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: Shah Financial Planning Inc.

Heard: March 27, 2019 in Toronto, Ontario
Decision: March 27, 2019
Reasons for Decision: May 7, 2019

# REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

| | |
|---|---|
| Malliha Wilson | Chair |
| Michael Coulter | Industry Representative |
| Tim Pryor | Industry Representative |

Appearances:

| | | |
|---|---|---|
| Francis Roy | ) | Enforcement Counsel for the Mutual Fund Dealers Association of Canada |
| Ekta Chauchan | ) | Chief Compliance Officer of the Respondent |

## I. SETTLEMENT AGREEMENT

1. Pursuant to a Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the "MFDA") held a hearing on March 27, 2019 to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the "Hearing Panel") of the MFDA should accept the settlement agreement dated December 20, 2018 (the "Settlement Agreement") entered into between Staff of the MFDA ("Staff") and the Respondent, Shah Financial Planning Inc. (the "Respondent").

## II. CONTRAVENTIONS

2. The Respondent admits that between at least January 2013 and August 2017, it failed to establish, implement and maintain adequate procedures to supervise and ensure the suitability of leveraged investment recommendations made by its Approved Persons to clients, contrary to MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2.

## III. AGREED PENALTY

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

a) the Respondent shall pay a fine in the amount of $20,000, pursuant to section 24.1.2(b) of By-law No. 1, upon the acceptance of this Settlement Agreement;

b) the Respondent shall pay the costs of this proceeding and investigation in the amount of $5,000, pursuant to section 24.2 of By-law No. 1, upon the acceptance of this Settlement Agreement;

c) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2; and

d) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

## IV. SETTLEMENT AGREEMENT

4. The Hearing Panel accepted the Settlement Agreement. A copy of the Settlement Agreement is attached hereto as Schedule "1" and a copy of the Order is attached as Schedule "2".

## V. AGREED FACTS

5. The agreed facts are set out in section IV of the Settlement Agreement, and the pertinent facts are set out as follows.

**Registration History**

6. The Respondent is registered in Ontario as a mutual fund dealer and has been a member of the MFDA since December 7, 2001. Its head office and only branch is located in Scarborough, Ontario.

**The Respondent's Total Leveraged Assets Under Administration Increased Significantly Commencing January 2013**

7. Between January 2013 and May 2016, the Respondent tripled its leveraged assets under administration ("AUA") from $12,186,059 to $36,658,987. As at May 2016, these leveraged AUA represented approximately 36% of the Respondent's total AUA.

8. The majority of the Respondent's clients who held leveraged investments had been recommended by the Respondent's Approved Persons, as part of a leveraged investment strategy (the "Leveraged Investment Strategy"), to obtain investment loans and use the proceeds of the investment loans to purchase return of capital ("ROC") mutual funds[1] subject to deferred sales charges ("DSC") for their accounts.

9. The Leveraged Investment Strategy was based on the premise that the ROC mutual funds would generate sufficient proceeds each month to cover the clients' costs of servicing their investment loans, such that the Leveraged Investment Strategy would pay for itself and the clients would not have to incur any out-of-pocket expenses in order to sustain the Leveraged Investment Strategy.

[1] "Return of capital" mutual funds are structured to pay a set monthly amount of proceeds (for example, 8%) to an investor which may include a return of the capital originally invested by the investor. In the event the value of a ROC mutual fund declines due to deteriorating market conditions, poor investment performance or other factors such that the amount of the promised monthly proceeds exceeds the increase in the value of the fund, there is a real and substantial risk that the fund will be required to reduce, suspend or cancel altogether, the monthly proceeds paid to investors.

10. Approximately 26% of the loans recommended as part of the Leveraged Investment Strategy were made by Approved Persons when they were registered with other MFDA Members. These Approved Persons subsequently became registered with the Respondent and clients serviced by these Approved Persons transferred their accounts to the Respondent.

11. In February 2016, Staff, prompted by the significant increase in the Respondent's leveraged AUA, as well as deficiencies it identified during its third and fourth round sales compliance examinations of the Respondent,[2] completed a targeted compliance examination of the Respondent specifically relating to the Member's leverage supervision and practices (the "Targeted Compliance Examination").

12. The Targeted Compliance Examination revealed that, among other things, although leverage review worksheets were completed for clients, until November 2017 the Respondent failed to maintain evidence that it had done a Tier 2 supervisory review, so as to ensure that the leveraging recommendations to clients by its Approved Persons were suitable for the clients, in accordance with MFDA Policy No. 2.

