



**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: Bernd Franz Adolf Niermann**

Heard: December 11, 2017 in Toronto, Ontario

Decision: December 11, 2017

Reasons for Decision: February 1, 2018

**REASONS FOR DECISION**

Hearing Panel of the Central Regional Council:

Frederick W. Chenoweth

Chair

Paige A. Wadden

Industry Representative

Brian Nowak

Industry Representative

Appearances:

Maria Abate

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)

Counsel for the Mutual Fund Dealers  
Association of Canada

Justin Papazian

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Counsel for the Respondent

Bernd Franz Adolf Niermann

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Respondent, in person

## **Background**

1. By Notice of Settlement Hearing dated December 8, 2016, a Hearing Panel of the Central Regional Counsel of the Mutual Fund Dealers Association of Canada (“MFDA”) was convened to consider whether, pursuant to s. 24.4 of By-law No. 1 of the MFDA, the Panel should accept a Settlement Agreement, dated December 11, 2017 (“Settlement Agreement”) entered into by the Staff of the MFDA (“Staff”) and Bernd Franz Adolf Niermann (“Respondent”).

2. At the outset of the proceeding, the Panel considered a joint motion by Staff and the Respondent to move the proceeding “*in camera*”. The Panel granted the motion. The Panel then considered the provisions of the Settlement Agreement, aided by submissions as to the applicable law which should guide the Panel in determining whether to accept or reject the settlement agreement.

## **The Allegations**

3. In the Settlement Agreement, the Respondent admits that:

- a) between August 2008 and November 7, 2014, he borrowed \$71,600 from three clients, thereby giving rise to a conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1;
- b) between July 2008 and November 2014, he misled the Member on annual compliance attestations, and during the course of the investigation into his conduct, by failing to disclose that he had borrowed monies from clients, thereby interfering with the ability of the Member to supervise his conduct, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1;
- c) commencing on December 12, 2014, he misled MFDA Staff when he failed to advise Staff that he had borrowed monies from clients AT and PL, contrary to MFDA Rule 2.1.1; and

- d) between November 24, 2005 and July 28, 2014, he obtained and maintained blank or partially complete pre-signed account forms, and/or altered account forms after clients had signed them, contrary to MFDA Rule 2.1.1.

## **The Facts**

4. In the Settlement Agreement, Staff of the MFDA and the Respondent agreed to the existence of a series of facts which are set out in Part IV and Part V of the said Agreement. The Settlement Agreement is attached as Schedule “1” to these Reasons.

5. As set out in paragraphs 6 and 7 of the Settlement Agreement, between March 25, 2004 and November 7, 2014, the Respondent was registered in Ontario as a mutual fund sales person or dealer representative with IPC Investment Corporation (“IPC”), a Member of the MFDA. The Respondent carried on business in and around Collingwood, Ontario.

## **Discussion**

6. The Hearing Panel accepted counsel for the MFDA’s Submission that prior to accepting a Settlement Agreement, a Hearing Panel must be satisfied that:

- a) the facts admitted to by the Respondent constitute misconduct in contravention of the By-law, MFDA Rules or policies, or provincial securities legislation; and
- b) the penalties contemplated in the Settlement Agreement fall within the reasonable range of appropriateness, bearing in mind the nature and extent of the misconduct and all of the circumstances.

7. The Hearing Panel was mindful of the acknowledgement by the courts and other MFDA Hearing Panels, that settlements advance the objective of protecting the public by proscribing activities that are harmful to the public and enabling the parties to reach a flexible remedy that is tailored to address the interests of both the regulator and the Respondent.

*British Columbia Securities Commission v Seifert*, [2006] B.C.J. No. 255 at para. 4

8. The Panel considered that in previous decisions, Hearing Panels have acknowledged that the role of a Hearing Panel at a settlement hearing differs from a Hearing Panel at a contested hearing. As one Hearing Panel stated:

*In a contested Hearing, the Hearing Panel attempts to determine the correct penalty. In a Settlement Hearing, the Hearing Panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the Settlement Agreement. In our view, a Hearing Panel should not interfere lightly in a negotiated settlement and should not reject a Settlement Agreement unless it views the penalty as falling outside a reasonable range of appropriateness. As has been said: "The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a Hearing where similar findings are made."*

*Re Clark (Re)*, [1999] I.D.A.C.D. No. 40, at page 3.  
*Professional Investments (Kingston) Inc. (Re)*, 2009 LNCMFDA 9 (*PI Kingston*) at paras. 12-13

*Christopher Andrew Nivet (Re)*, [2010] Hearing Panel of the Central Regional Council MFDA File No. 200940, Panel Decision dated May 11, 2010 (*Nivet*) at para 14.

