



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: Credential Asset Management 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 By-law No. 1, a hearing panel of the Pacific 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, Credential Asset Management Inc. (the “Respondent”).

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 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

The Respondent

6. The Respondent is registered as a mutual fund dealer in all Canadian provinces and has been a Member of the MFDA since January 11, 2002. It serves as the mutual fund dealer for various financial institution partners that operate throughout Canada (financial institution partners).

7. The Respondent’s head office is located in Vancouver, British Columbia.

8. The Respondent must comply with National Instrument 81-105, *Mutual Fund Sales Practices* (NI 81-105). NI 81-105 is designed to minimize conflicts of interest by ensuring that mutual fund dealers (i.e., MFDA Members) and their representatives (i.e., Approved Persons) sell mutual funds that are suitable for and in the best interests of their clients, as opposed to being induced to sell mutual funds on the basis of incentives that they were receiving.

9. The Respondent employs representatives at its financial institution partners who are registered to sell mutual funds (i.e., Approved Persons). Those representatives are dually-employed by the Respondent and the financial institution partners (dually-employed Approved Persons). The Respondent also employs a small number of Approved Persons at its head office. The Respondent’s head office Approved Persons and most of its dually-employed Approved Persons are compensated primarily by an annual salary.

10. The Respondent entered into participation agreements with its financial institution partners in which it agreed to share revenues from mutual fund sales by its dually-employed Approved Persons with the financial institution partners who also employ them.

11. In 2017, MFDA Compliance Staff conducted a compliance examination at the Respondent's head office and four branch locations of its financial institution partners to evaluate the Respondent's compliance with the MFDA's By-laws, Rules and Policies during the period April 1, 2013 to October 31, 2016 and issued a report to the Respondent. The compliance examination revealed that the Respondent had inadequate policies and procedures and internal controls to ensure that it complied with National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105) as described below.

Misconduct

The OnCourse Program

12. In November 2011, the Respondent launched its OnCourse Program, which involved the promotion of a customized and branded suite of related party and third party mutual funds for sale to clients of the Respondent's financial institution partners. The Respondent launched the OnCourse Program to offer clients branded mutual fund portfolios similar to the propriety mutual fund products offered by the Respondent's competitors in the financial services industry.

13. Part of the OnCourse Program's product development shifted operational control of sales and marketing costs from the mutual fund companies to the Respondent. The Respondent performed some of the tasks that would otherwise be performed by the mutual fund companies, including the preparation of marketing and collateral materials (OnCourse Program Attributes).

14. The related party mutual funds in the OnCourse Program were offered by Northwest & Ethical Investments LP (NEI). The third-party mutual funds in the OnCourse Program were offered by AGF Investments Inc. (AGF). Each of NEI and AGF created specific series of their funds for inclusion in the OnCourse Program.

15. The Respondent offered other series of the same NEI and AGF mutual funds for sale outside of the OnCourse Program that had substantially the same holdings, fees and expenses as the series of the NEI and AGF mutual funds offered for sale in the OnCourse Program.

16. The Respondent was the principal distributor of the NEI mutual funds in the OnCourse Program under section 1.1 of National Instrument 81-102, *Investment Funds* (NI 81-102).
17. The Respondent was a participating dealer of the AGF mutual funds in the OnCourse Program under section 1.1 of NI 81-102.
18. In part as compensation for doing the OnCourse Program Attributes, the Respondent received higher trailing commissions for selling NEI and AGF mutual funds in the OnCourse Program than those payable for selling the same NEI and AGF mutual funds outside of the OnCourse Program. Specifically, the Respondent received trailing commissions on units of NEI series funds purchased through the OnCourse Program that were on average 27 basis points higher than the trailing commissions it received on units of similar NEI funds purchased outside the OnCourse Program. In addition, the Respondent received trailing commissions on units of AGF series funds purchased through the OnCourse Program that were on average 15 basis points higher than the trailing commissions it received on units of similar AGF funds purchased outside the OnCourse Program. No increased fees were paid by clients of the Respondent with respect to higher trailing commissions.
19. After the 2017 compliance examination, the Respondent conducted an investigation to determine the scope and extent of incentive programs that had been implemented at its financial institution partners to promote the OnCourse Program.
20. Between November 2011 and May 2017, the Respondent offered performance bonuses to two Approved Persons who worked at the Respondent's head office if they achieved certain sales targets tied to their sales of mutual funds in the OnCourse Program. The Respondent did not offer the two Approved Persons at its head office performance bonuses tied to their sales of mutual funds outside of the OnCourse Program.
21. By providing performance bonuses to two Approved Persons at its head office tied to their sales of mutual funds in the OnCourse Program, the Respondent provided incentives to its Approved Persons at head office contrary to sections 4.1 and 4.2 of NI 81-105.
22. Between November 2011 and May 2017, certain of the Respondent's financial institution partners offered incentives to their dually-employed Approved Persons tied to their sale of mutual funds in the OnCourse Program that were not tied to their sale of mutual funds outside of the OnCourse Program. They included the following:

- a) certain of the financial institution partners offered performance bonuses if the Approved Persons achieved OnCourse Program sales targets;
- b) one of the financial institution partners offered increased commissions if the Approved Persons obtained new mutual fund sales in the OnCourse Program or for converting existing client assets to the OnCourse Program; and
- c) some dually-employed Approved Persons were expected to offer clients OnCourse Program products unless a client specifically requested an alternative.

