



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: Keybase Financial Group Inc. and Dax Sukhraj

Heard: April 22, 2009
Toronto, Ontario

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

Thomas J. Lockwood, Q.C.,	Chair
Linda Anderson	Industry Representative
Cheryl Hamilton	Industry Representative

Appearances:

H.C. Clement Wai)	For the Mutual Fund Dealers Association of Canada
and Charles Toth)	
Robert Brush)	For the Respondents, Keybase Financial Group Inc.
)	and Dax Sukhraj

The Allegations

1. By Notice of Hearing, dated the 24th day of July, 2008, the Mutual Fund Dealers Association of Canada (“MFDA”) made the following Allegations against Keybase Financial Group Inc. (“Keybase”) and Dax Sukhraj (“Sukhraj”) (collectively “the Respondents”):

Allegation 1: Between March 1, 2004 to December 31, 2005, Keybase failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to maintain and ensure compliance with policies and procedures requiring branch managers to supervise trading activity at the branch office level and failed to retain sufficient evidence of the review of the suitability of client trading activity, contrary to MFDA Rule 2.5 and MFDA Policy 2.

Allegation 2: Between March 1, 2004 and December 31, 2005, Keybase delegated certain supervisory tasks to a person who lacked the requisite proficiency standards of a compliance officer as set out in MFDA Rule 1.2.3 and contrary to MFDA Rule 2.5.5.

Allegation 3: Between March 1, 2004 and December 31, 2005, Keybase failed to review and approve at all or in a timely manner the opening of new client accounts and maintain evidence of such review and approval, contrary to MFDA Rules 2.2.3 and 2.5.3(b)(ii) and MFDA Policy 2.

Allegation 4: Between March 1, 2004 and December 31, 2005, Keybase failed to ensure New Account Application Forms (“NAAFs”) had been completed and failed to maintain or complete Know Your Client (“KYC”) information on client accounts and permitted trading in such accounts, contrary to MFDA Rules 2.2.1 and 2.2.2.

Allegation 5: Between March 1, 2004 and December 31, 2005, Keybase failed to establish, implement and maintain policies and procedures to identify, review and approve dual occupations of its Approved Persons, contrary to MFDA Rule 1.2.1(d)(iii).

Allegation 6: Between March 1, 2004 and December 31, 2005, Keybase failed to establish, implement and maintain policies and procedures to review and approve marketing materials, contrary to MFDA Rule 2.7.3.

Allegation 7: Between March 1, 2004 and 2006, Sukhraj, as the president and sole director of Keybase, engaged in business conduct or practice that was unbecoming or detrimental to the public interest by failing to ensure that Keybase maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

2. The Respondents were served with the Notice of Hearing on July 24, 2008, in accordance with Rule 4.2(1)(c) of the MFDA Rules of Procedure.

3. The Respondents served a Reply, on the MFDA, on August 13, 2008.

4. By Order of Hearing Panel, dated September 29, 2008, the Hearing on the Merits in this matter was scheduled to take place from April 20 - 28, 2009.

5. At the commencement of the Hearing on the Merits on April 20, 2009, Staff and counsel for the Respondents advised that the parties had negotiated a settlement agreement in principle. They requested an adjournment of the proceedings to April 22, 2009, in order that the formal Settlement Agreement could be prepared, executed and presented to the Hearing Panel for its consideration. This adjournment request was granted.

6. As the Settlement Agreement was executed after the commencement of the Hearing of the proceedings on its merits, in our view, further notice of the Settlement Hearing, under Rule 15.2(1) of the Rules of Procedure, was not required.

7. On April 22, 2009, we considered a joint Motion by Staff and the Respondents to move the proceedings “in-camera”. This Motion was brought pursuant to Rule 15.2(2) of the Rules of

Procedure, which provides as follows:

“(2) A Hearing Panel may, on its own initiative or at the request of a party, order that all or part of the settlement hearing be held in the absence of the public, having regard to the principles set out in Rule 1.8.”

8. Rule 1.8(2) provides as follows:

“(2) A Panel may order that all or part of a hearing be heard in the absence of the public where the Panel is of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing which are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.”

