



**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: Robert Kenneth Phillips**

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**NOTICE OF HEARING**

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**NOTICE** is hereby given that a first appearance will take place by teleconference before a hearing panel of the Prairie Regional Council (the “Hearing Panel”) of the Mutual Fund Dealers Association of Canada (the “MFDA”) in the hearing room at the MFDA offices, located at 800 - 6<sup>th</sup> Avenue S.W., Suite 850, Calgary, Alberta on August 25, 2016 at 10:00 a.m. (Mountain), or as soon thereafter as the appearance can be held, concerning a disciplinary proceeding commenced by the MFDA against Robert Kenneth Phillips (the “Respondent”). The Hearing on the Merits will take place in Calgary, Alberta at a time and venue to be announced.

**DATED** this 17<sup>th</sup> day of June, 2016.

“Sarah Rickard”

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Sarah Rickard  
Director of Regional Councils

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

**Allegation #1:** Between June 2010 and December 2014, the Respondent recommended, sold, referred, or facilitated the sale of an exempt security to at least 43 clients outside of the Member, thereby engaging in:

- (a) securities related business that was not carried on for the account and through the facilities of the Member, contrary to MFDA Rules 1.1.1 and 2.1.1; and/or
- (b) a referral arrangement which did not comply with sections 13.7 to 13.10 of National Instrument 31-103.

**Allegation #2:** Between June 2010 and December 2014, Respondent recommended, sold, referred, or facilitated the sale of an exempt security to at least 43 clients outside of the Member, thereby engaging in a dual occupation which was not disclosed to and approved by the Member, contrary to MFDA Rules 1.2.1(c) (formerly, MFDA Rule 1.2.1(d)) and 2.1.1.

**Allegation #3:** Commencing in April 2015, the Respondent failed to cooperate with an investigation conducted by MFDA Staff, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

## **PARTICULARS**

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

### **Registration History**

1. From November 2000 to December 2014, the Respondent was registered in Alberta as a mutual fund salesperson (now a mutual fund dealing representative) with Assante Financial Management Ltd. (“Assante”), a Member of the MFDA.

2. At all material times, the Respondent carried on business in the Calgary, Alberta area.
3. The Respondent is not currently registered in the securities industry in any capacity.

### **The Prism Group of Companies**

4. The Prism Group of Companies (“Prism”) is comprised of several real estate investment and development companies based in Calgary, Alberta. By way of Offering Memorandum (“OM”), Prism offered preferred shares in respect of two building and development projects in Calgary and Cochrane, Alberta known as Heritage Hills Plaza (“Heritage Plaza”) and Prism Place.

5. On July 15, 2010, the Alberta Securities Commission (“ASC”) entered into a Settlement Agreement with Prism’s President, Ali Ghani (“Ghani”), in relation to allegations that Ghani had breached the *Alberta Securities Act*, R.S.A. 2000, c. S-4 as amended, by making prohibited representations with regards to the investments offered by Prism. In particular, between November 2009 and January 2010, Prism distributed a magazine advertisement that made the following representations about Prism Place, Heritage Plaza and two other developments by Prism:

- (a) the investment in the developments was a “Fully Secure & High Return Investment”;
- (b) an investment in the developments would yield a 60% return on investment over 3 years; and
- (c) the investments were strictly regulated and monitored by the ASC.

6. As part of the Settlement Agreement reached with the ASC, Ghani admitted that he was responsible for making the prohibited representations described above, and therefore breached the *Alberta Securities Act*. Ghani agreed to pay a fine of \$35,000 in respect of his contravention.

7. Construction of Prism Place was completed in February 2015. Construction of Heritage Plaza was scheduled to be completed in October 2015, but has yet to be completed.

### **Referral Agreement with Prism**

8. In June 2010, the Respondent entered into an Agency Agreement with Prism. The Agency Agreement stipulated that Prism would pay compensation to the Respondent for referring investors to Prism, as follows:

- (a) Prism would pay a base commission rate of 7% of the total dollar amount of any subscription funds advanced by investors referred by the Respondent; and
- (b) Prism would pay a bonus compensation of 1% per \$5,000,000 of aggregate subscription funds received by Prism from referrals made by the Respondent within any period of 2 calendar months.

9. The Subscription Agreement for the Heritage Plaza preferred shares further stipulated that compensation of up to 7% of the gross proceeds realized on the sale of the preferred shares under the OM could be paid to “unrelated investment dealers”.