9. The Hearing Panel also understood that in past cases, when determining whether it would be appropriate to accept a proposed settlement, MFDA Hearing Panels have taken into account the following considerations:

- a) The seriousness of the contraventions admitted to by the Respondent;
- b) The Respondent's past conduct, experience in the capital markets and disciplinary history;
- c) Whether the Respondent recognizes that the conduct was improper and has demonstrated remorse;
- d) The harm suffered by investors as a result of the Respondent's conduct;
- e) Whether the Settlement Agreement addresses both specific and general deterrence and will tend to prevent both the Respondent and others who participate in the capital markets from engaging in similar improper activity in the future;

- f) Whether acceptance of the Settlement Agreement would be in the public interest as the penalties agreed upon will protect investors and are reasonable and proportionate having regard to the conduct of the Respondent;
- g) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets, the MFDA and the regulatory process; and
- h) Previous decisions in similar circumstances.

*PI (Kingston), supra* at para 14.

*Smilestone (Re), 2013 LNCMFDA 55* at para 7.

10. The Hearing Panel further acknowledged that, Hearing Panels have also taken into account the following additional factors when evaluating whether the penalties proposed in a Settlement Agreement should be accepted:

- a) The seriousness of the contraventions admitted to by the Respondent or proved against the Respondent;
- b) The Respondent's past conduct, including prior sanctions;
- c) The Respondent's experience and level of activity in the capital markets;
- d) Whether the Respondent recognizes the seriousness of the improper activity;
- e) The harm suffered by investors as a result of the Respondent's activities;
- f) The benefits received by the Respondent as a result of the improper activity;
- g) The risk to investors and the capital markets in the jurisdiction, were the Respondent to continue to operate in capital markets in the jurisdiction;
- h) The damage caused to the integrity of the capital markets in the jurisdiction by the Respondent's improper activities;
- i) The need to deter not only those involved in the case being considered, but also any others who participate in the capital markets, from engaging in similar improper activity;
- j) The need to alert others to the consequences of inappropriate activities to those who are permitted to participate in the capital markets; and
- k) Previous decisions made in similar circumstances.

## **Misconduct**

11. In this case, the Respondent has admitted to borrowing monies totalling \$71,600 from three clients, which created a conflict of interest that was not addressed by the exercise of responsible business judgment influenced only in the best interests of the client (paragraph 51 of the Settlement Agreement). Of the \$71,600 borrowed by the Respondent from clients, \$28,900 remains plus interest outstanding to client AP (paragraphs 17 and 50 of the Settlement Agreement). Clients AT and PL have been repaid with interest (paragraphs 24 and 31 of the Settlement Agreement).

12. In addition to borrowing monies from clients, the Respondent has also admitted to misleading his sponsoring Member, IPC, on compliance attestations which sought to ensure that dealing representatives had not engaged in personal financial dealings with IPC clients and that all dealing representatives were aware of the prohibition on borrowing monies from clients (paragraphs 33 to 39 of the Settlement Agreement). On six occasions commencing in about July 2008 to sometime in 2013, the Respondent was asked in writing or verbally by IPC's compliance department if he had engaged in any personal financial dealings with clients. On each occasion, the Respondent responded in the negative (paragraphs 34 to 39 of the Settlement Agreement). By doing so, the Respondent made it difficult for IPC to ensure compliance with its own regulatory obligations and duties.

13. The Respondent also attempted to mislead MFDA Staff when it began an investigation into the Respondent's activities with clients. In December 2014, when requested to reply to the inquiries of the Staff regarding the borrowing of monies from clients, the Respondent omitted to identify two clients from whom he had borrowed funds. In a second letter to Staff, in January 2015, the Respondent identified clients AT and PL as additional clients from whom he had borrowed funds (paragraphs 41 to 43 of the Settlement Agreement).

14. Finally, the Respondent has admitted that between November 24, 2005 and July 28, 2014, he obtained and maintained blank or partially complete pre-signed account forms, and/or altered account forms for about eleven clients after the clients had signed them (paragraph 45 of the Settlement Agreement).