9. We granted the Motion on the condition, which was agreeable to both Staff and the Respondents, that, should the Hearing Panel accept the Settlement Agreement, we would provide Reasons for our Decision, which, along with the record of the Settlement Hearing, would be available to the public. This is consistent with Rule 15.2(3) of the Rules of Procedure.

10. The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

11. After consideration, the Hearing Panel unanimously accepted the Settlement Agreement and made an Order to this effect on April 22, 2009. Our Reasons for doing so follow.

12. The salient portions of the Settlement Agreement are as follows:

“II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondents’ activities. The investigation disclosed that the Respondents have engaged in activity for which the Respondents could

be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No.1.

IV. AGREED FACTS

Registration History

6. Keybase is registered in the province of Ontario as a Mutual Fund Dealer and Limited Market Dealer and in the provinces of Alberta, British Columbia, New Brunswick, Nova Scotia and Prince Edward Island as a Mutual Fund Dealer.

7. Keybase became a Member of the MFDA on May 29, 2003.

8. Sukhraj is a shareholder, the President, sole Director and controlling mind of Keybase.

9. SB was registered as the Chief Compliance Officer of Keybase from 2003 to September 2004 at which time he became the Alternate Compliance Officer. Commencing in November 2004, SB became the Branch Manager for all Approved Persons who were reporting directly to Keybase's Head Office

10. RT was registered as the Chief Compliance Officer of Keybase from September 2004 to April 2006.

11. JJ was registered as the Chief Compliance Officer of Keybase from November 2006 to March 2008.

12. PR was registered as a salesperson with Keybase from September 2005 to September 2006.

The 2001 Ontario Securities Commission Field Review

13. In 2001, Keybase was subject to a field review by the Ontario Securities Commission (“OSC”), pursuant to section 20 of the *Securities Act* (Ontario) (the “OSC Examination”).

14. The OSC Examination included an assessment of Keybase’s compliance with relevant sections of Ontario securities law for the period from September 1, 2000 to August 31, 2001. The findings of the field review were reported to Keybase in the OSC’s Compliance Field Review Report dated December 13, 2001 (the “2001 OSC Report”). The 2001 OSC Report identified deficiencies in Keybase’s procedures and policies including but not limited to:

- (a) Branch Managers responsibilities regarding approval of new accounts and trade supervision;
- (b) Opening of new accounts and completeness of Know Your Client (“KYC”) information;
- (c) Review and approval of marketing materials; and
- (d) Written policies and procedures regarding new accounts and trading and sales practices.

15. On February 11, 2002, Keybase provided the OSC with a response to the 2001 OSC Report in which it outlined the various actions it had taken and the timeline for addressing the deficiencies identified in the 2001 OSC Report.

The 2004 MFDA Compliance Examination

16. In April 2004, the MFDA completed an initial compliance examination of Keybase (the “2004 Examination”) which included an assessment of compliance by Keybase with MFDA By-laws, Rules and Policies for the period from May 29, 2003 to February 29, 2004. The 2004 Examination included a review of Keybase’s head office as well as four branch locations. The findings of the 2004 Examination were reported to

Keybase in the MFDA Compliance Examination Report dated August 25, 2004 (the “2004 MFDA Report”).

17. The 2004 MFDA Report identified, amongst other things, deficiencies in the following areas:

- (a) Approval of new accounts;
- (b) Evidence of trade supervision;
- (c) Maintenance of KYC information;
- (d) Dual occupation approval;
- (e) Review and approval of marketing materials; and
- (f) Proficiency requirements of supervisory staff.

18. The deficiencies identified in the 2004 MFDA Report above were similar to some of the deficiencies found in the 2001 OSC Report.

19. To address the deficiencies, the MFDA required Keybase to describe the steps it had taken, or intended to take, with respect to the deficiencies identified in the 2004 MFDA Report. Keybase’s response was due on or before September 20, 2004.

20. On September 20, 2004 Keybase provided the MFDA with its initial response to the 2004 MFDA Report. Keybase’s response did not adequately address the deficiencies identified in the 2004 MFDA Report.