**Measures Implemented by the Respondent Following Staff's Targeted Compliance Examination**

13. On April 28, 2016, the Respondent, at Staff's request, agreed to, among other things:

a) cease permitting clients to invest in ROC mutual funds as part of a Leveraged Investment Strategy and immediately inform its Approved Persons of this restriction; and

b) have its President or Chief Compliance Officer contact all clients who had implemented the Leveraged Investment Strategy in their accounts to discuss with them their understanding of the Leveraged Investment Strategy, and recommend the implementation of corrective action to ensure the suitability of the clients' investment accounts.

[2] Staff's third round sales compliance examination of the Respondent was completed in January 2011. The fourth round sales compliance examination of the Respondent was completed in July 2013.

14. On May 11 and 13, 2016, the Respondent issued directives to its Approved Persons informing them, among other things, that:

a) the Respondent would no longer permit the recommendation and implementation of Leveraged Investment Strategies whereby clients invested in ROC or T-series mutual funds;
b) going forward, the Respondent would require its Approved Persons to provide to supervisory staff a rationale for their recommendation of leveraged investments to clients; and
c) the Respondent would contact each affected client, following which the Respondent would implement a complaint process to deal with, and resolve, any and all complaints made by clients.

15. In May 2016, the Respondent contacted or attempted to contact each affected client, educate them on the risks and material features of the Leveraged Investment Strategy that had been implemented in their accounts, and discuss options for handling their accounts.

16. On June 30, 2016, the Respondent revised its policies and procedures with respect to the suitability of leveraged investments to specify, among other things, that:

a) the Respondent would no longer permit the recommendation and implementation of Leveraged Investment Strategies whereby clients invested in ROC mutual funds; and
b) all Approved Persons who recommended a Leveraged Investment Strategy for clients was required to explain to clients the risks and material features associated with such a strategy.

17. On July 16, 2016, the Respondent sent at least 223 letters to clients who held ROC mutual funds in their leveraged accounts. Each letter was unique to the individual clients and included information specific to the clients such as the outstanding balance of their investment loans and the market value of their leveraged investments. The letters further provided clients with the Respondent's options and recommendations on how the clients could rectify the suitability issues flagged in their accounts and fully repay their investment loans.

18. Of the 223 clients who received the July 16, 2016 letter, three clients complained to the Respondent that they sustained losses in their leveraged accounts as a result of the Leveraged Investment Strategy they had implemented. The Respondent provided compensation to those three clients to resolve the complaints.

19. The Respondent acknowledges that it must comply with its complaint handling obligations pursuant to MFDA Policy No. 3 in respect of any further complaints received regarding the Leveraged Investment Strategy.

## VI. CONSIDERATIONS

20. The following considerations guided the Hearing Panel's acceptance of the Settlement Agreement. Firstly, the agreed penalty needed to be within an acceptable range considering similar cases. Secondly, the agreed penalty had to be fair and reasonable, i.e. proportional to the seriousness of the contravention and relevant circumstances. Thirdly, the agreed penalty should serve as a deterrent to the Respondent and the industry.

## VII. IMPORTANCE OF RESPECTING SETTLEMENTS

21. The case law makes it clear that Settlement Agreements should be encouraged and respected.

22. Settlements can be important and useful in achieving outcomes which further the goals of the securities regulatory context. The British Columbia Supreme Court stated in paragraph 49 of *British Columbia Securities Commission* v. *Seifert* [2006] B.C.J. No. 225, **aff'd [2007] B.C.C.A. No. 484**:

> "Settlements assist the Commission to ensure that its overriding objective, the protection of the public, is met. Settlements proscribe activities that are harmful to the public. In so doing, they are effective in accomplishing the purposes of the statute. They provide means of reaching a flexible remedy that is tailored to address the interests of both the Commission and the person under investigation."

23. Hearing Panels should respect settlements worked out by the parties. A Panel does not know what led to a settlement, what was given up by one party or the other in the course of the negotiations, and what interest each party has in agreeing to resolve the matter. The Panel cannot go beyond the Settlement Agreement. There are almost always facts that play a role in the settlement which are not set out in the Settlement Agreement or brought to the attention of the Panel. There were significant negotiations in the present case.

24. As a Panel stated (*Re Keshet*, File No. 201419 at paragraph 7), to take one of many such cases: "It is well established that hearing panels should not interfere lightly in negotiated settlements and should not reject a settlement agreement unless it views the proposed penalty clearly falling outside a reasonable range of appropriateness." There are many similar statements by MFDA Panels, stemming from the leading decision of *Re Milewski* [1999] I.D.A.C.D. No. 17, which stated:

> "A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

## VIII. NATURE OF THE MISCONDUCT

25. The Respondent's misconduct is serious. The Respondent engaged in serious contraventions of the MFDA's Rules as set out in paragraph 2 above.

