follows:

"IV. AGREED FACTS

Registration History

6. The Respondent was registered in Ontario as a mutual fund salesperson with Interglobe Financial Services Corp. ("Interglobe") from May 9, 2006 to May 25, 2009, at which time she was terminated by Interglobe as a result of the events described herein.

7. The Respondent was previously registered as a mutual fund salesperson with Clarica Investco Inc. from June 21, 2001 to May 4, 2006.

8. Interglobe has been a Member of the MFDA since March 8, 2002.

Allegation #1: Personal Financial Dealings with Client RZ

9. While registered with Interglobe, the Respondent conducted business on behalf of Interglobe using the business name, "Dollars & Sense", which had been approved by Interglobe in accordance with the requirements of MFDA Rule 2.8 (sic). Dollars & Sense was the name of a business owned and operated by the Respondent.

10. RZ was a client of Interglobe. The Respondent was the mutual fund sales person responsible for servicing the account of client RZ.

11. In or about October 2007, the Respondent approached client RZ, seeking to have client RZ invest in her company, Dollars & Sense. At this time, the Respondent and client RZ had discussions about client RZ purchasing investments that would provide a better return than those offered by guaranteed investment certificates. The Respondent represented to client RZ that an investment in Dollars & Sense would be guaranteed.

12. Following the Respondent's discussions with client RZ in October 2007, client RZ provided the Respondent with a cheque in the amount of $15,000 made payable to the Respondent, which the Respondent deposited in her personal bank account on or about October 29, 2007.

13. The Respondent prepared and provided RZ with a promissory note (the "First Promissory Note") dated October 27, 2009 (sic) from Dollars & Sense which described the monies that the Respondent had received from client RZ in the following terms:

(a) client RZ had invested the principal amount of $15,000 in Dollars & Sense;
(b) the interest rate was 5.5% per annum;
(c) no interest payment was due prior to maturity of the Promissory Note on October 29, 2009;
(d) the principal amount was "secured" by Dollars & Sense; and
(e) the principal amount was "Guaranteed".

14. On six more occasions between November 2007 and January 2009, the Respondent solicited and accepted additional monies from client RZ, which amounts were also described as investments in Dollars & Sense. On each occasion, the Respondent deposited the monies she received from client RZ into her personal bank account and provided additional promissory notes from Dollars & Sense to client RZ on similar terms as the First Promissory Note (collectively, the "Promissory Notes").

15. In total, the Respondent solicited and accepted $97,966.22 from client RZ for investment in Dollars & Sense pursuant to the seven separate Promissory Notes as set out below:

No.	Date Invested/Promissory Note	Amount	Interest (%)	Maturity
1	October 29, 2007	$15,000	5.5	2 years
2	November 16, 2007	$22,466.22	6	2 years

3	January 18, 2008	$12,000	4	2 years
4	October 29, 2008	$ 4,000	3.5	2 years
5	December 29, 2008	$ 2,500	3.5	Open
6	January 5, 2009	$40,000	3.5	2 years
7	January 16, 2009	$ 2,000	3.5	Open
	Total	$97,966.22		

16. In order to provide the Respondent with $40,000 on January 5, 2009 (Promissory Note #6), client RZ redeemed the net amount of $40,590.83 from mutual funds held in his account at Interglobe. Client RZ incurred redemption fees of approximately $2,845.

17. The Respondent deposited all of the monies she received from client RZ into her personal bank account, from which bank account she paid both personal and business expenses.

18. The Respondent completed Interglobe Transaction Forms that set out the amount and terms under which client RZ provided the monies to the Respondent. On some of the Transaction Forms, the Respondent indicated that the monies received from client RZ were for a "Private Loan". These documents also stated that the investment was a "Guaranteed Personal Loan" (in some instances the Respondent used the acronym "GPL"). The Respondent provided copies of the Transaction Forms to client RZ but did not provide them to Interglobe.