21. Between September 2004 to October 2005, the MFDA communicated with Keybase to address the deficiencies in the 2004 MFDA Report. In its numerous responses to the 2004 MFDA Report, Keybase:

- (a) Failed to respond to all of the MFDA’s requests;
- (b) Failed to submit the documents requested by the MFDA;

- (c) Included incomplete documents as evidence of resolution of deficiencies; and
- (d) Submitted inconsistent information with respect to the corrective measures purportedly taken by Keybase.

22. Keybase eventually provided the MFDA with action plans to correct the deficiencies identified in the 2004 MFDA Report. The action plans required Keybase to make changes to its policies and procedures.

The 2006 Compliance Examination

23. From January 30, 2006 to February 10, 2006, the MFDA undertook a second compliance examination of Keybase (the “2006 Examination”) which included an assessment of compliance by Keybase for the period from March 1, 2004 to December 31, 2005. The 2006 Examination included a review of Keybase’s head office as well as three branch locations. The findings of the 2006 Examination were reported to Keybase in the MFDA Compliance Examination Report dated July 6, 2006 (the “2006 MFDA Report”).

24. The 2006 MFDA Report identified, amongst other things, the following deficiencies that were previously identified in the 2004 MFDA Report that related to:

- (a) Approval of new accounts;
- (b) Evidence of trade supervision;
- (c) Maintenance of KYC information;
- (d) Dual occupation approval;
- (e) Review and approval of marketing materials; and
- (f) Proficiency requirements of supervisory staff. (collectively the “Repeat Deficiencies”)

25. By virtue of the repeat deficiencies identified in the 2006 MFDA Report, Keybase either did not take the corrective measures which it undertook to implement following the

2004 MFDA Report, or the corrective measures it took failed to resolve the Repeat Deficiencies adequately or at all.

Failure to Ensure Two-Tier Supervision and Branch Manager Trade Reviews

26. In the 2006 Examination, the MFDA was informed by SB that, in his capacity as Branch Manager for Approved Persons reporting to Keybase's Head Office, his trade reviews were conducted on-line.

27. The on-line process utilized by SB did not permit SB to adequately review the trading activity of Approved Persons who reported directly to Head Office and prevented SB from maintaining adequate records of the daily trade supervision.

28. In the 2006 Examination, the MFDA also conducted a review of three branch locations. The review identified that the designated Branch Manager of each location did not sufficiently undertake Branch Manager responsibilities with regard to branch level account supervision.

29. The 2006 Examination identified that Keybase did not make sufficient efforts to ensure that its Branch Managers were supervising client account activity at the branch office level. Consequently, Keybase did not have a two-tier supervision structure consisting of supervision at both the branch office and head office levels.

30. Similar deficiencies were identified in the 2001 OSC Examination and the 2004 Examination.

31. Between March 1, 2004 to December 31, 2005, Keybase failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to maintain and ensure compliance with policies and procedures requiring branch managers to supervise trading activity at the branch office level and

failed to retain sufficient evidence of the review of the suitability of client trading activity, contrary to MFDA Rule 2.5 and MFDA Policy 2.

Improper Delegation of Responsibilities

32. During the 2006 Examination it was identified that PR had been designated as a Junior Compliance Officer and was undertaking head office supervisory reviews of trading activity. At the time, PR had completed the Canadian Securities Course and the Conduct and Practices Handbook Course, but he had failed to complete the proficiency requirements set out in MFDA Rules 1.2.3(b)(iv) and (v).

33. Similar deficiencies were identified in the 2004 Examination.

34. Between March 1, 2004 to December 31, 2005, Keybase delegated certain supervisory tasks to a person who lacked the requisite proficiency standards of a compliance officer as set out in MFDA Rule 1.2.3 and contrary to MFDA Rule 2.5.5.

Failure to Properly Review and Approve Opening of New Accounts

35. The 2006 Examination identified the following deficiencies regarding Keybase's review and approval of new accounts:

- (a) New account approval being made later than one business day after the date of the initial trade in the account;
- (b) Branch Managers approving new accounts for their own clients (i.e. no independent oversight of Branch Managers' account openings); and
- (c) No evidence being maintained of review of approval of new accounts.