## IX. OTHER CONSIDERATIONS REGARDING ACCEPTABILITY OF AGREED PENALTY

26. The Respondent does not have a prior disciplinary history in the securities industry.

27. The Respondent has cooperated with the MFDA.

## X. SHOULD THE PANEL ACCEPT THE SETTLEMENT AGREEMENT?

28. A Panel can accept or reject a Settlement Agreement. It cannot modify it.

29. The agreed penalties help the MFDA to send a message to the Respondent and others with respect to specific and general deterrence.

30. The agreed penalties are within the reasonable range of appropriateness with respect to other decisions, as submitted to us by Staff, made by MFDA hearing panels in similar circumstances.

## XI. CONCLUSION

31. Having regard to all the aforementioned factors, the Panel concludes that the penalties proposed in the Settlement Agreement are reasonable, proportionate and will deter the Respondent and others from engaging in the impugned conduct. The Panel is of the view that the acceptance of this Settlement Agreement is in the public interest and will advance the objective of investor protection. The Settlement Agreement is therefore accepted.

**DATED** this 7th day of May, 2019.

"Malliha Wilson'
Malliha Wilson
Chair

"Michael Coulter"
Michael Coulter
Industry Representative

"Tim Pryor'
Tim Pryor
Industry Representative

DM 675143

**Schedule "1"**

**Settlement Agreement**

**File No. 2018131**


**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: Shah Financial Planning 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 Central 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, Shah Financial Planning Inc.

## 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 "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

### Registration History

6. The Respondent is registered in Ontario as a mutual fund dealer and has been a member of the MFDA since December 7, 2001. Its head office and only branch is located in Scarborough, Ontario.

### The Respondent's Total Leveraged Assets Under Administration Increased Significantly Commencing January 2013

7. Between January 2013 and May 2016, the Respondent tripled its leveraged assets under administration ("AUA") from $12,186,059 to $36,658,987. As at May 2016, these leveraged AUA represented approximately 36% of the Respondent's total AUA.

8. The majority of the Respondent's clients who held leveraged investments had been recommended by the Respondent's Approved Persons, as part of a leveraged investment strategy (the "Leveraged Investment Strategy"), to obtain investment loans and use the proceeds of the

investment loans to purchase return of capital ("ROC") mutual funds[3] subject to deferred sales charges ("DSC") for their accounts.

9. The Leveraged Investment Strategy was based on the premise that the ROC mutual funds would generate sufficient proceeds each month to cover the clients' costs of servicing their investment loans, such that the Leveraged Investment Strategy would pay for itself and the clients would not have to incur any out-of-pocket expenses in order to sustain the Leveraged Investment Strategy.

10. Approximately 26% of the loans recommended as part of the Leveraged Investment Strategy were made by Approved Persons when they were registered with other MFDA Members. These Approved Persons subsequently became registered with the Respondent and clients serviced by these Approved Persons transferred their accounts to the Respondent.

11. In February 2016, Staff, prompted by the significant increase in the Respondent's leveraged AUA, as well as deficiencies it identified during its third and fourth round sales compliance examinations of the Respondent,[4] completed a targeted compliance examination of the Respondent specifically relating to the Member's leverage supervision and practices (the "Targeted Compliance Examination").

12. The Targeted Compliance Examination revealed that, among other things, although leverage review worksheets were completed for clients, until November 2017 the Respondent failed to maintain evidence that it had done a Tier 2 supervisory review, so as to ensure that the leveraging recommendations to clients by its Approved Persons were suitable for the clients, in accordance with MFDA Policy No. 2.

[3] "Return of capital" mutual funds are structured to pay a set monthly amount of proceeds (for example, 8%) to an investor which may include a return of the capital originally invested by the investor. In the event the value of a ROC mutual fund declines due to deteriorating market conditions, poor investment performance or other factors such that the amount of the promised monthly proceeds exceeds the increase in the value of the fund, there is a real and substantial risk that the fund will be required to reduce, suspend or cancel altogether, the monthly proceeds paid to investors.

[4] Staff's third round sales compliance examination of the Respondent was completed in January 2011. The fourth round sales compliance examination of the Respondent was completed in July 2013.

**Measures** Implemented **by the Respondent Following Staff's Targeted Compliance Examination**

13. On April 28, 2016, the Respondent, at Staff's request, agreed to, among other things:

a) cease permitting clients to invest in ROC mutual funds as part of a Leveraged Investment Strategy and immediately inform its Approved Persons of this restriction; and

b) have its President or Chief Compliance Officer contact all clients who had implemented the Leveraged Investment Strategy in their accounts to discuss with them their understanding of the Leveraged Investment Strategy, and recommend the implementation of corrective action to the ensure the suitability of the clients' investment accounts.

