



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Everest Nicholas Louis D'Souza

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel of the Central Regional Council (“Hearing Panel”) of the Mutual Fund Dealers Association of Canada (“MFDA”) on February 3, 2022 at 10:00 a.m. (Eastern), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Everest Nicholas Louis D’Souza (“Respondent”). Members of the public who would like to listen to the teleconference should contact hearings@mfd.ca to obtain particulars.

DATED this 16th day of December, 2021.

“Michelle Pong”

Michelle Pong
Director, Regional Councils

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Telephone: 416-945-5134
Email: corporatesecretary@mfd.ca

NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: Between February 2014 and September 2015, the Respondent engaged in an unapproved outside business activity in relation to syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3)¹, 2.1.1, 2.5.1 and 1.1.2.

Allegation #2: Between February 2014 and September 2015, the Respondent engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities by recommending, selling, or facilitating the sale of syndicated mortgage investments, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #3: Between February 2014 and September 2015, the Respondent made referrals in respect of syndicated mortgage investments and received compensation for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2², 2.1.1, 2.5.1, and 1.1.2.

PARTICULARS

NOTICE is further given that the following is a summary of the facts alleged and intended to be relied upon by the MFDA at the hearing:

Registration History

1. From July 10, 2001 to December 31, 2019, the Respondent was registered in Ontario as a dealing representative with Keybase Financial Group Inc. (the "Member"), a Member of the MFDA.
2. On December 31, 2019, the Member terminated the Respondent and he is not currently registered in the securities industry in any capacity.
3. At all material times, the Respondent conducted business in the Markham, Ontario area.

¹ MFDA Rule 1.2.1(c) was amended and renumbered as MFDA Rule 1.3 effective March 17, 2016.

² MFDA Rule 2.4.2 was amended effective April 8, 2015.

Allegation #1 – Outside Business Activity

4. At all material times, the Member's policies and procedures required that its Approved Persons, prior to engaging in an outside business activity, disclose the outside business activity to the Member and obtain the Member's approval.

5. Tier 1 Transaction Advisory Services Inc. ("Tier 1") is a real estate and development company that was engaged in the distribution of syndicated mortgage investments in order to raise capital from investors to finance real estate development projects.

6. Between July 2014 and September 2015, the Respondent engaged in an outside business in relation to syndicated mortgage investments associated with the Tier 1 development projects. As a result of the Respondent's activities, the Respondent received compensation totalling \$17,974 in connection with the investment in syndicated mortgage investments by clients of the Member whose accounts were serviced by the Respondent and other individuals (the "Investors").

7. The Respondent did not advise the Member or obtain approval of the Member prior to engaging in the outside business in relation to syndicated mortgage investments.

8. On October 20, 2016, the Financial Services Commission of Ontario ("FSCO")³ issued an interim order requiring that Tier 1 cease and desist from dealing in syndicated mortgage investments without a license. On October 27, 2016, the Ontario Superior Court of Justice (Commercial List) appointed a trustee to protect the interests of investors in the syndicated mortgage investments (the "Trustee"). On January 23, 2018, FSCO issued a permanent order that Tier 1 cease and desist from dealing in syndicated mortgage investments.

9. Some of the properties underlying the syndicated mortgage investments were sold with court approval and distributions were made to the investors by the Trustee to the extent that money was recovered from the sale of the assets that could be distributed. In addition, the Trustee has also commenced and settled litigation against various individuals involved with the real estate development projects and the syndicated mortgage investments in order to try to recover some of the amounts lost by investors. Generally, the distributions made to date by the Trustee have been insufficient to permit investors in the syndicated mortgage investments, including the Investors, to recoup their investment.

³ Note: Effective June 8, 2019, the Financial Services Regulatory Authority ("FSRA") assumed the regulatory functions of FSCO and the Deposit Insurance Corporation of Ontario ("DICO").

10. By virtue of the foregoing, the Respondent engaged in an unapproved outside business activity contrary to the Member's policies and procedures and MFDA Rules 1.2.1(c) (now MFDA Rule 1.3), 2.1.1, 2.5.1 and 1.1.2.

Allegation #2 - Securities Related Business Outside the Member

11. At all material times, the Member's policies and procedures required that its Approved Persons conduct all securities related business on behalf of the Member and through the facilities of the Member.

12. Between July 2014 and September 2015, the Respondent recommended, sold, or facilitated the sale of investments in syndicated mortgages associated with the Tier 1 development projects.