19. Dollars & Sense did not have its own bank account and had few, if any, assets that could have been liquidated or realized upon to pay back the amounts owing on the Promissory Notes should that have been necessary. The Respondent admits that client RZ's investment(s) in Dollars & Sense, which she represented to client RZ were "guaranteed", were in fact secured only by her "word".

20. The Respondent did not disclose to Interglobe that she had obtained monies from client RZ, had provided RZ with the Promissory Notes, or that she was purporting to sell investments in Dollars & Sense to client RZ.

21. Dollars & Sense was not an investment product approved for sale by Interglobe. Interglobe was not aware that the Respondent was selling investments in Dollars & Sense to client RZ.

22. Interglobe became aware that the Respondent had obtained monies from client RZ as described above after client RZ moved his investments from Interglobe to a different mutual fund dealer.

23. The Respondent prepared a purported account summary printed on "Dollars & Sense" letterhead for a representative of (now former) client RZ's new mutual dealer that stated that client RZ and his wife had invested the amount of $97,966.22 by way of the individual investments described at paragraph 15 above. The document also described the monies paid by client RZ to the Respondent as "Guaranteed Personal Investments".

24. On or about May 19, 2009, a representative of client RZ's new mutual fund dealer

contacted Interglobe about the Respondent's activities with client RZ.

25. On or about May 26, 2009, client RZ requested that the Respondent return his investment of at least $97,966.22, which represented the principal amount invested by client RZ through the Respondent in Dollars & Sense.

26. On June 1, 2009, the Respondent gave client RZ a total of $97,966.22 as repayment of the total principal amount she had received from client RZ pursuant to the Promissory Notes.

Allegation #2: Failure to Cooperate

27. On June 12, 2009, Staff of the MFDA ("Staff") sent a letter to the Respondent by registered and regular mail that requested that she provide a written statement responding to the allegation that she had provided promissory notes to a client guaranteed by the Respondent's company.

28. On September 14, 2009, Staff again wrote to the Respondent by registered mail requesting that she provide a written response and certain documents no later than September 23, 2009.

29. On September 23, 2009, the Respondent wrote Staff and advised that she had already responded to Staff's inquiry and provided the text of the response she claimed to have previously sent to Staff. Staff has no record of receiving any previous response the Respondent claims that she had already sent. On September 23, 2009, the Respondent also promised to fax to Staff the requested documents by September 24 or 25, 2009.

30. On September 28, 2009, the Respondent advised Staff that she would forward a report and supporting documents by registered mail by the next day.

31. Having not received documents from the Respondent, Staff wrote the Respondent on October 15, 2009 by registered and regular mail and advised the Respondent of her obligation to respond to Staff, and requested that she provide documents to assist in the investigation no later than October 31, 2009.

32. On October 27, 2009, the Respondent emailed Staff and advised that she had already replied to Staff's previous request. She further advised that she would re-send her response to Staff. Staff has no record of having received the Respondent's response referred to in her October 27, 2009 email. Staff replied to the Respondent on October 27, 2009, and requested that the Respondent provide Staff with the previous response she referred to in her email.

33. Staff received no Response from the Respondent, so Staff emailed the Respondent on November 9, 2009 and advised her that it had not received the Respondent's response and requested that she provide the response no later than November 13, 2009.

34. On November 12, 2009, the Respondent sent Staff an email with the subject line "response attached". No response was attached to the Respondent's email, so Staff sent

an email to the Respondent on November 13, 2009 and advised the Respondent that there was no attachment to her email and requested that she provide her response that day. On November 15, 2009, the Respondent sent an email and advised that she would re-send the attachment the next day.

35. On November 16, 2009 the Respondent sent an email to Staff that claimed that she was unable to send the attachment because it was too large. The Respondent requested Staff's fax number and stated that she would fax it that morning. Staff provided the Respondent with the fax number.