36. Similar deficiencies were identified in the 2004 Examination.

37. Between March 1, 2004 to December 31, 2005, Keybase failed to review and approve at all or in a timely manner the opening of new client accounts and maintain

evidence of such review and approval, contrary to MFDA Rules 2.2.3 and 2.5.3(b)(ii) and MFDA Policy 2.

Missing NAAFs and KYC Information

38. The 2006 Examination identified instances where client accounts did not have a client New Account Application Form (“NAAF”) on file and instances where client accounts had missing or incomplete KYC information.

39. Similar deficiencies were identified in the 2001 OSC Examination and the 2004 Examination.

40. Keybase permitted purchase transactions to be completed on 11 of these client accounts with missing or incomplete KYC information.

41. On June 5, 2005, in response to the 2004 Examination, Keybase represented to the MFDA that client accounts with missing or incomplete KYC information would be frozen and new purchases would not be permitted on the accounts and (sic) purchases. The 2006 Examination identified seven purportedly frozen client accounts in which purchase transactions had been permitted after June 5, 2005.

42. Between March 1, 2004 to December 31, 2005, Keybase failed to complete a NAAF and failed to maintain or complete KYC information on client accounts and permitted trading in such accounts, contrary to MFDA Rules 2.2.1 and 2.2.2.

Failure to Properly Review and Approve Dual Occupations

43. The 2006 Examination identified Approved Persons with dual occupations that had not been disclosed to the applicable Securities Commission.

44. Keybase's policy and procedure concerning dual occupations did not require the Approved Person to identify the nature of the dual occupation or require Keybase to approve the dual occupation.

45. Similar deficiencies were identified in the 2004 Examination.

46. Between March 1, 2004 to December 31, 2005, Keybase failed to establish, implement and maintain policies and procedures to identify, review and approve dual occupations of its Approved Persons, contrary to MFDA Rule 1.2.1(d)(iii).

Failure to Properly Review and Approve of Marketing Materials

47. The 2006 Examination identified a failure by Keybase to maintain sufficient evidence of review and approval of all marketing materials.

48. Keybase failed to maintain records of the review and approval of its website and the personal websites of its Approved Persons.

49. In addition, Keybase was not always maintaining evidence of the review and approval of marketing materials, including evidence of who approved the materials and the timing of the approval.

50. Similar deficiencies were identified in the 2004 Examination.

51. Between March 1, 2004 to December 31, 2005, Keybase failed to establish, implement and maintain policies and procedures to review and approve marketing materials, contrary to MFDA Rule 2.7.3.

Sukhraj: Responsibility for Compliance by Keybase

52. On December 5, 2006 the MFDA released MR-0057 a Joint Regulatory Notice on

the Role of Compliance and Supervision. As set out in MR-0057, the board of directors of a Member is responsible for ensuring that the Member maintains a compliance program that identifies and addresses material risks of noncompliance and directors of a Member must act on reports from the Member's management and compliance personnel.

53. Commencing in 2006, JJ, as the Chief Compliance Officer of Keybase, made compliance recommendations to Sukhraj with respect to addressing deficiencies found in the 2006 Examination, specifically recommendations concerning:

- (a) Branch Manager's trade reviews;
- (b) Missing NAAF's and KYC information; and
- (c) Improper delegation of responsibilities.

54. Sukhraj failed to act or failed to act in a timely manner with respect to the compliance recommendations made by JJ.

55. Between March 1, 2004 to 2006, Sukhraj, as the president and sole director of Keybase, engaged in business conduct or practice that was unbecoming or detrimental to the public interest by failing to ensure that Keybase maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

V. CONTRAVENTIONS

56. Keybase admits that between March 1, 2004 to December 31, 2005:

- (a) it failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to maintain and ensure compliance with policies and procedures requiring branch managers to supervise trading activity at the branch office level and failed

to retain sufficient evidence of the review of the suitability of client trading activity, contrary to MFDA Rule 2.5 and MFDA Policy 2.