10. The Subscription Agreement for the Prism Place preferred shares similarly stipulated that compensation of up to 10% of the gross proceeds realized on the sale of the preferred shares under the OM could be paid by Prism Real Estate Investment Corporation to parties to affect the sale of preferred shares in Prism Place.

11. At all material times, Assante’s policies and procedures prohibited its Approved Persons, including the Respondent, from entering into referral arrangements unless the arrangements were approved by Assante and Assante was a party to the arrangement.

12. Assante did not have a referral arrangement with Prism and the preferred shares in Heritage Plaza and Prism Place were not approved for sale by Assante.

## Mutual Fund Clients Invested in Prism

13. As described below, between June 2010 and December 2014, the Respondent recommended, sold, referred, or facilitated the sale of more than \$1.7 million of preferred shares of Prism to at least 43 clients (including clients BK1 and BK2 as described in paragraphs 16-23 below):

<b>Client</b>	<b>Securities Purchased</b>	<b>Purchase Price</b>	<b>Purchase Date</b>	<b>Referral Fees</b>
<b>SW</b>	Prism Place	\$50,000	August 10, 2010	\$5,000
	Heritage Plaza	\$15,000	August 12, 2011	\$1,050
<b>MM and EM</b>	Prism Place	\$100,000	August 10, 2010	\$10,000
<b>HH</b>	Prism Place	\$5,000	September 12, 2010	\$500
	Prism Place	\$50,000	September 28, 2010	\$5,000
<b>MH</b>	Prism Place	\$30,000	September 28, 2010	\$3,000
<b>GS1</b>	Prism Place	\$50,000	September 28, 2010	\$5,000
<b>NC</b>	Prism Place	\$20,000	September 28, 2010	\$2,000
<b>RF1</b>	Prism Place	\$50,000	September 28, 2010	\$5,000
<b>RF2</b>	Prism Place	\$50,000	September 28, 2010	\$5,000
<b>FH</b>	Prism Place	\$50,000	September 28, 2010	\$5,000
<b>KV</b>	Prism Place	\$100,000	September 28, 2010	\$10,000
<b>JY</b>	Prism Place	\$40,000	September 28, 2010	\$4,000
<b>KF</b>	Prism Place	\$10,000	October 8, 2010	\$1,000
<b>TK</b>	Prism Place	\$25,000	November 12, 2010	\$2,500
<b>GS and KS</b>	Prism Place	\$25,000	November 12, 2010	\$2,500
<b>KI</b>	Prism Place	\$35,000	November 12, 2010	\$3,500
<b>EF</b>	Prism Place	\$20,000	November 12, 2010	\$2,000
<b>DR</b>	Prism Place	\$75,000	November 12, 2010	\$7,500
	Prism Place	\$25,000	November 12, 2010	\$2,500
<b>JM</b>	Prism Place	\$75,000	November 12, 2010	\$7,500
<b>JB</b>	Prism Place	\$50,000	November 12, 2010	\$5,000
<b>WL</b>	Prism Place	\$25,000	November 12, 2010	\$2,500
<b>BM</b>	Prism Place	\$30,000	November 12, 2010	\$3,000
<b>EC</b>	Prism Place	\$20,000	November 12, 2010	\$2,000
	Prism Place	\$20,000	December 17, 2010	\$2,000
<b>TD</b>	Prism Place	\$65,000	November 16, 2010	\$6,500
<b>TN</b>	Prism Place	\$50,000	December 17, 2010	\$5,000
<b>SC</b>	Prism Place	\$30,000	December 17, 2010	\$3,000

<b>Client</b>	<b>Securities Purchased</b>	<b>Purchase Price</b>	<b>Purchase Date</b>	<b>Referral Fees</b>
	Prism Place	\$25,000	December 17, 2010	\$2,500
<b>DL</b>	Prism Place	\$35,000	December 17, 2010	\$3,500
<b>GL</b>	Prism Place	\$15,000	December 17, 2010	\$1,500
<b>GS2</b>	Prism Place	\$10,000	February 7, 2011	\$1,000
<b>LC</b>	Prism Place	\$40,000	February 7, 2011	\$4,000
<b>DB</b>	Prism Place	\$10,000	May 19, 2011	\$1,000
<b>BK1</b>	Prism Place	\$80,000	May 31, 2011	\$8,000
<b>AD</b>	Prism Place	\$25,000	June 25, 2011	\$2,500
<b>DC</b>	Prism Place	\$25,000	June 25, 2011	\$2,500
	Prism Place	\$75,000	December 30, 2011	\$7,500
<b>BK2</b>	Heritage Plaza	\$40,000	July 19, 2011	\$2,800
<b>SC2</b>	Prism Place	\$25,000	July 21, 2011	\$2,500
<b>GG</b>	Prism Place	\$25,000	July 21, 2011	\$2,500
<b>SG</b>	Prism Place	\$20,000	July 21, 2011	\$2,000
<b>DJ</b>	Heritage Plaza	\$15,000	August 12, 2011	\$1,050
<b>JS</b>	Heritage Plaza	\$21,000	September 15, 2011	\$1,470
<b>LH</b>	Heritage Plaza	\$15,000	September 15, 2011	\$1,050
<b>MG</b>	Prism Place	\$10,000	September 15, 2011	\$1,000
<b>TOTAL</b>		<b>\$1,701,000</b>		<b>\$166,920</b>