36. On November 18, 2009, the Respondent sent Staff certain documentation by fax. Later that day, Staff emailed the Respondent and advised her that she had not responded to all of Staff's requests and requested that she provide the missing information/documentation together with copies of certain cheques deposited into her bank account no later than December 2, 2009.

37. On December 3, 2009 Staff received an email from the Respondent stating: *"I have a fax prepared for you with all but the deposits from the bank you requested. I'm still awaiting them from the bank. I was hoping they would be in the mail yesterday. I will send what I have today by fax."*

38. Having not received the documentation from the Respondent, Staff emailed the Respondent on December 7, 2009 and advised that Staff had not received her fax and requested than she send the fax no later than 3:00 p.m. that day. Later that day, the Respondent emailed staff and advised: *"I sent the fax that evening to you. I will resend."* Staff received a further email from the Respondent on December 7, 2009 asking *"Did you receive my fax"*. Staff has no record of receiving the fax the Respondent referred to in her December 7, 2009 email.

39. On December 9, 2009, Staff emailed the Respondent and advised that Staff had still not received her fax. The Respondent emailed Staff and advised that she was away from her office.

40. On December 15, 2009 the Respondent emailed Staff and advised: *"I'm back, and will be sending the info today. I was not able to scan and email over the weekend"*.

41. Staff still did not receive any documents from the Respondent by December 30, 2009, and therefore, Staff sent a letter to the Respondent that day and advised the Respondent of her obligations to cooperate with Staff's investigation and again requested that she provide her statement and the documents no later than January 8, 2010. In addition Staff requested that the Respondent attend at MFDA offices for an interview on January 22, 2010.

42. The Respondent attended the interview with MFDA Staff on January 22, 2010. During the interview the Respondent undertook to provide Staff with certain documentation and information (the "Undertakings").

43. On January 27, 2010, the Respondent advised Staff that she was "aiming to" have

the items requested by Staff by February 1, 2010.

44. By February 3, 2010, Staff had not received the answers to the Undertakings, so on February 3, 2010 Staff emailed the Respondent and requested that she comply with the Undertakings. The Respondent responded that same day and advised that she was waiting to receive information from her bank.

45. On February 19, 2010, the Respondent sent a fax to Staff that indicated that she was sending 19 pages by fax. Staff only received a cover sheet and 10 pages. The cover sheet of the Respondent's fax stated: "other items coming by email".

46. On February 23, 2010, Staff emailed the Respondent and sent a letter by registered mail that requested that the Respondent answer the Undertakings no later than March 8, 2010.

47. On March 8, 2010, the Respondent sent eight emails to Staff that provided various documents. The following day Staff received an email from the Respondent stating that she would fax additional documents on March 10, 2009. The Respondent's email did not answer the outstanding Undertakings, and on March 9, 2010, Staff emailed the Respondent stating: *"when you send the fax tomorrow please ensure that you provide ALL of the documents that you undertook to provide at your interview."*

48. On March 12, 2010, the Respondent sent Staff additional documents, which did not answer all the outstanding Undertakings. On March 16, 2010 Staff emailed Respondent and listed for her the Undertakings that remained unanswered and requested that she provide the answers no later than March 31, 2010.

49. On March 31, 2010, the Respondent emailed Staff to advise that she would be sending all the information she had later that day claiming that she was having difficulty obtaining information from her bank. On April 1, 2010, the Respondent emailed Staff and advised that she would fax additional documents the next day.

50. On April 5, 2010 the Respondent emailed Staff and asked Staff to confirm that it had received the Respondent's fax. Staff has no record of receiving the fax referred to in the Respondent's April 5, 2010 email. On April 7, 2010, Staff emailed the Respondent and advised her that Staff had not received her fax, and requested that she re-send it or that she send the response by registered mail.

