



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: Ben Alden Kaley

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 Atlantic 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, Ben Alden Kaley.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the MFDA.

IV. AGREED FACTS

6. The Respondent was registered in New Brunswick as a mutual fund salesperson with Investia Financial Services Inc. ("Investia") from August 20, 2004 until his resignation on August 19, 2008. During the period of registration, the Respondent had 1 client and completed only 1 transaction.

7. The Respondent is a co-owner (along with three other individuals) of a fishing camp called The Ledges Fishing Corp. ("The Ledges"). The Ledges is a company incorporated pursuant to the laws of New Brunswick. The Respondent is listed on corporate documents of The Ledges as its Vice-President.

8. On March 31, 2006, the Respondent became a Director of The Ledges.

9. On May 11, 2006, the Respondent completed and submitted Investia's "Annual Review of Professional Activities" form. The Respondent did not disclose on the form his status as a co-owner of The Ledges and his position as Vice-President and Director of The Ledges.

10. Shortly thereafter, The Ledges offered for sale 18 preferred shares priced at \$150,000 CDN per share. The preferred shares were offered for sale pursuant to an exemption from prospectus and registration requirements of the New Brunswick *Securities Act*. Ownership of a preferred share entitled the shareholder to specified fishing rights at The Ledges.

11. Between February 2007 and August 2007, The Ledges sold 13 of the 18 preferred shares. Twelve of the preferred shares were purchased by members of the public. The thirteenth share was purchased by another co-owner of The Ledges, Alden M. Kaley, the Respondent's father. None of the investors was a client of Investia. A total of \$1,950,000 was raised through the sale of the preferred shares. As far as the MFDA is aware, the remaining five preferred shares have yet to be sold.

12. The Respondent, in his capacity as Vice-President and a Director of The Ledges, was involved in explaining the details and terms of the preferred share offering to prospective investors. Thereafter, individuals who expressed interest in purchasing a preferred share were directed to counsel for The Ledges, which handled the preparation and execution of the legal documentation associated with the purchase.

13. In addition to meeting with prospective investors, the Respondent, in his capacity as Vice-President and a Director of The Ledges, signed, on behalf of The Ledges, all but one of the Subscription Agreements or Buy-Sell agreements completed by the investors.

14. The preferred shares were offered for sale pursuant to exemptions from the prospectus and registration requirements of the New Brunswick *Securities Act* and, as such, the distribution of the preferred shares was required to be reported by The Ledges to the New Brunswick Securities Commission ("NBSC"). The Respondent, on behalf of The Ledges, signed the requisite Exempt Distribution Form (Form 45-106F1) filed with

the NBSC in respect of the distribution of the preferred shares.

15. Upon receipt of the Form 45-106F1 filed by The Ledges with the NBSC, NBSC Staff contacted Investia by letter dated May 28, 2007 to advise Investia of the involvement of the Respondent in the distribution of the preferred shares. Prior to receiving this notification from NBSC Staff, Investia was aware of the Respondent's status as a co-owner of The Ledges, but was not aware of his position as Vice-President and Director and his involvement in the sale of the preferred shares.

16. On October 9, 2007, the Respondent completed and submitted an Investia "Outside Business Activity Approval Form". On the form, the Respondent disclosed his position as Vice-President of The Ledges but did not disclose the fact that The Ledges had sold preferred shares to members of the public or the nature and extent of his involvement in the sale of the preferred shares.

V. CONTRAVENTIONS

17. The Respondent admits that his participation in the sale of the 13 preferred shares of The Ledges to the public constituted securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to MFDA Rules 1.1.1(a).

18. The Respondent admits that between February 2007 and August 2007, he carried on another gainful occupation that was not properly disclosed to and approved by the Member in his role as co-owner, Vice-President and Director of The Ledges, contrary to MFDA Rules 1.2.1(d).

VI. TERMS OF SETTLEMENT

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

- (a) the Respondent will attend, in person, on the date set for the settlement hearing;
- (b) the Respondent shall pay a fine in the amount of \$10,000;
- (c) the Respondent shall be suspended from acting as a mutual fund salesperson for a period of 6 months commencing immediately upon the approval of the settlement agreement by the Hearing Panel; and
- (d) the Respondent shall pay legal costs in the amount of \$2,500.

VII. STAFF COMMITMENT

20. 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 X 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 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

21. Acceptance of this Settlement Agreement shall be sought at a hearing of the Atlantic Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

22. 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 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.

23. 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.

24. 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

25. 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 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

26. 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.

27. 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

28. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: November 23, 2009

“Alden Kaley”

Witness - Signature

Alden Kaley

Witness - Print name

“Ben Alden Kaley”

Ben Alden Kaley

“Mark T. Gordon”

Staff of the MFDA

Per: Mark T. Gordon

Executive Vice-President



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Re: Ben Alden Kaley

ORDER

WHEREAS on June 24, 2009, 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 Ben Alden Kaley (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated the [] of [], 2009 (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 the Respondent:

- (a) from February 2007 to August 2007, engaged in securities related business that was not carried on for the account of the Member or through the facilities of the Member, contrary to MFDA Rules 1.1.1(a).

- (b) from at least February 2007 to August 2007, carried on a dual occupation that was not properly disclosed to and approved by the Member, contrary to MFDA Rules 1.2.1(d).

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

1. If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, then the Corporate Secretary shall prepare copies of the requested exhibits, redact any and all intimate financial or personal information therefrom, and provide the redacted copies to the non-party, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;
2. The Respondent, Ben Alden Kaley, shall pay a fine in the amount of \$10,000 pursuant to MFDA By-Law No. 1, section 24.1.1(b);
3. The Respondent the Respondent shall be suspended from acting as a mutual fund salesperson for a period of 6 months commencing immediately upon the approval of the settlement agreement by the Hearing Panel; and
4. The Respondent, Ben Alden Kaley, shall pay costs in the amount of \$2,500 pursuant to MFDA By-Law No. 1, section 24.2.

DATED this 3rd day of December, 2009.

Per: _____
Tom Lockwood, Chair

Per: _____
Ann Etter, Industry Representative

Per: _____
Remy Richard, Industry Representative

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