



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: Keybase Financial Group Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of MFDA By-law No. 1, a hearing panel of the Central Regional Council of the MFDA (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Keybase Financial Group Inc. (the “Respondent” or “Keybase”).

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 MFDA 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

Registration History

6. Since May 2003, Keybase has been a Member of the MFDA. Keybase is currently registered as a Mutual Fund and Exempt Product dealer in all provinces in Canada and the territory of Nunavut.

Respondent Failed to Respond Fairly and Promptly to Client Complaints

7. Between 2011 and 2014, Keybase received a number of client complaints originating in Atlantic Canada, regarding a leveraged investment strategy that certain clients had implemented in their mutual fund accounts (the “Strategy”). Some of the investments made as part of the Strategy were started before the clients became clients of Keybase.

8. In order to engage in the Strategy, the clients borrowed monies and invested the borrowed monies in return of capital mutual funds (“ROC mutual funds”).

9. Between 2008 and 2009, in the context of the global financial crisis, the unit values of the ROC mutual funds declined, the distributions paid by the ROC mutual funds to investors were reduced, and the clients were left with investment loans that required repayment. The clients experienced investment losses.

10. The client complaints to Keybase alleged the following concerns:
- the Approved Persons (“APs”) had failed to adequately explain the features of the Strategy to clients;
 - the APs projected that the Strategy would generate sufficient returns to pay the clients’ borrowing costs, and also allow them to pay down their mortgages more quickly and/or generate excess discretionary income, such that the clients would not have to incur any out-of-pocket expenses to sustain the Strategy;
 - the APs had reported incorrect Know-Your-Client (“KYC”) information on the clients’ account opening and investment loan documents with respect to the clients’ income and assets, risk tolerance and/or investment knowledge, and the liabilities.
11. A number of the clients who submitted complaints also commenced civil lawsuits seeking recovery of their monies.
12. As described in greater detail below, Keybase failed to handle 13 client complaints it received in a fair and prompt manner in accordance with its obligations pursuant to MFDA Policy No. 3 and Rule 2.11.

Keybase Failed to Issue Timely Substantive Responses

13. Pursuant to MFDA Policy No. 3 and Rule 2.11, a Member must provide its substantive response to a client complaint in most cases within three months of the receipt of the complaint. Where a substantive response cannot reasonably be provided within three months, the Member must advise the complainant of the delay, provide an explanation for the delay, and provide the Member’s best estimate of the time required for the completion of the substantive response.
14. Keybase issued substantive responses to seven of the 13 client complaints that exceeded the reasonable time limits expected of a Member in such circumstances.
15. Keybase took between seven months and three years to provide a substantive response to seven client complaints.

Keybase Failed to Investigate and Assess the Complaints Fairly

16. Keybase failed to investigate and assess the 13 client complaints in a thorough, balanced, and objective manner, in accordance with the requirements set out in MFDA Policy No. 3.

17. In particular, in the course of investigating and assessing the complaints, Keybase:

- did not treat the complaints as raising suitability issues;
- notwithstanding that it had received a number of complaints, failed to consider whether there was a pattern of alleged misconduct as a factor in assessing the merits of the complaints;
- disregarded the clients' assertions that APs had not accurately represented the Strategy and instead preferred explanations from its APs;
- disregarded the clients' assertions that their KYC information was recorded incorrectly on account and loan documents based upon its view that the clients' signatures were indicative of the accuracy of KYC information, or the clients had condoned the use of incorrect KYC information by its APs;
- treated certain recurring behaviour by its APs as being merely 'administrative errors' rather than being evidence of APs recording inaccurate KYC information.

Keybase Issued Inadequate and Unfair Substantive Responses

18. In responding to the 13 client complaints, Keybase issued substantive responses which were inadequate, and failed to meet the requirements as set out in MFDA Policy No. 3.

19. In particular, Keybase's substantive response letters:

- contained inadequate or inaccurate outlines of the complaint, or in some cases, no outline at all;
- raised issues which Keybase knew or ought to have known were not relevant to the complaint;
- failed to include information about the amounts the client had borrowed to invest;
- included flawed gain and loss calculations (if completed at all);

- did not include the basis for Keybase’s conclusions on the suitability of the AP’s investment recommendations; or
- did not clearly state or explain Keybase’s conclusions with respect to the complaint.

20. In 2016 and 2017, Keybase received additional client complaints relating to its APs who had recommended the Strategy.

21. As described in greater detail below, in or about Spring 2018, Keybase voluntarily agreed to appoint an independent consultant (“Consultant”) to assist Keybase in improving its complaint handling.

V. ADDITIONAL FACTORS

ComArm Solutions Review

22. In or about August 2015, following an *Opportunity to be Heard*, the Ontario Securities Commission imposed terms and conditions on Keybase and on its IIROC affiliate, Argosy Securities Inc. (“Argosy”) requiring the hiring of a consultant to recommend changes to the governance structure and compliance resources of Keybase and Argosy.