51. On April 13, 2010, Staff emailed the Respondent and advised Staff had still not received the documents, and stated: *"If you are faxing [the documents] please do so by 5:00 pm today. If you have sent [the documents] by registered mail please provide the Canada Post tracking number."*

52. On April 13, 2010, the Respondent emailed Staff: *"The info was sent by our office mail, I will get the # for you. Our system is up and running just fine now. For good measure I will fax it tomorrow morning as well."*

53. On April 15, 2010. Staff emailed the Respondent and advised her that the

information she claimed to have sent Staff did not arrive, and that Staff did not receive from her the Canada Post Tracking number it had requested she provide. Staff also advised the Respondent that if Staff did not receive the documents by noon that day that Staff would proceed on the basis that the Respondent was failing to cooperate with Staff's investigation.

54. The Respondent faxed additional documents to Staff on April 16, 2010, which did not answer the outstanding Undertakings. On April 29, 2010, Staff emailed the Respondent and sent a letter by Registered mail which listed the outstanding Undertakings and advised that the Respondent had failed to provide answers to the Undertakings.

55. The Respondent emailed Staff on May 7, 2010 stating "I should have everything *together today. Ive* (sic) *been waiting on the bank. They sent the wrong information."*

56. On May 31, 2010, Staff emailed the Respondent and requested the documents pursuant to the Undertakings. The Respondent emailed Staff on June 2, 2010 stating *"I did send the remaining items by email and requested the bank fax you directly. Please confirm what is outstanding?"*

57. On June 8, 2010, Staff emailed the Respondent and advised that Staff had not received any documents the Respondent claimed she had sent to Staff or any documents the Respondent claimed she requested her bank to fax Staff directly.

58. On June 28, 2010, the Respondent emailed Staff and advised that she had spoken with her bank and that they had advised her that she would receive the items within that week (June 28 to July 2, 2010).

59. As of the date the Notice of Hearing was issued in this matter on July 28, 2011, Staff had not received any response from the Respondent subsequent to her email of June 28, 2010.

60. As a result of the Respondent's failure to provide the requested documents and information requested by Staff, Staff has been is (sic) unable to determine the full nature and extent of the Respondent's activities as described in Allegation #1 above, including in particular whether any other clients may have loaned monies to the Respondent. (sic) invested in Dollars & Sense, or had their monies used by the Respondent to repay client RW. (sic)

61. Since the time this proceeding was commenced on July 28, 2011, the Respondent has provided some documents to staff that have answered some of the Staff's requests. To date, the following requests remain unanswered:

> (a) provide Staff with copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;
>
> (b) provide copies of the cheques for business expenses paid from the $4,000.00

deposited into the Respondent's bank account on October 29, 2008;

(c) provide copies of the summaries from the Respondent's fax machine for all faxes sent during the time period November 2009 to December 2009; and

(d) provide the Canada Post Tracking number for the mail the Respondent claims she sent to Staff in her April 14, 2010 email to Staff.

Mitigating Factors

62. The Respondent has not been the subject of previous MFDA disciplinary proceedings.

V. RESPONDENT'S REPRESENTATIONS

63. The Respondent represents that she can no longer locate the summaries from her fax machine showing all faxes sent during the period of November 2009 and December 2009, which are documents she undertook to provide to Staff during her interview on January 22, 2010. In particular, the Respondent represents that she can no longer locate proof that she faxed information to Staff on or about December 3 and 7, 2009 as she previously advised Staff that she did on December 7 and 8, 2009. There is no evidence to show that the Respondent sent these faxes other than the Respondent's representations that she did so.

64. The Respondent represents that she can no longer locate the Canada Post tracking number that pertains to the information the Respondent advised she sent Staff by mail on or about April 13, 2010. The Respondent represents that she has made inquiries of Canada Post to obtain the tracking number, and she has been advised that it will take four to six weeks to obtain the document requested. There is no evidence to show that the Respondent sent the information by mail to Staff on or about April 13, 2010 other than the Respondent's representations that she did so.