23. Between November 2011 and May 2017, one of the Respondent's financial institution partners also paid out 5% of its profit share from NEI to dually-employed Approved Persons who sold NEI funds (including NEI mutual funds (or series thereof) sold through the OnCourse Program) to clients in proportion to the amount of sales made.

24. In 2015, 91 Respondent's dually-employed Approved Persons received increased compensation of a total of \$65,289 in the form of performance bonuses, increased commissions and profit sharing attributable to \$37,578,793 of sales of mutual funds in the OnCourse Program. This was out of a total of 979 dually-employed Approved Persons who sold \$307,140,547 of mutual funds in the OnCourse Program that year.

25. In 2016, 91 of the Respondent's dually-employed Approved Persons received increased compensation of a total of \$67,177 attributable to \$28,162,308 of sales of mutual funds in the OnCourse Program. This was out of a total of 1,162 dually-employed Approved Persons who sold \$311,894,967 of mutual funds in the OnCourse Program that year. In total, the Respondent determined that 470 Approved Persons were eligible to receive incentives (including year-end performance bonuses) linked to the promotion of the OnCourse Program.

26. By sharing revenues from mutual fund sales in the OnCourse Program with its financial institution partners, the Respondent provided revenues out of which some financial institution partners paid incentives to dually-employed Approved Persons. In doing so, the Respondent provided incentives in a manner contrary to sections 4.1 and 4.2 of NI 81-105.

Socially Responsible Investing Mutual Funds

27. In January 2016, one of the Respondent's financial institution partners implemented a number of promotional incentives to encourage its dually-employed Approved Persons to promote

“socially responsible investing” (SRI). SRI refers to the integration of environmental, social and governance factors into the investment decision-making process.

28. The incentives included the following:

- a) Approved Persons who sold SRI mutual funds were eligible to receive bonus compensation, which was not otherwise payable in respect of mutual funds that did not qualify as SRI mutual funds;
- b) in 2016, Approved Persons earned credit for soliciting new monies into the sale of SRI mutual funds only; and
- c) in 2017, in addition to accumulating credit for soliciting new monies into investments in SRI mutual funds, Approved Persons were eligible to earn additional credit for converting existing client assets into units of SRI mutual funds.

29. Approximately 45 mutual funds offered by the Respondent qualified as SRI mutual funds. The Respondent was either the principal distributor or a participating dealer of those mutual funds under section 1.1 of NI 81-102. Only a small number of those mutual funds were issued by NEI.

30. In 2016, 47 of the Respondent’s dually-employed Approved Persons earned bonus compensation totaling \$250,576 linked to the sale of SRI mutual funds, with the highest payout to an Approved Person being 24.5% of their salary.

31. In 2017, 49 of the Respondent’s dually-employed Approved Persons earned bonus compensation totaling \$394,554 linked to the sale of SRI mutual funds with the highest payout to an Approved Person being 27.5% of their salary.

32. By sharing revenues from SRI mutual fund sales with the financial institution partner, the Respondent provided revenues out of which the financial institution partner paid incentives to its dually-employed Approved Persons. In doing so, the Respondent provided incentives in a manner contrary to sections 4.1 and 4.2 of NI 81-105.

V. ADDITIONAL FACTORS

33. The Respondent fully cooperated with the MFDA’s review of the issues that form the subject matter of this Settlement Agreement.

34. By entering into this settlement agreement, the Respondent has enabled the MFDA to avoid the costs, time and effort that would have been required to conduct a potentially lengthy hearing to determine liability.

35. None of the incentives described in this Settlement Agreement that were contrary to NI 81-105 had any bearing on the fees or costs borne by clients investing through the OnCourse Program or in an SRI mutual fund.

36. The higher trailing commission paid to the Respondent for mutual fund sales in the OnCourse Program were not financed by increased fees paid by the Respondent's clients. The management expense ratio (MER) for the OnCourse Program series of AGF and NEI mutual funds was not higher than the MER applicable to similar series of AGF and NEI mutual funds.

37. According to the Respondent, the enhanced compensation for the SRI mutual funds was intended to encourage dually-employed Approved Persons to recommend that clients consider environmental, social and governance factors in their investment decision-making process, as this was the core philosophy of this financial institution partner, rather than to specifically discourage investments in other funds.

