



**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: Lexy Dawn Koss**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (“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 Prairie Regional Council (“Hearing Panel”) of the MFDA should accept the settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Lexy Dawn Koss.

**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 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 XI) 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. The Respondent was registered in the mutual fund industry commencing in April 2006.

7. The Respondent has been registered as a mutual fund salesperson (now known as a dealing representative) in Alberta since April 2006, and in Ontario since April 2015, with Manulife Securities Investment Services (“Manulife”), a Member of the MFDA.

8. At all material times, the Respondent carried on business in the Edmonton, Alberta area.

## **Unauthorized Discretionary Trading**

9. At all material times, Manulife's policies and procedures prohibited its Approved Persons from engaging in discretionary trading and also explicitly stipulated that Approved Persons must obtain express prior written consent from clients prior to processing 10% free unit switches from mutual funds in a client's portfolio that are held subject to deferred sales charge ("DSC") fees ("DSC load mutual funds").

10. At all material times, client DM was a client of Manulife, whose accounts were serviced by the Respondent.

11. In 2016, client DM held DSC load mutual funds in his RRSP account.

12. Between March 2016 and May 2016, the Respondent made approximately six attempts to contact client DM to recommend and obtain client DM's authorization to redeem 10% free units held in the DSC load mutual funds, and apply the proceeds from the redemptions to the purchase of units of a different mutual fund that the Respondent believed would advance client DM's investment objective to pursue growth.

13. Client DM did not respond to any of the Respondent's attempts to contact him.

14. On May 24, 2016, without the knowledge, authorization or approval of client DM, the Respondent redeemed the 10% free units from the DSC load mutual funds that client DM held in his RRSP account. The proceeds from the redemptions totaled \$36,477.71.

15. On May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent used the proceeds from the redemptions from client DM's DSC load mutual funds to purchase a front end load mutual fund.

16. On July 8, 2016, client DM emailed the Respondent and advised her that he had received a confirmation showing that unauthorized transactions had been processed in his account on May 24 and 25, 2016.

### **Manulife's Response**

17. Manulife was notified of the complaint regarding unauthorized trading on July 21, 2016, and issued an acknowledgement letter to client DM the next day.

18. On September 19, 2016, Manulife contacted client DM and offered to reverse the trades, but client DM did not respond and did not request a reversal of the trades. The mutual fund that the Respondent purchased with the proceeds from the redemptions of the DSC load mutual funds increased in value following the unauthorized trading that was processed in client DM's account.

19. On January 10, 2017, Manulife issued a warning letter to the Respondent and took the following disciplinary action against the Respondent:

- a) \$15,000 fine
- b) Close Supervision for an indefinite period, to be reviewed on June 30, 2017; and
- c) Attendance and completion of the Manulife Securities Professional Workshop in Oakville, Ontario on April 10 to 12, 2017, at the Respondent's expense.

### **Additional Factors**

20. There is no evidence of client harm resulting from any of the misconduct described in this Settlement Agreement.

21. There is no evidence that the Respondent received any financial benefit from engaging in the misconduct described in this Settlement Agreement, beyond the commissions and fees that she would ordinarily be entitled to receive had the transactions been processed in the proper manner.

22. The Respondent has not previously been the subject of MFDA disciplinary proceedings.

23. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing of the allegations.

## **V. CONTRAVENTIONS**

24. The Respondent admits that, between May 24, 2016 and May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent processed unauthorized trades in client DM's account, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2.

## **VI. TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine in the amount of \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No 1;
- c) the Respondent shall in the future comply with MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2; and
- d) the Respondent will attend in person on the date set for the Settlement Hearing.

## **VII. STAFF COMMITMENT**

26. 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 described in Part V of this Settlement Agreement, 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 that are not set out in Part V of this Settlement Agreement 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**

27. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie 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](http://www.mfda.ca).

28. 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.

29. 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. 24.1.1 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.

30. 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**

31. 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**

32. 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.

33. 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**

34. 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.

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

**XII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 27<sup>th</sup> day of March, 2018.

“Lexy Dawn Koss”

\_\_\_\_\_  
Lexy Dawn Koss

“GMK”

\_\_\_\_\_  
Witness – Signature

GMK

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

\_\_\_\_\_  
Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement



**Schedule “A”**

**Order**

**File No. 201812**



**Mutual Fund Dealers Association of Canada**  
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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: Lexy Dawn Koss**

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**ORDER**

(ARISING FROM SETTLEMENT HEARING ON APRIL 4, 2018)

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**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 Lexy Dawn Koss (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated March 27, 2018 (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** on the basis of admissions made by the Respondent as set out in the Settlement Agreement, the Hearing Panel is of the opinion that the Respondent:

- a) between May 24, 2016, and May 25, 2016, without the knowledge, authorization or approval of client DM, the Respondent processed unauthorized trades in client

DM's account, contrary to the policies and procedures of the Member and MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2.

**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 \$5,000 pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- 2. the Respondent shall pay costs in the amount of \$2,500 pursuant to s. 24.2 of MFDA By-law No 1;
- 3. the Respondent shall in the future comply with MFDA Rules 2.3.1, 2.1.1, 2.10 and 1.1.2;
- 4. the Respondent will attend in person on the date set for the Settlement Hearing; and
- 5. 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]