65. The Respondent regrets the contraventions of MFDA Rules that are described in this Settlement Agreement.

VI. CONTRAVENTIONS

66. The Respondent admits that:

(a) between October 2007 and June 2009, she engaged in personal financial dealings with client RZ by soliciting and accepting monies from client RZ on at least seven occasions in the total amount of approximately $97,966.22 to be invested on behalf of client RZ in a company owned and controlled by the Respondent, thereby giving rise to an actual or potential conflict of interest between the Respondent and client RZ which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of client RZ, contrary to MFDA Rules 2.1.4 and 2.1.1; and

(b) commencing on January 22, 2010, she has failed or refused to provide documents and information requested by MFDA Staff in the course of an investigation, which information she undertook and agreed to provide during the course of an interview with MFDA Staff, contrary to s. 22.1 of MFDA By-law No. 1.

VII. TERMS OF SETTLEMENT

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

(a) the Respondent shall pay a fine in the amount of $15,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1;

(b) the Respondent shall pay costs in the amount of $5,000, attributable to the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;

(c) the Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with a Member of the MFDA for a period of nine months from the date of the Order, pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

(d) the Respondent shall provide Staff with proof, satisfactory to Staff, that the Respondent has made requests of the appropriate third parties to provide the following information to the Respondent within 10 days of the Order:

i. copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;

ii. copies of the cheques for business expenses paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008;

iii. the Canada Post Tracking number for the mail the Respondent claims she sent to Staff in her April 14, 2010 email to Staff;

(e) the Respondent shall provide the following documents to Staff no later than 60-days from the date of this Order:

I. copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;

II. copies of the cheques for business expense paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008; and

III. copies of the Respondent's line of credit statements showing the source of the funds used to purchase the $97,966.22 bank draft, copies of the Respondent's bank statements showing the deposit of the funds from her line of credit that were used to pay the $97,966.22 bank draft, and the withdrawal of the monies to pay the bank draft.

(f) if the Respondent fails to fully comply with subparagraph (e) above:

i. the Respondent shall pay an additional fine of $35,000; and

ii. the Respondent shall immediately be permanently prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA.

(g) if there is any issue as to whether the Respondent has fulfilled the provisions of subparagraph (e) above, then either party may, upon reasonable notice, bring the matter back before a Hearing Panel for further directions and orders;

(h) the Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.1.4, 2.1.1 and s.22.1 of MFDA By-law No. 1; and

(i) the Respondent will attend in person, on the date set for the Settlement Hearing

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

74. 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."

(a) <u>Factors to be considered</u>

20. In our view, the role of a Hearing Panel in a Settlement Hearing is not the same as its role in making a penalty determination after a contested Hearing. In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty

as clearly falling outside a reasonable range of appropriateness. As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."

> Re: *Clark (Re),* [1999] I.D.A.C.D. No. 40 at page 3.
>
> Re: *Professional Investments (Kingston) Inc. (Re),* [2009], Central Regional Council, File No. 200836, Hearing Panel Decision dated March 24, 2009, page 8, para. 13.

21. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

1. Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
2. Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondent as set out in the Settlement Agreement;
3. Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
4. Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
5. Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
6. Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
7. Whether the Settlement Agreement will foster confidence in the regulatory process itself.

> Re: *Investors Group Financial Services (Re),* [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated December 16, 2004 at pages 2-3.
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> Re: *Evangeline Securities Limited (Re),* [2008] MFDA Atlantic Regional Council, File No. 200816, Hearing Panel Decision dated September 21, 2008.
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> Re: *Professional Investments (Kingston) Inc. (Re*), [2009], *supra, page 9, para. 14*.

22. Previous Hearing Panels have also identified a number of additional factors which should be considered when determining whether the penalty sought to be imposed is appropriate. These include:

1. The seriousness of the allegations proved against the respondent;
2. The respondent's past conduct, including prior sanctions;
3. The respondent's experience in the capital markets;
4. The level of the respondent's activity in the capital markets;
5. Whether the respondent recognizes the seriousness of the improper activity;
6. The harm suffered by investors as a result of the respondent's activities;
7. The benefits received by the respondent as a result of the improper activity;
8. The risk to investors and the capital markets in the jurisdiction, were the respondent to continue to operate in capital markets in the jurisdiction;
9. The damage caused to the integrity of the capital markets in the jurisdiction by the respondent's improper activities;
10. The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
11. The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in capital markets; and
12. Previous decisions made in similar circumstances.