23. In or about early 2016, Keybase retained the services of ComArm Solutions (the “Compliance Consultant”) to complete a comprehensive review of Keybase and Argosy’s general compliance policies, procedures, and practices. Keybase has taken steps to improve its general compliance, policies, procedures and practices.

24. Keybase paid approximately \$200,000 for the Compliance Consultant’s services.

Complaint Handling Review

25. In or about Spring 2018, Staff and Keybase agreed that Keybase would appoint an independent consultant (“Consultant”) in order to resolve its complaint handling deficiencies, by:

- i) reviewing and assessing the adequacy of all complaint handling processes and procedures, including interviewing Keybase staff and observing Member practices;

- ii) reviewing and assessing the sufficiency of the complaint handling department, including staff qualifications, workloads, and available department resources; and
- iii) establishing and assisting with the implementation of:
 - adequate policies and procedures;
 - system controls;
 - Keybase staff education and training regarding complaint handling; and
 - staffing solutions.

26. The Consultant's mandate included a review of complaints relating to the Strategy received by Keybase and, where necessary, Keybase issued new substantive responses to clients. The Consultant advised Staff that it trained Keybase staff regarding complaint handling, Keybase implemented the complaint handling recommendations, and Keybase now has adequate complaint handling procedures.

27. The Consultant completed the mandate in 2019.

28. Keybase paid approximately \$89,000 for the Consultant's services. The Respondent represents that it will continue to utilize its revised complaint handling procedures to ensure that all client complaints are handled in accordance with MFDA Policy No. 3.

Client Compensation

29. As of the date of this Settlement Agreement, Keybase has paid \$245,181 to compensate complainants for losses incurred as a result of the Strategy.

30. Keybase has offered to pay \$71,000 to client BO arising from Keybase's failure to a) query certain redemptions processed by one of its APs, and b) complete monthly supervision reports in respect of the AP in accordance with terms and conditions imposed on the AP by the Ontario Securities Commission. The AP arranged for client BO to invest in certain off book private mortgage investments. The amount offered by Keybase would compensate client BO for her principal losses.

Cooperation by Keybase

31. Keybase has cooperated with Staff throughout the course of Staff's investigation and these proceedings.

32. By entering into this Settlement Agreement, Keybase has saved the MFDA significant time and resources associated with conducting a fully contested hearing on the merits.

VI. CONTRAVENTIONS

33. The Respondent admits that, between 2011 and 2019, it failed to handle 13 client complaints promptly and fairly, contrary to MFDA Rules 2.11 and 2.1.1, and the complaint handling duties and requirements under MFDA Policy No. 3.

VII. TERMS OF SETTLEMENT

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

- i) the Respondent shall pay a fine in the amount of \$35,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
- ii) the Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
- iii) the Respondent shall in the future comply with its complaint handling duties and requirements, pursuant to MFDA Rules 2.11 and Rule 2.1.1, and MFDA Policy No. 3; and
- iv) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

35. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent or any of its officers or directors in respect of the facts and the contraventions set out in 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 this Settlement Agreement or in respect of conduct that occurred outside the specified date

ranges of the facts and contraventions set out in this Settlement Agreement, 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.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

36. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.mfda.ca.

37. 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/her/their) 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.

38. Staff and the Respondent agree that if the Settlement Agreement is accepted by the Hearing Panel, 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.

39. Staff and the Respondent agree that if the 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.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

40. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff reserves the right to bring proceedings under section 24.3 of the By-laws of the MFDA against the Respondent and any of its officers or directors based on, but not limited to, the facts set out in 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.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

41. 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.

42. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

XII. DISCLOSURE OF AGREEMENT

43. 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.

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

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 27th day of May, 2020.

“Dax Sukhraj”
KEYBASE FINANCIAL GROUP INC.

Per: Dax Sukhraj, President
Name and title of authorized signing officer

DC
Witness – Signature

DC
Witness – Print Name

“Charles Toth”
Staff of the MFDA
Per: Charles Toth
Vice-President, Enforcement

Schedule “A”

Order

File No. 2017100



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**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: Keybase Financial Group Inc.

ORDER

WHEREAS on [date], the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Keybase Financial Group Inc. (the “Respondent”);

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

AND WHEREAS the Hearing Panel is of the opinion that between 2011 and 2019, the Respondent failed to handle 13 client complaints fairly and properly, contrary to MFDA Rules 2.11 and 2.1.1, and the complaint handling duties and requirements under MFDA Policy No. 3.

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

1. The Respondent shall pay a fine in the amount of \$35,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
2. The Respondent shall pay costs in the amount of \$5,000, pursuant to s. 24.2 of MFDA By-law No. 1;
3. The Respondent shall in the future comply with its complaint handling duties and requirements, pursuant to MFDA Rules 2.11 and Rule 2.1.1, and MFDA Policy No. 3; and
4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the *MFDA Rules of Procedure*.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 753073