14. The Respondent received, or was entitled to receive, approximately \$166,920 from Prism in respect of his activities.

15. In the case of each above noted client, the Respondent engaged in securities related business by:

- (a) introducing clients to the opportunity to purchase preferred shares in Heritage Plaza or Prism Place;
- (b) explaining the details of the investments to clients, including the rates of return that the clients could expect to receive; and
- (c) attending meetings between clients and representatives of Prism, where investing in preferred shares of Heritage Plaza or Prism Place was discussed.

## **Client BK1<sup>1</sup>**

16. In early January 2011, the Respondent presented Prism Place as an investment opportunity to Client BK1 and her husband, DK. The Respondent indicated to BK1 and DK that they could earn a better rate of return on the preferred shares of Prism Place than they were presently earning on some of their mutual fund holdings.

17. In late January 2011, BK1 attended a follow-up meeting with the Respondent and Ghani. During the follow up meeting, the Respondent presented the details of the investment and provided client BK1 with a copy of the OM and the Subscription Agreement. The Respondent represented to client BK1 that the investment was low risk in nature. The Respondent further represented that the investment would yield a guaranteed return of capital plus 20 percent per year in interest upon the completion of the project. At the conclusion of the meeting, the Respondent informed client BK1 that she would only be able to communicate with Ghani about the investment from that point on, and that the Respondent, would not have any further involvement.

18. On January 31, 2011, client BK1 executed a Subscription Agreement and purchased \$80,000 worth of preferred shares in Prism Place. Funds were transferred from client BK1's mutual fund account held at Assante, to the Olympia Trust Company ("Olympia") to complete the sale.

19. Prism Place was originally expected to be completed in the spring of 2013. Beginning in the spring of 2014, client BK1 and DK made a number of inquiries to the Respondent and Ghani about the status of Prism Place. The Respondent did not respond to client BK1.

20. To date, client BK1 has not received any payments from her investment in Prism Place.

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<sup>1</sup> Numbered initials denote different clients with the same initials.

## **Complainant 2 - Client BK2**

21. In or about January 2011, the Respondent presented Heritage Plaza to client BK2 as an investment opportunity. The Respondent described Heritage Plaza as a retail development project in Cochrane, Alberta, that was actively seeking investors. The Respondent advised client BK2 that any investment made in Heritage Plaza would be locked-in for three years and that, at the conclusion of the three years, client BK2's principal plus any accrued interest would be returned to his RRSP portfolio. The Respondent further advised client BK2 that the rate of return on the Heritage Plaza investment would be 20 percent.

22. In or around July 2011, the Respondent set up an appointment at his office between client BK2, the Respondent, and Ricky Arshi ("Arshi"), a representative of Prism. During the meeting, Arshi presented the details of the Heritage Plaza investment to client BK2. Client BK2 asked the Respondent his opinion of Heritage Plaza as an investment opportunity, and the Respondent recommended that client BK2 invest in the project, as he believed it to be a good opportunity.

23. On or about July 19, 2011 client BK2 met with Arshi to complete the Subscription Agreement for the purchase of \$40,000 worth of preferred shares in Heritage Plaza. The Respondent was not present for this meeting. To facilitate the purchase, funds were transferred from client BK2's RRSP account at Assante to a self-directed RSP account at Olympia. Client BK2 has not received any payments from his investment in Heritage Plaza.

### **Allegation #1 – Securities Related Business**

24. The Prism preferred shares were not an investment that was approved by Assante for sale by its Approved Persons, including the Respondent. In addition, the transactions involving Prism preferred shares were not processed for the account or through the facilities of Assante.

25. By recommending, selling, referring or facilitating the sale of more than \$1.7 million of preferred shares of Prism outside of Assante, to at least 43 clients, the Respondent engaged in



securities related business that was not carried on for the account and through the facilities of Assante, contrary to MFDA Rules 1.1.1 and 2.1.1.