> *Re: In the Matter of Robert Roy Parkinson* (2005), Hearing Panel of the Ontario Regional Council, Decision and Reasons dated April 29, 2005, MFDA File No. 200501, at page 22.
>
> *Re: In the Matter of Arnold Tonnies,* (2005), Hearing Panel of the Prairie Regional Council, Decision dated June 27, 2005, MFDA File No. 200503, at page 23.

23. We were also referred to the MFDA Penalty Guidelines, specifically to the sections on Personal Financial Dealings and Failure to Cooperate. While these Guidelines are not mandatory, they do suggest the types and ranges of penalties which might be considered appropriate for particular case types.

(b) Considerations in the Present Case

24. The amount of money involved in the admitted personal financial dealings with client RZ was very significant. The principal amount was "secured" by "Dollars and Sense", a company with no bank account and few, if any, assets. It was the company, owned and controlled by the Respondent, under which she carried on business. The loans were said to be "guaranteed". In the Settlement Agreement, the Respondent admitted that this "guarantee" consisted solely of her "word".

25. Dollars and Sense was not an investment product approved for sale by Interglobe, the MFDA Member through which the Respondent was registered. Interglobe was not made aware that the Respondent was selling investments in Dollars and Sense until after RZ had moved his investments to a different mutual fund dealer.

26. The Respondent did, eventually, repay to RZ the total principal amount she had received pursuant to the Promissory Notes. No interest was either paid or proffered despite the fact that a portion of the funds had been received by the Respondent more than 18 months previously.

27. The Staff portrayed this as a case of partial, as opposed to complete, non-compliance. It is clear, however, that the non-compliance did impact the investigation. At the time of the Settlement Hearing, there was still significant, admitted, non-compliance on the part of the Respondent. In fact, one of the terms of the Settlement Agreement was a request that the Hearing Panel issue an Order requiring the Respondent to produce certain documentation within 60 days from the date of the Settlement Hearing, failing which there would be very significant consequences.

28. In addition, in assessing the nature and degree of non-compliance, the Hearing Panel was aware that certain of the requests had been outstanding for more than two years.

29. On the mitigating side, we were advised that the Respondent has no past disciplinary history with the MFDA.

30. Shortly before the scheduled commencement of the Hearing on the Merits, the Respondent did admit that the Allegations which had been made against her in the Notice of Hearing were correct. She stated that she "regretted" her misconduct.

31. By executing the Settlement Agreement, and making the admissions which she did, the Respondent did ensure that a full Hearing on the Merits was not necessary, although the timing of the admissions would not have likely significantly shortened the amount of Staff preparation time.

32. We were also advised that the Respondent had made arrangements, satisfactory to Staff, to secure the payment of the fine and costs should the Hearing Panel consider it appropriate to accept the Settlement Agreement.

33. With respect to the proposed penalty on the issue of personal financial dealings, we were referred to the following MFDA Decisions:

1. *In The Matter of Patricia Marva Cuthbert* (2011), Hearing Panel of the Pacific Regional Council, Reasons for Decision dated June 8, 2011, MFDA File No. 201013.
2. *In The Matter of Luigi Ciardullo* (2011), Hearing Panel of the Central Regional Council, Reasons for Decision dated February 17, 2011, MFDA File No. 201013.
3. *Re: Zenon Smiechowski* (2010), Hearing Panel of the Pacific Regional Council, Reasons for Decision dated December 31, 2010, MFDA File No. 201007.
4. *Re: Ronald Freynet* (2007), Hearing Panel of the Pacific Regional Council, Reasons for Decision dated August 14, 2007, MFDA File No. 200704.
5. *In The Matter of Michael Anthony Ryan* (2011), Hearing Panel of the Central Regional Council, Reasons for Decision dated April 6, 2011, MFDA File No. 201014.

