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: Jacqueline De Backer**

# 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 entered into between Staff of the MFDA ("Staff") and the Respondent, Jacqueline De Backer (the "Settlement Agreement").

## 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 section 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 IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

## IV. AGREED FACTS

### Registration History

6. From March 2006 to November 2011, the Respondent was registered in Ontario, British Columbia and Quebec as a mutual fund salesperson with FundTrade Financial Corp. and its successor company, FundEX Investments Inc., a Member of the MFDA.

7. In November 2011, the Respondent voluntarily resigned her registration. She has not been registered since that time.

8. Prior to her registration with FundEX, the Respondent was registered as a mutual fund salesperson with The Investment House of Canada Inc. (a former member of the MFDA) from May 2004 to March 2006.

**The Leveraged Investment Strategy**

9. Between about 2007 and 2010, the Respondent frequently recommended and facilitated the implementation of a leveraged investment strategy (the "Leveraged Investment Strategy") in the accounts of clients.

10. The Leveraged Investment Strategy, as it was explained to clients by the Respondent, was broken down into the following phases.

(a) **The "Mortgage Conversion Phase"**

In this phase, over a period of three to ten years[1], clients would:

i. if they did not already have such a mortgage, convert their existing mortgage into a re-advanceable mortgage (the "Mortgage"), consisting of a home equity line of credit ("HELOC") and a regular mortgage (the "Regular Mortgage"). Clients arranged the Mortgages through mortgage brokers, and the Respondent was not involved in this process. As clients paid down their Regular Mortgages, the credit limit on their respective HELOCs increased;

ii. purchase return of capital mutual funds[2] ("ROC Funds") using funds from investment loans and the HELOCs. All of the investment loans were no-margin loans, so the clients were not at risk of margin calls if the value of the

[1] The Respondent represented that this process would take between three and ten years, depending on the client.
[2] "Return of capital" mutual funds are structured to pay a set monthly distribution (for example, 8%) to an investor which may include a return of the capital originally invested by the investor. In the event the value of these funds declines due to deteriorating market conditions or poor investment performance such that the amount of the promised monthly distributions exceeds the actual increase in the value of the funds, there is a real and substantial risk that the funds will be required to reduce, suspend or cancel altogether, the monthly distributions paid to investors.

investments decreased. The Respondent explained to clients that the ROC Funds were structured to pay predictable monthly distributions, expected to be sufficient to make pre-payments on their Regular Mortgages (in addition to the regular payments from other sources the clients were expected to continue to make on the Regular Mortgages) in order to accelerate the prepayment of the Regular Mortgage and increase the amount available through HELOCs. The resulting additional HELOC amounts were in turn to be used to pay the interest on the investments loans and HELOCs;

iii. use any excess in the HELOCs to invest in a second portfolio (the "Growth Portfolio");

iv. use any tax refunds the clients received to make pre-payments on the Regular Mortgages; and

v. continuously apply the distributions generated by the ROC mutual funds and the clients' annual income tax refunds (if any) to make their Regular Mortgage payments until their Regular Mortgage was paid off and only the HELOC liability (which would be equal in value to original outstanding Regular Mortgage) and the investment loans remained.

(b) **The "Investment Phase"**

Once the Mortgage Conversion Phase was completed, for a subsequent period of 15 to 25 years[3], clients would:

i. contribute an amount equivalent to clients' previous regular mortgage payment to purchase additional investments, including investments in the Growth Portfolios and Registered Retirement Savings Plans ("RRSP"s);

[3] The Respondent represented that the length of time depended on how quickly clients completed the Mortgage Conversion Process.

ii. direct the distributions from the ROC Funds towards continued interest payments on the investment loans and HELOCs; and

iii. direct any excess ROC Funds distributions to purchase further investments in the Growth Portfolios or RRSPs.

(c) **The "Retirement Phase":**

At the conclusion of the Investment Phase, clients would:

i. repay their HELOCs and investment loans by redeeming the ROC Funds purchased during the Mortgage Conversion Phase and possibly a portion of the Growth Portfolio; and

ii. be left with paid off Mortgages, the remainder of their Growth Portfolios and RRSPs for retirement.

11. As presented by the Respondent, the Leveraged Investment Strategy was structured, and recommended by the Respondent to clients, on the basis that the monthly distributions generated by the ROC mutual funds would be sufficient:

(a) **during the Mortgage Conversion Phase,** to make additional payments on the Regular Mortgages thereby increasing the amounts available through the HELOCs, funds from which monies would in turn be used to pay interest on investment loans and the HELOCs;

(b) **during the Investment Phase,** to pay the monthly costs associated with the investment loans and the interest costs of the clients' HELOCs; and

(c) **during the Investment Phase,** to purchase additional investments in Growth Portfolios and RRSPs (beyond those already purchased with funds previously used for Regular Mortgage payments) that would enable clients to meet their needs over the course of the Retirement Phase and leave them with a sizeable retirement fund after their investment loans were repaid.