13. Without the knowledge or authorization of the Member, the Respondent engaged in one or more the following activities to sell or facilitate the sale of syndicated mortgage investments by one or more of the Investors:

- a) he introduced the Investors to the opportunity to invest in the syndicated mortgage investments;
- b) he recommended that the Investors purchase the syndicated mortgage investments;
- c) he provided the Investors with promotional materials regarding the syndicated mortgage investments;
- d) he provided blank subscription agreements to the Investors to facilitate the purchase of investments by the Investors in the syndicated mortgage investments;
- e) he discussed the terms and features of investing in the syndicated mortgage investments with the Investors; or
- f) he attended meetings between the Investors and representatives of Tier 1 to enable the Investors to obtain further information about the Tier 1 syndicated mortgage investments.

14. As described above at paragraph 6, the Respondent received compensation totalling \$17,974 from Tier 1 in connection with his activities in relation to syndicated mortgage investments offered by Tier 1. The Respondent did not inform the Member that he had received compensation from Tier 1 and that compensation was not recorded in the books and records of the Member.

15. The Member had not approved any syndicated mortgage investments in real estate development projects offered by Tier 1 for sale by its Approved Persons and the Respondent did not request or obtain authorization from the Member to recommend syndicated mortgage investments offered by Tier 1 to the Investors.

16. None of the purchases by the Investors of syndicated mortgage investments offered by Tier 1 that were facilitated by the Respondent's conduct were carried on for the account of the Member or processed through the facilities of the Member.

17. By recommending, selling, or otherwise facilitating the sale of syndicated mortgage investments offered by Tier 1 to the Investors as described above, the Respondent engaged in securities related business that was not carried on for the account of the Member or conducted through its facilities, contrary to the Member's policies and procedures and MFDA Rules 1.1.1, 2.1.1, 2.5.1, and 1.1.2.

Allegation #3 – Unapproved Referral Arrangement

18. At all material times, the Member's policies and procedures prohibited its Approved Persons from entering into a referral arrangement without prior disclosure to and written approval from the Member.

19. The Respondent failed to disclose to the Member or obtain approval from it to engage in any referral arrangement with Tier 1.

20. The Member was not a party to any referral arrangements with Tier 1 for the sale of syndicated mortgage investments.

21. As described above at paragraph 6, the Respondent received \$17,974 from Tier 1 in connection with his activities with syndicated mortgage investments and Tier 1.

22. None of the compensation received by the Respondent in relation to the syndicated mortgage investments as described above was recorded in the Member's books and records.

23. As described above, the Respondent participated in a referral arrangement in respect of the sale of syndicated mortgage investments to which the Member was not a party and which did not otherwise comply with sections 13.7 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2, 2.1.1, 2.5.1, and 1.1.2.

NOTICE is further given that the Respondent shall be entitled to appear and be heard and be represented by counsel or agent at the hearing and to make submissions, present evidence and call, examine and cross-examine witnesses.

NOTICE is further given that MFDA By-laws provide that if, in the opinion of the Hearing Panel, the Respondent:

- has failed to carry out any agreement with the MFDA;
- has failed to comply with or carry out the provisions of any federal or provincial statute relating to the business of the Member or of any regulation or policy made pursuant thereto;
- has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;
- has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or
- is otherwise not qualified whether by integrity, solvency, training or experience,

the Hearing Panel has the power to impose any one or more of the following penalties:

- a) a reprimand;
- b) a fine not exceeding the greater of:
 - (i) \$5,000,000.00 per offence; and
 - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- d) revocation of the authority of such person to conduct securities related business;
- e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time; and
- f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

NOTICE is further given that the Hearing Panel may, in its discretion, require that the Respondent pay the whole or any portion of the costs of the proceedings before the Hearing Panel and any investigation relating thereto.

NOTICE is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty days from the date of service of this Notice of Hearing.

A **Reply** shall be **served** upon Enforcement Counsel at:

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Alan Melamud
Email: amelamud@mfd.ca

A **Reply** shall be **filed** by:

- a) providing four copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

The Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, ON M5H 3T9
Attention: Office of the Corporate Secretary; or

- b) transmitting one electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at corporatesecretary@mfd.ca.

A **Reply** may either:

- (i) specifically deny (with a summary of the facts alleged and intended to be relied upon by the Respondent, and the conclusions drawn by the Respondent based on the alleged facts) any or all of the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing; or
- (ii) admit the facts alleged and conclusions drawn by the MFDA in the Notice of Hearing and plead circumstances in mitigation of any penalty to be assessed.

NOTICE is further given that the Hearing Panel may accept as having been proven any facts alleged or conclusions drawn by the MFDA in the Notice of Hearing that are not specifically denied in the **Reply**.

NOTICE is further given that if the Respondent fails:

- a) to **serve and file a Reply**; or

- b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

the Hearing Panel may proceed with the hearing of the matter on the date and the time and place set out in the Notice of Hearing (or on any subsequent date, at any time and place), without any further notice to and in the absence of the Respondent, and the Hearing Panel may accept the facts alleged or the conclusions drawn by the MFDA in the Notice of Hearing as having been proven and may impose any of the penalties described in the By-laws.

END.

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