34. The Penalty Guidelines suggest a minimum fine of $10,000.00, an educational component, a period of increased supervision and a suspension or a permanent prohibition in egregious cases.

35. With respect to the issue of non-compliance, the Divisional Court in the case of *Artinian v. College of Physicians and Surgeons of Ontario*, 73 O.R. (2d) 704, stated that "every professional has an obligation to cooperate with his self governing body.".

36. The Penalty Guidelines state that the failure to cooperate with an MFDA investigation "is serious misconduct because it subverts the MFDA's ability to perform its regulatory function." We agree. The Guidelines suggest a minimum fine of $50,000.00 and a permanent prohibition.

37. We were also referred to two recent MFDA Decisions, where consideration was given as to what penalty should be imposed in a case of failure to cooperate. These Decisions were:

1. *Ryan, supra*, page 11, para. 32.
2. *In The Matter of David Allan Vitch* (2011), Hearing Panel of the Central Regional Council, Reasons for Decision dated September 22, 2011, MFDA File No. 201103.

38. In the penalty portion of the Settlement Agreement, the parties proposed, *inter alia*, a two-part Order. Under the proposed Order, the Respondent would be required, within 60 days, to produce certain documentation. Should she fail to do so, she would be immediately permanently prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA.

39. We were referred to three Decisions of the Investment Dealers Association of Canada, where a type of two-step Order was issued. These Decisions were:

1. *Crittall (Re)*, [2004] I.D.A.C.D. No. 51.
2. *Pandelidis (Re)*, [2004] I.D.A.C.D. No. 33.
3. *Derivative Services Inc. (Re)*, [2000] I.D.A.C.D. No. 26

40. We have also considered the nature of these proceedings, the fact that they are public and the effect that this has had and will have on the Respondent.

41. We have, finally, considered that this was a Settlement Agreement that was reached after,

apparently, significant discussion and negotiation. It represents what the parties, with their knowledge and experience, feel is an appropriate resolution.

(c) Decision

42. After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were unanimously of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by this Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing. We advised that our Reasons for that Decision would be delivered in due course. These are those Reasons.

(d) Order

43. After accepting the Settlement Agreement, we made the following Order:

1. The Respondent shall pay a fine in the amount of $15,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1.

2. The Respondent shall pay costs in the amount of $5,000, attributable to the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1.

3. The Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with a Member of the MFDA for a period of nine months from the date of the Order, pursuant to section 24.1.1(e) of MFDA By-law No. 1.

4. The Respondent shall, within 10 days of the Order, provide Staff with proof, satisfactory to Staff, that the Respondent has made requests of the appropriate third parties to provide the following information to the Respondent:

(a) copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;
(b) copies of the cheques for business expenses paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008; and
(c) the Canada Post Tracking number for the mail the Respondent claims she sent to Staff in her April 14, 2010 email to Staff

5. The Respondent shall provide the following documents to Staff no later than 60-days from the date of this Order:

(a) copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;
(b) copies of the cheques for business expenses paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008; and
(c) copies of the Respondent's line of credit statements showing the source of the funds used to purchase the $97,966.22 bank draft, copies of the Respondent's bank statements showing the deposit of the funds from her line of credit that were used to pay the $97,966.22 bank draft, and the withdrawal of the monies to pay the bank draft.

6. If the Respondent fails to fully comply with paragraph 5 above:

(a) the Respondent shall pay an additional fine of $35,000.00; and
(b) the Respondent shall immediately be permanently prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA

7. If there is any issue as to whether the Respondent has fulfilled the provisions of paragraph 5 above, then either party may, upon reasonable notice, bring the matter back before a Hearing Panel for further directions and orders.