**Implementation of the Leveraged Investment Strategy**

12. Relying upon the Respondent's representations, 4 clients, consisting of two spousal couples, namely JI and MFI and JH and LH (collectively the "Clients"), applied for and obtained investment loans totaling $547,000 from B2B Trust ("B2B") in order to implement the Leveraged Investment Strategy, as described below:

| Client | Lender | Date of Loan | Type of Loan | Loan Amount |
|---|---|---|---|---|
| JI and MFI | 1. Bank<br>2. B2B<br><br><br>3. B2B | 1. June 2007<br>2. June 2007<br><br><br>3. June 2007 | 1. HELOC<br>2. 2 for 1 (secured with funds from clients' HELOC)<br>3. 1 for 1 | 1. $100,000<br>2. $200,000<br><br><br>3. $100,000<br><br>**Total $400,000** |
| JH and LH | 1. Bank<br>2. B2B | 1. April 2007<br>2. April 2007 | 1. HELOC<br>2. 2 for 1 (secured with funds from clients' HELOC) | 1. $49,000<br>2. $98,000<br><br>**Total $147,000** |

13. The Respondent recommended to the Clients that they use the borrowed monies primarily to purchase a ROC Fund. Pursuant to the Respondent's recommendations, clients JI and MFI purchased $400,000 of the ROC Fund, and clients JH and LH purchased $147,000 of the ROC Fund.

14. At all material times, the clients relied entirely, or substantially, on the Respondent's:

(a) explanations of the features of the Leveraged Investment Strategy and the manner in which it was intended to work;

(b) recommendations with respect to their use of the Leveraged Investment Strategy.

**Failures to Explain Adequately the Leveraged Investment Strategy**

15. The Respondent obtained Leverage Disclosure Documents signed by the clients in respect of the investment loans, but failed to ensure that the clients fully understood and accepted the risks of implementing the Leveraged Investment Strategy.

16. The Respondent's explanations with respect to the Leveraged Investment Strategy failed to fully and adequately explain the risks, benefits, features and material assumptions inherent in the Leveraged Investment Strategy, as described in greater detail below.

***i) Mischaracterization of monthly distributions***

17. The Respondent did not fully and adequately explain the nature of the monthly distributions paid to investors in the ROC Funds when she referred to the payments as income. In fact, the ROC Funds were structured to pay monthly distributions to investors which may consist of a return of the capital originally invested by the investors.[4]

***ii) Risk distributions could be reduced, suspended or cancelled***

18. The Respondent failed to ensure that the Clients understood the risk that the ROC Funds might reduce, suspend or cancel the payment of the monthly distributions in the event that the ROC Funds failed to generate sufficient returns due to market conditions and other reasons, such that the investments could not be relied upon to pay the costs of the investment loans associated with the Leveraged Investment Strategy.

[4] See note 2 above.

19. In the event that the value of the underlying investments held by the ROC Funds declined due to deteriorating market conditions or poor performance, such that the amount of the monthly distributions paid to investors exceeded the increase in the value of underlying investments, there was a real and substantial risk that the ROC Funds could be required to reduce, suspend, or possibly cancel altogether, the monthly distributions paid to investors. The Respondent failed to fully and adequately explain this risk to the Clients.

20. The Respondent failed to ensure that the Clients understood the risk that a reduction or suspension in the payment of distributions from the ROC Funds could prevent clients from:

(a) paying down their Regular Mortgage on an accelerated basis, during the Mortgage Conversion Phase;

(b) paying the monthly costs associated with the investment loans and the interest costs on their HELOCs, during the entirety of the Leveraged Investment Strategy; and

(c) purchasing sufficient additional investments, if any, during the Investment Phase, to meet their needs over the course of the Retirement Phase and leave them with a sizeable retirement fund after their investment loans were paid down.

***iii) Decline in value of the ROC Funds***

21. The Respondent failed to ensure that the Clients understood the risk that the ROC Funds might decline in value over time, particularly if the clients did not reinvest the distributions the ROC Funds paid to them. If the value of the ROC Funds declined, the clients might not have sufficient assets available to repay their investment loans and HELOC.

22. As stated in footnote 2 above (at paragraph 10), the distributions paid by the ROC Funds could include a return of the capital originally invested by the investor. If, during the Mortgage

Conversion Phase, the returns generated by the investments held within the ROC Fund were not sufficient to meet the distributions paid to investors, the shortfall would, over time, reduce the value of the clients' units in the ROC mutual funds and the clients could incur investment losses. This potential problem would be compounded by the fact that the Respondent had recommended that the clients use the distributions they received to pay the costs associated with the investment loans or other expenses, rather than reinvest the distributions in the ROC Funds (during the Mortgage Conversion Phase) or other mutual funds (during the Investment Stage).

