



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

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

**Re: Everest Nicholas Louis D'Souza**

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**AGREED STATEMENT OF FACTS**

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**I. INTRODUCTION**

1. By Notice of Hearing dated December 16, 2021, the Mutual Fund Dealers Association of Canada (the “MFDA”) commenced a disciplinary proceeding against Everest D’Souza (the “Respondent”) pursuant to ss. 20 and 24 of MFDA By-law No. 1.

2. The Notice of Hearing sets out the following allegations:

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

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

**Allegation #3:** Between February 2014 and September 2015, the Respondent made referrals in respect of syndicated mortgage investments and received compensation for doing so, thereby participating in a referral arrangement to which the Member was not a party and which did not otherwise comply with sections 13.7 to 13.10 of National Instrument 31-103, the Member's policies and procedures, and MFDA Rules 2.4.2<sup>1</sup>, 2.1.1, 2.5.1, and 1.1.2.

## **II. IN PUBLIC/IN CAMERA**

3. The Respondent and Staff of the MFDA (“**Staff**”) agree that this matter should be heard in public pursuant to Rule 1.8 of the MFDA Rules of Procedure.

## **III. ADMISSIONS AND ISSUES TO BE DETERMINED**

4. The Respondent has reviewed this Agreed Statement of Facts and admits the facts set out in Part IV herein. The Respondent admits that the facts in Part IV constitute misconduct for which the Respondent may be penalized on the exercise of the discretion of a Hearing Panel pursuant to s. 24.1 of MFDA By-law No. 1.

5. Subject to the determination of the Hearing Panel, Staff submits and the Respondent does not oppose that, at a minimum, the appropriate penalty to impose on the Respondent is a permanent prohibition of the Respondent's authority to conduct securities related business while in the employ of or in association with a Member of the MFDA.

6. Staff and the Respondent jointly request that the Hearing Panel determine, on the basis of this Agreed Statement of Facts, the appropriate financial penalty and costs to be imposed on the Respondent.

## **IV. AGREED FACTS**

7. Staff and the Respondent agree that submissions made with respect to the appropriate penalty are based only on the agreed facts in Part IV, and no other information, facts or documents, subject to the content of this paragraph and paragraph 8 below.

8. In the event that the Hearing Panel advises one or both of Staff and the Respondent of any additional facts that it considers necessary in order to determine the issues before it, Staff and the

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<sup>1</sup> MFDA Rule 2.4.2 was amended effective April 8, 2015.

Respondent agree that such additional facts may be provided to the Hearing Panel, either: (a) with the consent of both Staff and the Respondent if the additional facts are agreed upon; (b) if the Respondent is not present at the hearing, Staff may disclose additional relevant facts, at the request of the Hearing Panel; or (c) if the parties are both present at the hearing and are not in agreement about the additional facts requested by the Hearing Panel, the parties will be given a reasonable opportunity to lead evidence concerning the additional facts. In circumstances where a party leads evidence concerning additional facts requested by the Hearing Panel, the opposing party may cross-examine any witness tendered to lead such evidence and shall be given a reasonable opportunity to lead responding evidence if they wish to do so.

9. Nothing in this Part IV is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against him.

### **Registration History**

10. From July 10, 2001 to December 31, 2019, the Respondent was registered in Ontario as a dealing representative with Keybase Financial Group Inc. (the “Member”), a Member of the MFDA.

11. On December 31, 2019, the Member terminated the Respondent and he is not currently registered in the securities industry in any capacity.

12. At all material times, the Respondent conducted business in the Markham, Ontario area.

### **Securities Related Business Outside the Member**

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

14. Tier 1 Transaction Advisory Services Inc. (“Tier 1”) is a real estate and development company that was engaged in the distribution of syndicated mortgage investments in real estate development projects to retail investors.