15. In Member Staff Notice MSN-0066 issued on October 31, 2007, entitled “Pre-Signed Forms”, Staff clearly communicated to the industry that even the use of a form signed by the client before the document was fully completed contravenes the standard of conduct. The collection of pre-signed forms by dealing representatives may facilitate additional misconduct such as unauthorized trading or the circumvention of supervision procedures intended to ensure the suitability of trades processed for a client (e.g.; unauthorized updates are made to a client’s KYC documents using documentation with previously collected signatures). Even in the most innocent circumstances, where pre-signed forms are collected for the convenience of the client, such conduct destroys the integrity of the audit trail by creating the false appearance that a client has indicated his or her consent or approval to the content and implications of a document that the client did not actually see in its final form (if at all).

*MSN-0066, dated October 11, 2007*

### **Mitigating Factors**

16. The Respondent is remorseful for his conduct.

17. The Respondent is 63 years old.

18. The Respondent has not been previously disciplined by an MFDA Hearing Panel and continues to maintain a relationship with client AP with the intention of making repayments to her.

19. Client AP has acknowledged that the loan remains outstanding, is agreeable to providing the Respondent further time to repay the funds and has not filed a complaint with the MFDA.

20. The Respondent is employed and wishes to repay AP. The Respondent has already repaid the other two clients from whom he had borrowed funds.

21. Between 2007 and 2014, one of the Respondent's children was repeated hospitalized for mental health issues. During this time, the Respondent's child also had numerous altercations with police.

22. There is no indication that the pre-signed forms and/or altered forms collected by the Respondent resulted in client harm.

23. The Panel felt that the admitted conduct was very serious, however, the Panel was also of the view that the Settlement Agreement fairly addressed the concerns arising from the facts. The Panel further believed that in the particular facts of this case, the Settlement Agreement and agreed penalties were within a reasonable range.

## **RESULT**

24. For all of the above reasons, the panel has concluded that the Settlement Agreement is reasonable and proportionate. Accordingly, the following penalties are imposed upon the Respondent:

- a) a prohibition conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 for a period of five years from December 11, 2017 to December 11, 2022, after which date the Respondent shall be entitled to apply to be registered to conduct securities related business in any capacity over which the MFDA has jurisdiction;
- b) shall pay client AP the amount of \$28,900 plus interest in accordance with the terms of the promissory notes as described in the Settlement Agreement by no later than December 11, 2019 and provide proof of such payment to the MFDA;

- c) in the event that the Respondent fails to repay client AP in full prior to December 11, 2019, he shall be prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 an additional five years to December 11, 2027;
- d) costs of \$2,500 to the MFDA pursuant to section 24.2 of MFDA By-law No. 1.

**DATED** this 1<sup>st</sup> day of February, 2018.

“Frederick W. Chenoweth”

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Frederick W. Chenoweth  
Chair

“Paige A. Wadden”

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Paige A. Wadden  
Industry Representative

“Brian Nowak”

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Brian Nowak  
Industry Representative

DM 596096

**Schedule “1”**

**Settlement Agreement**

**File No. 201688**



**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: Bernd Franz Adolf Niermann**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Hearing dated December 7, 2016, the Mutual Fund Dealers Association of Canada (“MFDA”) will hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (“Hearing Panel”) of the MFDA should accept a proposed settlement agreement (“Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Bernd Franz Adolf Niermann.

**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 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 “B”.

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedules “A” and “B”, 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 and V 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. From March 25, 2004 to November 7, 2014 when he was terminated as result of the events described below, the Respondent was registered in Ontario as a mutual fund salesperson (now known as a dealing representative) with IPC Investment Corporation (“IPC”), a Member of the MFDA. At all material times, the Respondent was also licensed in Ontario to sell insurance.

7. At all material times, the Respondent carried on business in the Collingwood, Ontario area.

## **Borrowing Monies from Clients**

8. At all material times, IPC's policies and procedures prohibited its Approved Persons from borrowing monies from clients on the basis that it creates a conflict of interest which cannot be resolved.

9. As described in greater detail below, between August 2008 and November 2012, the Respondent borrowed \$71,600 from three clients.