38. The Respondent has also taken steps to address the deficiencies described herein. After receiving the 2017 compliance report, specifically:

- a) in May 2017, the Respondent amended its policies to remove bonuses paid in respect of sales of the OnCourse Program for its Approved Persons employed at its head office. The Respondent also instructed its financial institution partners, who offered incentives to promote the OnCourse Program to its dually-employed Approved Persons, to remove any OnCourse Program incentive altogether and amend their bonus structures to compensate equally for sales of all mutual fund products;
- b) in 2018, the Respondent directed its financial institution partners to discontinue incentivizing compensation programs associated with the sale of SRI mutual funds;
- c) the Respondent has also revised its policies and procedures to specifically state that NI 81-105 does not permit dealers (whether a participating dealer or a dealer in a principal distributor role) to provide an incentive to its Approved Persons or recommend mutual funds of one mutual fund family over mutual funds of another mutual fund family;

- d) the Respondent has also established a conflicts of interest committee which includes senior management to review conflicts of interest related to compensation. The Respondent's compliance department has implemented a proactive process to review compensation arrangements with its financial institution partners;
- e) starting in 2018, the Respondent's policies and procedures have required the financial institution partners to discontinue practices that would have the result of incentivizing dually-employed Approved Persons to solicit investments in OnCourse products or SRI products in contravention of NI 81-105.

Action Taken by the British Columbia Securities Commission

39. This settlement is part of joint regulatory action being taken by the MFDA and British Columbia Securities Commission ("BCSC") to address the conduct described in this Settlement Agreement. In a separate but related proceeding commenced by the BCSC, the Respondent has agreed to pay a fine in the amount of \$300,000 on the basis that the Respondent failed to establish a system of controls and supervision to assure that its head office representatives and dually-employed representatives were not being provided with any incentives to sell mutual funds contrary to NI 81-105, and it failed to establish and maintain a system of controls and supervision sufficient to provide reasonable assurance that the Respondent and each individual acting on its behalf complied with securities legislation, contrary to section 11.1 of National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103).

VI. CONTRAVENTIONS

40. Between November 2011 and May 2017, the Respondent failed to establish and maintain adequate policies and procedures, controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices, contrary to MFDA Rules 2.5.1 and 2.1.4¹.

VII. TERMS OF SETTLEMENT

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

¹ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to the Rules, the contravention referred to in this Settlement Agreement is of the former version of Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

- a) the Respondent shall pay a fine in the amount of \$280,000 on the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to s. 24.1.2(b) of MFDA By-law No. 1;
- b) the Respondent shall pay costs to the MFDA in the amount of \$20,000 on the date that this Settlement Agreement is accepted by a Hearing Panel, pursuant to s. 24.2 of MFDA By-law No. 1.
- c) the Respondent shall in the future comply with MFDA Rule 2.5.1 and 2.1.4(1)²; and
- d) a senior officer of the Respondent who is authorized to appear on behalf of the Respondent will attend on the date set for the Settlement Hearing.

VIII. STAFF COMMITMENT

42. 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 set out in Part IV and 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 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.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

43. Acceptance of this Settlement Agreement shall be sought at a hearing of the Pacific 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.

² As noted in FN1 above, MFDA Rule 2.1.4 was amended effective June 30, 2021. As a term of this Settlement Agreement, the Respondent agrees to comply in the future with MFDA Rule 2.1.4(1) as amended.

44. 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 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.

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

46. 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.

X. FAILURE TO HONOUR SETTLEMENT AGREEMENT

47. 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 or any of its officers or directors 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.

XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

48. 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.

49. 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

50. 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.

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

XIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 30th day of November, 2021.

“Yasmin Lalani”

Credential Asset Management Inc.

Per: Yasmin Lalani
Title: SVP, Chief Legal Officer, Chief Governance Officer

“ML”

Witness – Signature

ML

Witness – Print name

“Charles Toth”

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



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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: Credential Asset Management 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 By-law No. 1 in respect of Credential Asset Management 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 ss. 20 and 24.1 of By-law No. 1;

AND WHEREAS on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that, between November 2011 and May 2017, the Respondent failed to establish and maintain adequate policies and procedures, controls and supervision to ensure that it complied with securities legislation relating to internal dealer incentive and sales practices, contrary to MFDA Rule 2.5.1 and 2.1.4³.

³ On June 30, 2021, MFDA Rule 2.1.4 was amended to conform with client focused reform amendments to National Instrument 31-103 that came into effect on the same day. As the conduct addressed in this Settlement Agreement pre-dated the amendment to the Rules, the contravention referred to in this Settlement Agreement is of the former version of Rule 2.1.4 that was in effect between February 27, 2006 and June 30, 2021.

AND WHEREAS the Respondent has also entered into a settlement agreement with respect to the British Columbia Securities Commission dated [date], in which the Respondent has agreed to pay a fine of \$300,000 to the BCSC to address contraventions of NI 81-105 and NI 31-103;

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 \$280,000 on the date of this Order, pursuant to s. 24.1.2(b) of MFDA By-law No. 1.
2. The Respondent shall pay costs to the MFDA in the amount of \$20,000 on the date of this Order, pursuant to s. 24.2 of MFDA By-law No. 1.
3. 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]

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