- (b) it delegated certain supervisory tasks to a person who lacked the requisite proficiency standards of a compliance officer as set out in MFDA Rule 1.2.3 and contrary to MFDA Rule 2.5.5:
- (c) it failed to review and approve at all or in a timely manner the opening of new client accounts and maintain evidence of such review and approval, contrary to MFDA Rules 2.2.3 and 2.5.3(b)(ii) and MFDA Policy 2;
- (d) it failed to ensure NAAF's had been completed and failed to maintain or complete KYC information on client accounts and permitted trading in such accounts, contrary to MFDA Rules 2.2.1 and 2.2.2;
- (e) it failed to establish, implement and maintain policies and procedures to identify, review and approve dual occupations of its Approved Persons, contrary to MFDA Rule 1.2.1(d)(iii); and
- (f) it failed to establish, implement and maintain policies and procedures to review and approve marketing materials, contrary to MFDA Rule 2.7.3.

57. Sukhraj admits that between March 1, 2004 to 2006, Sukhraj, as the president and sole director of Keybase, engaged in business conduct or practice that was unbecoming or detrimental to the public interest by failing to ensure that Keybase maintained a compliance program that identified and addressed material risks of non-compliance and that appropriate supervision and compliance procedures to manage those risks had been implemented, contrary to MFDA Rules 2.1.1(c) and 2.5.1 and MFDA Policy 2.

VI. TERMS OF SETTLEMENT

58. The Respondents agree to the following terms of settlement:

- (a) Keybase shall pay a fine in the amount of \$150,000.00, pursuant to section 24.1.2(b) of MFDA By-law No. 1;
- (b) Keybase shall retain an independent monitor to resolve compliance deficiencies identified in the MFDA 2006 Sales Compliance Examination Report dated July 6, 2006 and (if any) deficiencies identified in the MFDA 2009 Sales Compliance Examination Report when issued, as well as any deficiencies identified by the independent monitor in their review in accordance with Schedule B, pursuant to section 24.1.2(g) of MFDA By-law No. 1;
- (c) Sukhraj shall pay a fine in the amount of \$50,000.00, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (d) Sukhraj shall complete the Partners Directors and Senior Officers course within 1 year of date of the acceptance of the Settlement Agreement;
- (e) The Respondents shall together pay costs in the amount of \$25,000.00, attributable to conducting the investigation and settlement of this matter, pursuant to section 24.2 of MFDA By-law No. 1;
- (f) The fines and costs as prescribed in this Settlement Agreement against the Respondents are payable as follows:
 - i. \$50,000 in fines and \$25,000 in costs payable upon acceptance of the Settlement Agreement;
 - ii. \$50,000 in fines payable on or before October 22, 2009;

iii. \$50,000 in fines payable on or before April 22, 2010; and

iv. \$50,000 in fines payable on or before October 22, 2010.

- (g) If the Respondents fail to pay the fines or costs as prescribed in this Settlement Agreement, Staff may summarily, without further notice, suspend the rights and privileges of Keybase and the authority of Sukhraj to conduct securities related business until such fines or costs are paid, pursuant to s. 24.3.13 of MFDA By-law No. 1.

VII. STAFF COMMITMENT

59. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against Sukhraj, Keybase or any officer or director of Keybase in respect of any conduct or alleged conduct of the Respondents in relation to:

- (a) deficiencies (if any) identified in the MFDA 2009 Sales Compliance Examination Report when issued;
- (b) the facts set out in Part IV of this Settlement Agreement; and
- (c) matters concerning Keybase currently in the Enforcement Department of the MFDA.

This would not preclude enforcement action against any individual Approved Person in respect of any such matters currently in the Enforcement Department of the MFDA and is subject to the provisions of paragraph 64 below.

64. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent(s) fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against either or both of the Respondent(s) or if applicable 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.”