### **Client AP**

10. On July 28, 2004, client AP became a client of IPC. At all material times, the Respondent was the mutual fund salesperson responsible for servicing client AP's accounts at IPC.

11. On April 5, 2012, the Respondent borrowed \$3,600 from client AP. The Respondent provided client AP with a promissory note in respect of the monies he borrowed which provided that the Respondent would pay client AP interest of 7% per annum, and repay the principal of the loan by no later than January 5, 2013.

12. At that time of the April 2012 loan, client AP was approximately 75 years old.

13. On April 30, 2012, client AP ceased to be a client of IPC.

14. On May 4, 2012, the Respondent borrowed \$24,000 from client AP. The Respondent provided client AP with a promissory note in respect of the monies he borrowed which provided that the Respondent would pay client AP interest of 7% per annum, and repay the principal of the loan by no later than February 4, 2013.

15. On September 11, 2012, the Respondent borrowed \$1,300 from client AP. The Respondent provided client AP with a promissory note in respect of the monies he borrowed

which provided that the Respondent would pay client AP interest of 7% per annum, and repay the principal of the loan by no later than January 11, 2013.

16. The Respondent used the monies he borrowed from client AP to pay his personal and business expenses.

17. As of December 8, 2017, the Respondent had not repaid the monies he borrowed from client AP.

### **Client AT**

18. Since November 23, 2005, client AT has been a client of IPC. At all material times, the Respondent was the mutual fund salesperson responsible for servicing client AT's accounts at IPC.

19. In about August 2008, the Respondent borrowed \$50,000 from client AT.

20. At the time of the August 2008 loan, client AT was 68 years old.

21. Client AT obtained the monies that he loaned to the Respondent from his line of credit (the "LOC").

22. At the time of the loan, the Respondent agreed to pay client AT \$454 per month and interest calculated at the rate of 5.25% over the LOC interest rate charged to client AT.

23. On August 25, 2008, the \$50,000 debt was registered as a second mortgage on the Respondent's personal residence in favour of client AT.

24. On March 13, 2014, the Respondent made the final payment of the monies he owed to client AT and the second mortgage was discharged. The Respondent repaid these monies by borrowing monies from his insurance clients.

## **Client PL**

25. From July 23, 2003 to March 24, 2014, client PL was a client of IPC. At all material times, the Respondent was the mutual fund salesperson responsible for servicing client PL's accounts at IPC.
26. On November 13, 2012, the Respondent borrowed \$18,000 from client PL. The Respondent agreed to pay interest to the client PL which fluctuated from 6% to 10% per annum based on the timing of the Respondent's repayment of the loan.
27. At the time of the loan, client PL was 64 years old.
28. The Respondent used the monies he borrowed from client PL to pay his personal and business expenses.
29. From January to April 2014, client PL made repeated requests to the Respondent to repay the loan.
30. During this period, client PL also advised the Respondent that she was considering contacting IPC's Head Office to report the loan arrangement. On April 2, 2014, the Respondent responded to client PL and advised that he would likely be terminated if she reported the loan arrangement to IPC's Head Office.
31. On April 9, 2014, the Respondent repaid the monies he owed to client PL. The Respondent repaid these monies by borrowing monies from his insurance clients.
32. By virtue of the foregoing, the Respondent borrowed \$71,600 from three clients, thereby giving rise to a conflict of interest which the Respondent failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

## **Misleading the Member**

33. On January 27, 2004 and October 6, 2006, the Respondent signed IPC's "Representative Policy and Procedure Compliance Certificate" attesting that he understood and would comply with the requirements outlined in IPC's policies and procedures manual (the "PPM"). As stated above, IPC's PPM included a prohibition on borrowing monies from clients.

34. In about July 2008, IPC sent a Compliance Questionnaire to the Respondent that he was required to complete. The questionnaire included the following question: "Have you borrowed money from, or loaned money to clients within the last year?" The Respondent falsely answered "No" to this question and submitted the completed questionnaire to IPC.

35. On November 2, 2009, IPC conducted a routine review of the Respondent's branch location. As part of this review, IPC required the Respondent to complete an Approved Persons Questionnaire. The Respondent falsely stated in the Approved Persons Questionnaire that he did not have any personal financial dealings with clients.

36. In 2010, IPC circulated a Compliance Questionnaire to the Respondent that he was required to complete. The questionnaire included the following question: "Have you borrowed money from, or loaned money to clients within the past 24 months?" The Respondent falsely answered "No" to this question and submitted the questionnaire to IPC.