15. Between July 2014 and September 2015, the Respondent recommended, sold, and facilitated the sale of investments in syndicated mortgages associated with Tier 1 development projects. As a result of the Respondent’s activities, the Respondent received compensation from

Tier 1 totalling \$17,974 in connection with the purchase of \$230,800 of syndicated mortgage investments by clients of the Member whose investment accounts were serviced by the Respondent and other individuals (the “Investors”).

16. Without the knowledge or authorization of the Member, the Respondent engaged in the following activities to facilitate the purchase of syndicated mortgage investments by the Investors:

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

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

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

19. On October 20, 2016, the Financial Services Commission of Ontario (“FSCO”)<sup>2</sup> issued an interim order requiring that Tier 1 cease and desist from dealing in syndicated mortgages

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<sup>2</sup> Note: Effective June 8, 2021, the Financial Services Regulatory Authority assumed the regulatory functions of the FSCO and the Deposit Insurance Corporation of Ontario.

investments without a license. On October 27, 2016, the Ontario Superior Court of Justice (Commercial List) appointed a trustee to protect the interests of investors in the syndicated mortgage investments that had been offered by Tier 1 (the “Trustee”). On January 23, 2018, FSCO issued a permanent order that Tier 1 cease and desist from dealing in syndicated mortgage investments.

20. The Trustee sold some of the properties underlying the syndicated mortgage investments that Tier 1 had offered to investors subject to the supervision and approval of the court and distributions were made by the Trustee to investors who had invested in the syndicated mortgage investments to the extent that money was recovered from the sale of the assets that could be distributed to investors. However, the proceeds from the sale of assets purchased with money invested in the syndicated mortgage investments have not been sufficient to recover the principal amounts invested. In addition, the Trustee has also commenced and settled litigation against various individuals involved with the real estate development projects and the syndicated mortgage investments in order to try to recover some additional amounts for the benefit of investors in the syndicated mortgage investments that were offered by Tier 1.

21. The Investors described above who were solicited by the Respondent to invest in syndicated mortgage investments have collective losses of approximately \$169,000.

### **Additional Factors**

22. The Respondent has not previously been the subject of a MFDA disciplinary proceeding.

23. As described above at paragraph 15, the Respondent earned \$17,974 from his activities in relation to syndicated mortgage investments. As described above at paragraph 22, the Investors suffered losses of approximately \$169,000 attributable to the syndicated mortgage investments purchases that were facilitated by the Respondent.

24. To the extent the syndicated mortgage investments failed as a result of any wrongdoing, there is no evidence that the Respondent had any knowledge or involvement in such wrongdoing or any involvement in the operations of the real estate developments or the issuers of the investments.

25. On August 8, 2019, after learning of the Respondent's misconduct from the Staff, the Member sent audit letters to each of the clients with accounts serviced by the Respondent, asking whether the Respondent had ever discussed any real estate investment opportunities with the clients. Three clients responded to the Member's letter, who complained that the Respondent had recommended, sold, and facilitated the sale of syndicated mortgage investments to them, resulting in significant losses.

26. In addition, between August 22, 2019 and August 25, 2019, the Member attempted to contact all clients whose accounts were serviced by the Respondent and who had redemptions in excess of \$10,000 between 2014 and 2019. None of the clients called indicated that they had purchased syndicated mortgage investments offered by Tier 1 with the proceeds of redemption.

27. By entering into this Agreed Statement of Facts, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a fully contested hearing with respect to the allegations of misconduct in the Notice of Hearing.

### **Misconduct Admitted**

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

### **V. EXECUTION OF AGREED STATEMENT OF FACTS**

29. This Agreed Statement of Facts may be signed in one or more counterparts, which together shall constitute a binding agreement.

30. An electronic copy of any signature shall be effective as an original signature.

**DATED** this 13<sup>th</sup> day of July, 2022.

“Everest D’Souza”

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Everest D’Souza

“JP”

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Witness – Signature

JP

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Witness – Print Name

“Charles Toth”

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Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

DM 897140