The Independent Monitor

13. A key component of the Settlement Agreement is the retention by Keybase, at its own expense, of an Independent Monitor (“Monitor”). Staff must approve the selection of the Monitor, as well as the terms of Keybase’s retainer of the Monitor. Keybase agreed that this retainer would incorporate the requirements set out in a document entitled “Duties and Standards of the Independent Monitor”. A copy of the retainer agreement is to be provided to Staff. Keybase agreed to fully co-operate with and provide full disclosure to the Monitor in a timely manner of all matters and information relevant to the activities of the Monitor.

14. Under the Settlement Agreement, Keybase shall cause the Monitor to:

(a) assess Keybase’s compliance department, including the adequacy of its staffing, education, training programs, identify any deficiencies therein and make recommendations on any changes and provide its assessment to Keybase no later than 90 calendar days from the issuance of the 2009 Exam Report;

(b) develop, in collaboration with Keybase, a written plan containing proposed actions (and timeframes for implementation of the actions) to remedy the Deficiencies. This Action Plan is to be completed and delivered to Staff by no later than 90 calendar days from the issuance of the 2009 Exam Report;

(c) Staff reserve the right to add, delete or change any part of the Action Plan provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change;

(d) The Member shall fully implement the actions identified in the Action Plan within the time frames set out therein;

(e) The independent consultant shall discuss with the MFDA its proposed procedures for testing the Member's implementation of the Action Plan and thereafter submit written proposals for testing procedures, time frame for completion of testing and format for a report to the MFDA on the Member's completion of the implementation of the Action Plan and resolution of the Deficiencies (the "Completion Report");

(f) The MFDA reserves the right to add, delete or change any aspect of the proposed testing procedures, time frame or Completion Report format, provided that the Member will be given a reasonable opportunity to comment on any such addition, deletion or change;

(g) Once the testing procedures, time frame and Completion Report format have been approved by the MFDA, the independent consultant shall complete the testing procedures and provide the Completion Report to the MFDA in the format within the time frame to the MFDA;

(h) Where the Completion Report identifies any continuing Deficiencies, or where prior to the satisfaction by the Member of its obligations under these *Terms of the Independent Monitor* the MFDA becomes aware from other sources that there are continuing Deficiencies, the MFDA may in its sole discretion do either or both of the following:

(i) make recommendation to resolve the continuing Deficiencies identified in the Completion Report and direct the Member to implement all such recommendations and have the Monitor conduct any additional testing within a reasonable time period to be determined by the MFDA;

(ii) pursue enforcement action pursuant to Section 24 of MFDA By-law No. 1 with regard to the Member's failure to resolve the Deficiencies.

(i) During the period between the MFDA approval of the Action Plan and the commencement of testing by the Monitor, the Monitor shall deliver a report to Staff

every three months detailing the Monitor's assessment of the status of the implementation of the Action Plan;

(j) The Member shall provide its Board of Directors with copies of the quarterly status reports, the Action Plan and the Completion Report; and

(k) Exceptions to any terms of the *Terms of the Independent Monitor* are permissible only with the prior express written consent of Staff.

FACTORS CONCERNING ACCEPTANCE OF A SETTLEMENT AGREEMENT

15. The settlement in principle, in this case, was reached just prior to the scheduled commencement of the Hearing on the Merits. The settlement was formalized in the Settlement Agreement. This Settlement Agreement was reached by the parties after significant discussion and negotiation. It represents what they feel, with their knowledge and experience, is an appropriate resolution.

16. Under those circumstances, in our view, a Hearing Panel should not interfere lightly in this negotiated settlement so long as the penalties agreed upon are in the reasonable range of appropriateness given the admitted conduct of the Respondents.

Re: *Clark (Re)*, [1999] I.D.A.C.D. No. 40 at p. 3.

17. Previous MFDA Hearing Panels have determined the factors which should be considered in determining whether a Settlement Agreement should be accepted. These include the following:

- (i) Whether acceptance of the Settlement Agreement would be in the public interest and whether the penalty imposed will protect investors;
- (ii) Whether the Settlement Agreement is reasonable and proportionate, having regard to the conduct of the Respondents as set out in the Settlement Agreement;

- (iii) Whether the Settlement Agreement addresses the issues of both specific and general deterrence;
- (iv) Whether the proposed settlement will prevent the type of conduct described in the Settlement Agreement from occurring again in the future;
- (v) Whether the Settlement Agreement will foster confidence in the integrity of the Canadian capital markets;
- (vi) Whether the Settlement Agreement will foster confidence in the integrity of the MFDA;
- (vii) Whether the Settlement Agreement will foster confidence in the regulatory process itself.