14. On May 11 and 13, 2016, the Respondent issued directives to its Approved Persons informing them, among other things, that:

a) the Respondent would no longer permit the recommendation and implementation of Leveraged Investment Strategies whereby clients invested in ROC or T-series mutual funds;

b) going forward, the Respondent would require its Approved Persons to provide to supervisory staff a rationale for their recommendation of leveraged investments to clients; and

c) the Respondent would contact each affected client, following which the Respondent would implement a complaint process to deal with, and resolve, any and all complaints made by clients.

15. In May 2016, the Respondent contacted or attempted to contact each affected client, educate them on the risks and material features of the Leveraged Investment Strategy that had been implemented in their accounts, and discuss options for handling their accounts.

16. On June 30, 2016, the Respondent revised its policies and procedures with respect to the suitability of leveraged investments to specify, among other things, that:

a) the Respondent would no longer permit the recommendation and implementation of Leveraged Investment Strategies whereby clients invested in ROC mutual funds; and

b) all Approved Persons who recommended a Leveraged Investment Strategy for clients was required to explain to clients the risks and material features associated with such a strategy.

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18. Of the 223 clients who received the July 16, 2016 letter, three clients complained to the Respondent that they sustained losses in their leveraged accounts as a result of the Leveraged Investment Strategy they had implemented. The Respondent provided compensation to those three clients to resolve the complaints.

19. The Respondent acknowledges that it must comply with its complaint handling obligations pursuant to MFDA Policy No. 3 in respect of any further complaints received regarding the Leveraged Investment Strategy.

**Additional Factors**

20. The Respondent does not have a prior disciplinary history in the securities industry.

21. The Respondent has cooperated with the MFDA.

## V. CONTRAVENTIONS

22. As a result of the above, the Respondent admits that between at least January 2013 and August 2017, it failed to establish, implement and maintain adequate procedures to supervise and

ensure the suitability of leveraged investment recommendations made by its Approved Persons to clients, contrary to MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2.

## VI. TERMS OF SETTLEMENT

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

a) the Respondent shall pay a fine in the amount of $20,000, pursuant to section 24.1.2(b) of By-law No. 1, upon the acceptance of this Settlement Agreement;
b) the Respondent shall pay the costs of this proceeding and investigation in the amount of $5,000, pursuant to section 24.2 of By-law No. 1, upon the acceptance of this Settlement Agreement;
c) the Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2; and
d) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

## VII. STAFF COMMITMENT

24. 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 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.

## VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

25. 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.

26. 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.

27. 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 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.

28. 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.

## IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

29. 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

30. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to sections 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

31. 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.

## XI. DISCLOSURE OF AGREEMENT

32. 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.

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

## XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

**DATED** this 20th day of December, 2018.

"Narendra Shah"
Shah Financial Planning Inc.
Per: **Narendra Shah, President and Ultimate Designated Person**

"EC"
Witness – Signature

EC
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. 2018131**

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: Shah Financial Planning 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 Shah Financial Planning 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** the Hearing Panel is of the opinion that between at least January 2013 and August 2017, the Respondent failed to establish, implement and maintain adequate procedures to supervise and ensure the suitability of leveraged investment recommendations made by its Approved Persons to clients, contrary to MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 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 $20,000, pursuant to section 24.1.2(b) of By-law No. 1.

2. The Respondent shall pay the costs of this proceeding and investigation in the amount of $5,000, pursuant to section 24.2 of By-law No. 1.

3. The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2.

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

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

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

**Schedule "2"**

**Order**

**File No. 2018131**

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: Shah Financial Planning Inc.

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# ORDER

(ARISING FROM SETTLEMENT HEARING ON MARCH 27, 2019)

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**WHEREAS** on December 18, 2018, 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 Shah Financial Planning Inc. (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated December 20, 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 WHERAS** the Settlement Hearing was held on March 27, 2019 during which time the Hearing Panel considered the Settlement Agreement and submissions of Staff and the Respondent's President and Chief Executive Officer;

**AND WHEREAS** the Hearing Panel is of the opinion that between at least January 2013 and August 2017, the Respondent failed to establish, implement and maintain adequate procedures

to supervise and ensure the suitability of leveraged investment recommendations made by its Approved Persons to clients, contrary to MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2.

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

1. 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*;

2. The Respondent shall pay a fine in the amount of $20,000, pursuant to section 24.1.2(b) of By-law No. 1;

3. The Respondent shall pay the costs of this proceeding and investigation in the amount of $5,000, pursuant to section 24.2 of By-law No. 1; and

4. The Respondent shall in the future comply with MFDA Rules 2.2.1, 2.5, and 2.10 and MFDA Policy No. 2.

**DATED** this 27th day of March, 2019.

"Malliha Wilson"
Malliha Wilson
Chair

"Tim Pryor"
Tim Pryor
Industry Representative

"Michael Coulter"
Michael Coulter
Industry Representative