***iv) Effect of increase in borrowing costs***

23. The Respondent failed to ensure that the Clients understood the risk that:

(a) even if distributions from the investments purchased with investment loans remained consistent, an increase in interest rates could affect the sustainability of the Leveraged Investment Strategy if additional sources of income, savings or credit were not available to pay any resulting increase in the costs of servicing the investment loans; or

(b) even if the returns from the investments purchased with investment loans were positive, they could lose money if their borrowing costs exceeded their investment gains.

**Effects of the Leveraged Investment Strategy on Clients JI, MFI, JH and LH**

24. Commencing in about December 2007, the ROC Fund purchased by the Clients began to reduce its monthly distributions and its unit value began to decline. As a result, the monthly distributions the clients received became insufficient to pay the costs associated with their investment loans and they were forced to incur out-of-pocket expenses to cover the amounts they owed.

25. To limit the depletion of the value of the ROC Fund held by the Clients, the Respondent recommended that, rather than applying all of the distributions they received from the Leveraged Investment Strategy to their Regular Mortgages[5], they use a portion of those distributions to purchase units of another ROC Fund.

26. In September 2009, clients JI and MFI transferred the investments they held with FundEX, which at that time totaled $318,362.38 (down from the $400,000 they had originally invested), to another mutual fund dealer. At that time, clients JI and MFI still owed $400,000 on their investment loans and their HELOC.

27. In November 2009, the Respondent sent an email to all clients whose accounts she serviced and who had invested in the ROC Fund, including clients JH and LH. In her email, the Respondent advised that the distributions paid by the ROC Fund would be significantly reduced. Consequently, the Respondent recommended that clients, including clients JH and LH, transfer their investments to another ROC mutual fund that provided similar monthly distributions that the Respondent believed were not going to be reduced.

28. In May and June 2010, clients JH and LH transferred the investments they held with FundEX, including those in their RRSP accounts, which at that time totaled $143,073.74 (down from the $147,000 they had originally invested), to another mutual fund dealer. In doing so, they incurred deferred sales charges in the amount of $4,702.90. At that time, they still owed $147,000 on their investment loans and their HELOC.

## V. CONTRAVENTIONS

29. The Respondent admits that, between 2007 and 2010, she failed to ensure that 4 clients understood the risks, benefits, material assumptions and features of a leveraged investment strategy that she recommended to them, thereby failing to present the leveraged investment strategy to the clients in a fair and balanced manner, contrary to MFDA Rule 2.1.1.

[5] Per the Mortgage Conversion Phase described at paragraph 10(a) above.

## VI. TERMS OF SETTLEMENT

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

(a) a one year prohibition on the authority of the Respondent to conduct securities related business in any capacity while in the employ of or associated with any MFDA Member, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

(b) a fine in the amount of $10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, payable as follows:

i. $5,000 payable on or before the date of the settlement hearing;

ii. $5,000 payable no later than 12 months from the date that the settlement agreement is accepted by the Hearing Panel;

(c) costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1;

(d) the Respondent shall in the future comply with MFDA Rule 2.1.1; and

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

## VII. STAFF COMMITMENT

31. 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 contraventions related to the Leveraged Investment Strategy in the date range specified in Part V, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions unrelated to the Leveraged Investment Strategy or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part 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

32. 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.

33. 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 her 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.

34. 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 section 24.1.1 of MFDA By-law No. 1 for the purpose of giving notice to the public thereof in accordance with section 24.5 of MFDA By-law No. 1.

35. 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 her.

## IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

36. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is

taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

## X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

37. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of MFDA By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

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

39. 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.

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

## XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

**DATED** this 14th day of June, 2016.

"Jacqueline De Backer"
Jacqueline De Backer

"VSA"
Witness – Signature

VSA
Witness – Print Name

"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: Jacqueline De Backer**

# 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 Jacqueline De Backer (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 sections 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that, between 2007 and 2010, the Respondent failed to ensure that 4 clients understood the risks, benefits, material assumptions and features of a leveraged investment strategy that she recommended to them, thereby failing to present the leveraged investment strategy to the clients in a fair and balanced manner, contrary to MFDA Rule 2.1.1;

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

1. The Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with any MFDA Member, for one year, pursuant to section 24.1.1(e) of MFDA By-law No. 1;

2. The Respondent shall pay a fine in the amount of $10,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1, payable as follows:

   i) $5,000 payable on or before the date of the settlement hearing;
   ii) $5,000 payable no later than 12 months from the date that the settlement agreement is accepted by the Hearing Panel;

3. The Respondent shall pay costs in the amount of $5,000, pursuant to section 24.2 of MFDA By-law No. 1;

4. The Respondent shall in the future comply with MFDA Rule 2.1.1; and

5. 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 [day] day of [month], 20[ ].

Per: _____

[Name of Public Representative], Chair

Per: _____

[Name of Industry Representative]

Per: _____

[Name of Industry Representative]

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