37. On November 22, 2010, IPC conducted a routine review of the Respondent's branch location. During the review, IPC interviewed the Respondent who falsely stated that he had not borrowed money from clients.

38. In 2012 and 2013, IPC sent Compliance Questionnaires to the Respondent that was he required to complete. The questionnaire included the following question: "Have you borrowed or lent funds to a client?" The Respondent falsely answered "No" to this question and submitted the questionnaires to IPC.

39. IPC became aware that the Respondent had borrowed monies from a former client (RB). On November 4, 2014, IPC interviewed the Respondent with respect to this conduct. During the interview with IPC, the Respondent was repeatedly asked if he had approached any other clients, prospective clients or any other persons to borrow money. The Respondent acknowledged that he asked friends and family to loan him monies, but falsely stated that he not approached any clients or prospective clients for loans.

40. By virtue of the foregoing, the Respondent misled the Member on annual compliance attestations, and during the course of the investigation into his conduct, by failing to disclose that he had borrowed monies from clients, thereby interfering with the ability of the Member to supervise the Respondent, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

#### **Misleading the MFDA**

41. During the course of its review of the events described in this Notice of Hearing, MFDA Case Assessment Staff (“Staff”) sent a letter to the Respondent dated November 14, 2014 requesting that he provide: (1) the names of any clients that the Respondent had borrowed monies from; (2) the amounts he had borrowed; and (3) copies of any documents relating to the loans, including copies of any promissory notes.

42. On December 12, 2014, the Respondent delivered a reply to Staff’s letter which failed to identify that he had borrowed monies from client AT or client PL.

43. On January 26, 2015, in response to a second letter from Staff, the Respondent identified client AT and client PL as additional clients from whom he had borrowed monies.

44. By virtue of the foregoing, the Respondent misled MFDA Staff about the extent of his borrowing monies from clients, contrary to MFDA Rule 2.1.1.

## Blank-Signed Forms and Altered Account Forms

45. Between November 24, 2005 and July 28, 2014, the Respondent obtained and maintained blank or partially complete pre-signed account forms, and/or altered account forms after the clients had signed them, as described below:

Client	Date	Form Violation	Form Type
RA	April 2, 2010	Blank Signed	Order entry form
MA	May 5, 2007	Altered Documents	Application
GD	July 28, 2014	Altered Documents	KYC
SF	N/A	Blank Signed	Redemption/ Purchase Form
DK	November 24, 2005	Altered Documents	KYC
FK	April 3, 2007	Altered Documents	KYC
JM	January 30, 2008	Blank Signed	PAC
CP	May 14, 2008	Blank Signed	Redemptions
JP	April 30, 2008	Altered Documents	KYC
DS	December 31, 2009	Blank Signed	Order entry form
	December 29, 2009	Blank Signed	Order entry form
	December 21, 2009	Blank Signed	Order entry form
	December 18, 2009	Blank Signed	Order entry form
	December 15, 2009	Blank Signed	Order entry form
	February 13, 2008	Blank Signed	Order entry form
	November 2, 2008	Blank Signed	Order entry form
	June 2, 2008	Blank Signed	Order entry form
WW	January 30, 2008	Blank Signed	Order entry form
WW	N/A	Blank Signed	Dealer-Representative Change Form

46. By virtue of the foregoing, the Respondent violated the standard of conduct prescribed in MFDA Rule 2.1.1.

## V. THE RESPONDENT' POSITION

47. The Respondent is remorseful.

48. Between 2007 and 2014, one of the Respondent's children was repeatedly hospitalized for mental health issues. During this time, the Respondent's child also had numerous altercations with police services and was incarcerated on one occasion.

49. The Respondent states that he is currently employed on an “as needed basis” as a Car Jockey for two automobile dealerships working between two and ten hours per month.

50. Client AP has acknowledged that the Respondent continues to owe her \$28,900 plus interest, but has not filed a complaint with the MFDA.<sup>1</sup>

## **VI. CONTRAVENTIONS**

51. The Respondent admits that between August 2008 and November 7, 2014, he borrowed \$71,600 from three clients, thereby giving rise to a conflict of interest which he failed to address by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rules 2.1.4 and 2.1.1.