Re: *Investors Group Financial Services (Re)*, [2005] MFDA Ontario Regional Council, File No. 200401, Hearing Panel Decision dated December 16, 2004 at pp. 2-3.

Re: *Evangeline Securities Limited (Re)*, [2008] MFDA Atlantic Regional Council, File No. 200816, Hearing Panel Decision dated September 21, 2008, at pp. 2-3.

18. In determining whether the proposed penalty was appropriate, we followed the guidelines provided by past Hearing Panels and considered the following factors:

- the seriousness of the allegations proved against the Respondents,
- the Respondents' past conduct, including prior sanctions;
- the Respondents' experience in the capital markets,
- the level of the Respondents' activity in the capital markets
- whether the Respondents recognize the seriousness of the improper activity
- the harm suffered by investors as a result of the Respondents' activities
- the benefits received by the Respondents as a result of the improper activity; and
- previous Decisions made in similar circumstances.

Re: *Robert Roy Parkinson (Re)*, [2005] MFDA Ontario Regional Council, File 200501, Hearing Panel Decision dated April 29, 2005, at p. 22.

19. We also considered the MFDA Penalty Guidelines ("Guidelines"). We recognize that these Guidelines are not mandatory, but simply suggest the types and ranges of penalties that

might be appropriate to particular case types. In its written Submissions, Staff provided a series of useful extracts from the Guidelines relevant to the kind of misconduct set out in the Settlement Agreement.

20. We are also aware that previous MFDA Hearing Panels have ordered respondents to retain independent monitors to resolve deficiencies identified during MFDA compliance audits and to test the procedures implemented by the respondents to ensure compliance with the MFDA By-laws, Rules and Policies.

Re: *Sterling Mutuals Inc. (Re)*, [2008] MFDA Ontario Regional Council, Hearing Panel Decision, dated September 3, 2008, File No. 200820.

Re: *IQON Financial Inc. (Re)*, [2007] MFDA Pacific Regional Council, Hearing Panel Decision, dated May 24, 2007, File No. 200713.

Re: *Professional Investments (Kingston) Inc. (Re)*, [2009] MFDA Ontario Regional Council, Hearing Panel Decision dated March 24, 2009, File No. 200836.

Considerations in the Present Case

21. In our view, the Respondents' misconduct was serious and longstanding.

22. We were, however, advised that the Respondent, Keybase, has not been subject to previous disciplinary proceedings.

23. This is not the case for the Respondent, Sukhraj. According to the Settlement Agreement, Sukhraj is a shareholder, the President, sole Director and controlling mind of the Respondent, Keybase. According to documents filed at the Settlement Hearing, in March of 1999, Sukhraj was reprimanded by the Ontario Securities Commission ("OSC") as a result of taking the position that he would not fulfill his representation to the OSC that Keybase would indemnify three elderly clients. Sukhraj later fulfilled his representation and entered into an agreement with the OSC to resolve the proceeding.

24. The Hearing Panel was also provided with a copy of an October 29, 2008, Decision of the Investment Industry Regulatory Organization of Canada ("IIROC") wherein Sukhraj was

disciplined as a result of his failure to ensure that Argosy Securities Inc. (“Argosy”), a firm of which he was the owner and sole member of the Board of Directors, fulfilled representations to the Investment Dealers Association (“IDA”) that it would develop and implement policies and procedures to ensure compliance with the regulatory requirements of the IDA.

25. Subsequently, on December 31, 2008, the IROC Hearing Panel ordered Sukhraj to pay a global fine of \$150,000.00, including costs, within ninety days, to complete the Chief Compliance Officer’s Qualifying Examination by April 1, 2009, and retain a compliance consultant to remain at Argosy for a period of one year to conduct regular evaluations of Argosy’s compliance systems.