26. To the extent that the Respondent entered into a referral arrangement with Prism and made referrals in respect of investments offered by Prism, then the referral arrangement did not comply with sections 13.7 to 13.10 of National Instrument 31-103.

### **Allegation #2 – Outside Business Activity**

27. In the event that the Respondent's conduct described in Allegation #1 did not constitute securities related business, then the Respondent had and continued in another gainful occupation which was not disclosed to and approved by Assante, contrary to MFDA Rules 1.2.1(c) (formerly MFDA Rule 1.2.1(d)) and 2.1.1.

### **Allegation #3 – Failure to Cooperate**

28. On April 13, 2015, Staff sent the Respondent a letter by registered and regular mail requesting his attendance at an interview for the purpose of providing a statement as to his knowledge of the matters under investigation. His response was requested within ten business days of the date of the letter.

29. On April 16, 2015, the letter sent by registered mail was returned to Staff as having been refused by the Respondent. The letter sent by regular mail was not returned to Staff.

30. On May 4, 2015, Staff sent the Respondent a follow up letter by registered and regular mail. The Respondent was reminded that he was required to respond to Staff, in accordance with his obligations as an Approved Person, as set out in section 22.1 of By-law No. 1 of the MFDA. Staff again requested his attendance at an interview for the purpose of providing a statement as to his knowledge of the matters under investigation and requested his response by May 19, 2015.

31. On May 5, 2015, Staff received a letter from the Respondent dated April 30, 2015. The Respondent did not respond to Staff's request for his attendance at an interview. The Respondent stated in his letter that he had received a copy of one of Staff's previous letters on April 29, 2015. The Respondent further stated that he had declined to sell any Prism investments to clients and that his involvement with Prism was limited to introducing his clients to persons associated with Prism.

32. On May 25, 2015, the letter sent by registered mail was returned to Staff as having been unclaimed by the Respondent. The letter sent by regular mail was not returned to Staff.

33. On May 27, 2015, Staff sent the Respondent a letter by registered and regular mail requiring his attendance at an interview on a date between July 13 and 17, 2015, and that if he did not respond, then an interview date of July 14, 2015 would be set by Staff. Staff reminded the Respondent that he had been twice asked to attend an interview since April 13, 2015 and had failed to respond. Staff requested a response to its letter by June 10, 2015.

34. Staff also informed the Respondent that, if he failed to attend the interview, Staff might seek authorization to commence enforcement proceedings against him, including an allegation that he failed to cooperate with an MFDA investigation, contrary to section 22.1 of By-law No. 1. No response was received from the Respondent.

35. On June 30, 2015, Staff attempted to contact the Respondent at the telephone number recorded on the National Registration Database. The telephone number is no longer in service.

36. On July 14, 2015, the Respondent failed to attend the interview as scheduled.

37. The Respondent has failed to provide the information and documents requested by Staff, and has failed to contact Staff to arrange an interview.

38. As a result of the Respondent's conduct, Staff have been unable to determine the full nature and extent of the Respondent's activities described in the Allegations above.

39. By failing to submit information requested by Staff and by failing to attend an interview to give information regarding matters under investigation as described above, the Respondent failed to cooperate with an investigation conducted by Staff, contrary to section 22.1 of MFDA By-law No. 1 and MFDA Rule 2.1.1.

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

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

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

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

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$5,000,000.00 per offence; and
  - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;

- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel;

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

**NOTICE** is further given that the Respondent must **serve a Reply** on Enforcement Counsel and **file a Reply** with the Office of the Corporate Secretary within twenty (20) days from the date of service of this Notice of Hearing.

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

Mutual Fund Dealers Association of Canada  
121 King Street West, Suite 1000  
Toronto, ON M5H 3T9  
Attention: David Babin  
Fax: (416) 361-9073  
Email: [dbabin@mfd.ca](mailto:dbabin@mfd.ca)

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

- (a) providing four (4) copies of the **Reply** to the Office of the Corporate Secretary by personal delivery, mail or courier to:

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

- (b) transmitting one (1) copy of the **Reply** to the Office of the Corporate Secretary by fax to fax number 416-361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Office of the Corporate Secretary permits otherwise; or
- (c) transmitting one (1) electronic copy of the **Reply** to the Office of the Corporate Secretary by e-mail at [corporatesecretary@mfd.ca](mailto:corporatesecretary@mfd.ca).

A **Reply** may either:

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

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

**NOTICE** is further given that if the Respondent fails:

- (a) to **serve and file a Reply**; or
- (b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

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

**END.**

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