52. The Respondent admits that between July 2008 and November 2014, he misled the Member on annual compliance attestations, and during the course of the investigation into his conduct, by failing to disclose that he had borrowed monies from clients, thereby interfering with the ability of the Member to supervise his conduct, contrary to MFDA Rules 1.1.2, 2.5.1 and 2.1.1.

53. The Respondent admits that commencing on December 12, 2014, he misled MFDA Staff when he failed to advise Staff that he had borrowed monies from client AT and client PL, contrary to MFDA Rule 2.1.1.

54. The Respondent admits that between November 24, 2005 and July 28, 2014, he obtained and maintained blank or partially complete pre-signed account forms, and/or altered account forms after the clients had signed them, contrary to MFDA Rule 2.1.1.

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<sup>1</sup> Attached hereto as Schedule “A” to this Settlement Agreement is a copy of a letter from client AP confirming the current status of the loan made to the Respondent.

## **VII. TERMS OF SETTLEMENT**

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

- (i) the Respondent is prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 for a period of 5 years from December 11, 2017 to December 11, 2022, after which date the Respondent shall be entitled to apply to be registered to conduct securities related business in any capacity over which the MFDA has jurisdiction;
- (ii) the Respondent shall pay client AP the amount of \$28,900 plus interest in accordance with the terms of the promissory notes as described in the Settlement Agreement by no later than December 11, 2019 and provide proof of such payment to the MFDA;
- (iii) in the event that the Respondent fails to repay client AP in full prior to December 11, 2019, the Respondent shall be prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 an additional five (5) years to December 11, 2027;
- (iv) the Respondent shall pay costs of \$2,500 to the MFDA pursuant to section 24.2 of MFDA By-law No. 1; and
- (v) the Respondent will attend in person on the date set for the Settlement Hearing.

## **VIII. STAFF COMMITMENT**

56. 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 facts set out in Part IV and V and the contraventions described in Part VII of this Settlement Agreement, subject to the provisions of Part XI 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, V and VII 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, V and VII, 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**

57. 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](http://www.mfda.ca).

58. 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 his 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.

59. 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.

60. 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 him.

## **X. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

61. 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.

## **XI. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

62. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule “B” 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.

63. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he 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**

64. 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.

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

**XIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 11<sup>th</sup> day of December, 2017.

“Bernd Franz Adolf Niermann”  
\_\_\_\_\_  
Bernd Franz Adolf Niermann

“JP”  
\_\_\_\_\_  
Witness – Signature

JP  
\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”  
\_\_\_\_\_  
Shaun Devlin  
Staff of the MFDA  
Per: Shaun Devlin  
Senior Vice-President,  
Member Regulation – Enforcement

**Schedule "A"**  
(Transcribed from hand-written original)

November 14, 2017

To MFDA: re Bernd Neirman [sic] matter

I, "AP", am of sane mind, not vu[!]nerable and have not filed a complaint!

Bernd owes me \$28,900 plus interest.

I expect repayment but understand that Bernd can not do that at the present time.

There is no repayment schedule in place.

I have known Bernd for 20 years and trust him to repay his debt.

Sincerely,

"AP"

**Schedule “B”**

**Order**

**File No. 201688**



**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: Bernd Franz Adolf Niermann**

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**ORDER**

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**WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated December 11, 2017 (“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** the Hearing Panel is of the opinion that the Respondent engaged in misconduct pursuant to MFDA Rules 2.1.4, 2.1.1, 1.1.2 and 2.5.1;

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

1. the Respondent is prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 for a period of five (5) years from December 11, 2017 to December 11, 2022, after which date the

Respondent shall be entitled to apply to be registered to conduct securities related business in any capacity over which the MFDA has jurisdiction;

2. the Respondent shall pay client AP the amount of \$28,900 plus interest in accordance with the terms of the promissory notes as described in the Settlement Agreement by no later than December 11, 2019 and provide proof of such payment to the MFDA;

3. in the event that the Respondent fails to repay client AP in full prior to December 11, 2019, the Respondent shall be prohibited from conducting securities related business in any capacity over which the MFDA has jurisdiction pursuant to s. 24.1.1(e) of MFDA By-law No. 1 an additional five (5) years to December 11, 2027;

4. the Respondent shall pay costs of \$2,500 to the MFDA pursuant to section 24.2 of MFDA By-law No. 1; 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]