8. 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 9th day of February, 2012.

"Thomas J. Lockwood"
Thomas J. Lockwood, Q.C.,
Chair

"Selwyn Kossuth"
Selwyn Kossuth,
Industry Representative

"Anne Traczuk"
Anne Traczuk,
Industry Representative

Postscript

Notice from the Corporate Secretary

File No. 201109

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: Jennifer Lynn Killins

NOTICE FROM THE CORPORATE SECRETARY

NOTICE is hereby given that, whereas Jennifer Lynn Killins (the "Respondent") entered into a settlement agreement with Staff of the MFDA dated November 20, 2011 (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of matters for which she could be disciplined pursuant to sections 20 and 24.1.1 of MFDA By-law No. 1;

AND WHEREAS a Settlement Hearing was held in Toronto, Ontario on November 21, 2011 before a hearing panel of the MFDA's Central Regional Council (the "Hearing Panel");

AND WHEREAS the Hearing Panel accepted the Settlement Agreement pursuant to section 24.4.3 of MFDA By-law No. 1, as a consequence of which the Hearing Panel made the following orders:

1. The Respondent shall pay a fine in the amount of $15,000, pursuant to s. 24.1.1(b) of

MFDA By-law No. 1;

2. The Respondent shall pay costs in the amount of $5,000, attributable to the investigation and settlement of this matter, pursuant to s. 24.2 of MFDA By-law No. 1;

3. The Respondent shall be prohibited from conducting securities related business while in the employ of, or associated with a Member of the MFDA for a period of nine months from the date of the Order [November 21, 2011], pursuant to s. 24.1.1(e) of MFDA By-law No. 1;

4. The Respondent shall provide Staff with proof, satisfactory to Staff, that the Respondent has made requests of the appropriate third parties to provide the following information to the Respondent within 10 days of the Order [November 21, 2011]:

a. copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;
b. copies of the cheques for business expenses paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008; and
c. the Canada Post Tracking number for the mail the Respondent claims she sent to Staff in her April 14, 2010 email to Staff.

5. The Respondent shall provide the following documents to Staff no later than 60-days from the date of the Order [November 21, 2011]:

a. copies of all deposits into the Respondent's bank account over $5,000.00 and copies of all cheques deposited between January 1, 2006 and September 30, 2009;
b. copies of the cheques for business expenses paid from the $4,000.00 deposited into the Respondent's bank account on October 29, 2008; and
c. copies of the Respondent's line of credit statements showing the source of the funds used to purchase the $97,966.22 bank draft, copies of the Respondent's bank statements showing the deposit of the funds from her line of credit that were used to pay the $97,966.22 bank draft, and the withdrawal of the monies to pay the bank draft.

6. If the Respondent fails to fully comply with paragraph 5 above:

a. the Respondent shall pay an additional fine of $35,000; and
b. the Respondent shall immediately be permanently prohibited from conducting securities related business while in the employ of or associated with a Member of the MFDA.

7. If there is any issue as to whether the Respondent has fulfilled the provisions of paragraph 5 above, then either party may, upon reasonable notice, bring the matter back before a Hearing Panel for further directions and orders.

8. 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*.

AND WHEREAS the Respondent failed to comply with paragraph 5 above on or before January 20, 2012;

AND WHEREAS the MFDA Corporate Secretary was notified by MFDA Enforcement Counsel on January 23, 2012 that the Respondent had not complied with paragraph 5 above;

NOTICE is hereby given that, in accordance with paragraph 5 of the Hearing Panel's Order dated November 21, 2011, the Respondent is permanently prohibited from conducting securities related business in any capacity while in the employ of or associated with any Member of the MFDA, pursuant to s. 24.1.1(e) of MFDA By-law No. 1, and shall pay an additional fine of $35,000, pursuant to s. 24.1.1(b) of MFDA By-law No. 1.

Date: January 24, 2012

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
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