Re: *In the Matter of Dax Sukhraj*, OSC Settlement Agreement and Order (Section 127(1)).

Re: *Argosy Securities Inc. and Dax Sukhraj*, Investment Dealers Association of Canada, Order dated October 29, 2008 and December 31, 2008.

26. We expressed our concern to the parties about these previous Decisions. We were advised by counsel for Mr. Sukhraj that the December 31, 2008 Order had been fully complied with by his client. Counsel for the MFDA said that Staff viewed the conduct in the Argosy case as being of a contemporaneous nature and, consequently, they did not view the current conduct as a repeat offence. In considering the appropriateness of the penalty, we were mindful of these two representations.

27. Staff submitted that the admissions of misconduct described in the Settlement Agreement indicate that the Respondents recognize the seriousness of their misconduct. They also submitted that, by entering into this Settlement Agreement, the Respondents have accepted responsibility for the misconduct and have avoided the necessity of the MFDA conducting a lengthy Hearing at considerable additional expense to the MFDA and, ultimately, to its membership.

28. We were advised that there is no evidence of any client losses suffered as a result of the Respondents’ misconduct.

29. We were advised that the penalties proposed in the Settlement Agreement are consistent with previous Decisions made in similar circumstances and we were referred to three precedent cases.

Re: *Sterling Mutuals Inc. (Re), supra.*

Re: *IQON, supra.*

Re: *Professional Investments (Kingston) Inc., supra.*

30. Under the Settlement Agreement, Keybase will be required to retain a Monitor to assist with the resolution of its compliance deficiencies. The Monitor will ensure that changes will be made by Keybase to improve its policies and procedures and ensure that all of the deficiencies will be corrected in an appropriate and timely manner.

31. The proposed penalties include the payment, over a period of time, of \$225,000.00 in fines and costs, as well as the expense of a Monitor.

32. During the course of the Settlement Hearing, the Panel pointed out to the parties that MFDA Rule 1.2.3 provides that “each trading partner, director, officer and designated compliance officer of a Member “must successfully complete either: a.) “the Partners’, Directors’ and Senior Officers’ Qualifying Examination offered by the Canadian Securities Institute” or b.) “the Mutual Fund Officers’, Partners’ and Directors’ Course offered by the Investment Funds Institute of Canada.”

33. The Panel indicated that the Settlement Agreement was unclear as to which of these two avenues had been agreed upon and that, as a Hearing Panel, it was not imposing either of the two alternatives but simply considering the agreement of the parties. Counsel agreed that, in arriving at the specifics of the Settlement Agreement, they had not focused on this section.

34. The Panel was, subsequently, advised that the parties had agreed that it was the Canadian Securities Institute Qualifying Examination that the Respondent, Sukhraj, would complete.

35. The Panel is confident that the penalties imposed against Sukhraj, as the President and

sole Director of Keybase, will send a message to senior management of companies involved in the capital markets that a strong culture of compliance must be fostered at the highest levels of an organization and diligently enforced throughout. In our view, the investing public, and clients in particular, are entitled to depend on these officers and directors. When they fall short of what is expected of them, as was clearly the case here with respect to Sukhraj, they will be held personally accountable.

36. In urging us to accept the Settlement Agreement, Staff submitted that these are significant penalties which, in their view, will deter future misconduct by the Respondents, deter others from engaging in similar misconduct and improve overall compliance by mutual fund industry participants.

37. Staff also submitted that the Settlement Agreement and proposed penalties are in keeping with the purpose of the MFDA to enhance investor protection and strengthen public confidence in the Canadian mutual fund industry by ensuring high standards of conduct by its Members and Approved Persons.

38. Taking all of these factors into consideration, we unanimously concluded that this Settlement Agreement was reasonable and in the public interest and should be accepted by this Hearing Panel.

Dated at Toronto, Ontario this 2nd day of June, 2009.

“Thomas J. Lockwood”
Thomas J. Lockwood, Q.C., Chair

“Linda Anderson”
Linda Anderson, Industry Representative

“Cheryl Hamilton”
Cheryl Hamilton, Industry Representative