



**Settlement Agreement**

**File No. 200713**

**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: IQON FINANCIAL INC.**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing dated May 14, 2007, the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that it proposed to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the MFDA Pacific Regional Council (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and IQON Financial Inc. (the “Respondent”).

**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 a 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” and Schedule “B”, will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and the Respondent agree with the facts set out in Part IV 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 paragraph 43) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. The Respondent has been registered as a mutual fund dealer in the province of British Columbia since March 10, 1998. The Respondent is also registered as a mutual fund dealer in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland, Yukon, Northwest Territories and Nunavut. The Respondent has been a Member of the MFDA since May 10, 2002.

7. Between May 28, 1998 and October 16, 2006, Patrick Dennis Sullivan (“Sullivan”) was an Approved Person of the Respondent. Sullivan was first registered as a mutual fund salesperson in British Columbia on July 21, 1997.

### **All Island Equity Mortgage Investment Corp.**

8. On or about February 27, 1997, Sullivan established All Island Equity Mortgage Investment Corp. (“AIEMIC”), a mortgage investment corporation registered with the Financial Institutions Commission of British Columbia. Sullivan and William Walker were the original Class A shareholders of AIEMIC.

9. In addition to the Class A shares, AIEMIC also issued Class B non-voting preferred shares (the “Shares”). By May 1998, AIEMIC had raised approximately \$1.1 million from 22 investors in the Shares. Investors in the Shares were entitled to receive a quarterly dividend based on the performance of AIEMIC.

10. On April 22, 1998, Sullivan entered into a Representative Commission Agreement with the Respondent, at which time he disclosed to the Respondent his interest and involvement in AIEMIC.

11. Following discussions between the Respondent and the British Columbia Securities Commission (the “BCSC”) concerning Sullivan’s involvement with AIEMIC, the BCSC allowed the transfer of Sullivan’s registration as a mutual fund salesperson to the Respondent only after Sullivan agreed to restrict his involvement with AIEMIC to acting as a director and member of its management committee. On May 28, 1998, Sullivan was granted registration as a mutual fund salesperson with the Respondent on that basis. To give effect to this arrangement, on or about May 29, 1998, Sullivan signed an undertaking (the “Sullivan Undertaking”) in which he stated that he “will not participate in or initiate any activities relative to the sale, promotion or solicitation of business or investments in or on behalf of [AIEMIC].”

12. In May 2002, the Respondent had an internal policy in place, section 8.4.2 of which stated that its Approved Persons in British Columbia were not authorized to trade in exempt securities, with the exception of British Columbia labour sponsored funds and certain government bonds and debentures (the “Internal Policy”).

13. Outside of a routine audit, between May 1998 and February 2003, the Respondent did not take any additional steps to supervise Sullivan's compliance with the terms of the Sullivan Undertaking.

14. In or around February 2003, Sullivan asked the Respondent to approve certain radio advertisements relating to AIEMIC. As a result, the Respondent became aware that Sullivan may not have been complying with the terms of the Sullivan Undertaking and ought to have been aware that Sullivan may not have been complying with the Internal Policy.

15. Between February and July 2003, the Respondent conducted a review of Sullivan's activities involving AIEMIC (the "review"). Following the review, the Respondent concluded that Sullivan was not complying with the terms of the Sullivan Undertaking and was therefore engaging in activity that was contrary to the basis on which the BCSC had approved the transfer of his registration to the Respondent.

16. The Respondent notified Sullivan of the outcome of the review shortly after its completion. Between August 5, 2003 and October 21, 2003, Sullivan and senior staff of the Respondent entered into discussions on how to bring Sullivan into compliance with the Sullivan Undertaking and the Respondent into compliance with its obligations to the BCSC.

17. Between October 2003 and January 2006, despite having concluded that Sullivan was not in compliance with the terms of the Sullivan Undertaking, the Respondent did not take any action to ensure that Sullivan complied with the Sullivan Undertaking, the Internal Policy, MFDA Rule 1.1.1(a) or the requirements of the *Securities Act (British Columbia)*.

18. After being contacted by the MFDA in January 2006 about Sullivan's involvement with AIEMIC, the Respondent commenced another investigation of Sullivan's involvement with AIEMIC, which ultimately led to the Respondent placing Sullivan under close supervision in May 2006.

19. Sullivan resigned from the Respondent effective October 16, 2006.
20. By virtue of Sullivan's non-compliance with the Sullivan Undertaking, the Respondent was not in compliance with its obligations to the BCSC.
21. From inception to June 2006, AIEMIC represents that it raised approximately \$10,842,750 from over 120 investors. Of this amount, approximately \$5,527,362 was invested between May 28, 1998, when Sullivan joined the Respondent, and July 2003, when the Respondent concluded the review. An additional amount of approximately \$4,066,130 was raised between the conclusion of the review and June 2006.
22. Approximately 60% of the investors in AIEMIC were clients of the Respondent (the "clients"). Between 1997 and 2006, AIEMIC represents that the clients invested \$3,703,280, collectively, in AIEMIC. Of this amount, \$2,349,320 was invested after the Respondent joined the MFDA. Sullivan provided the clients with portfolio statements on the Respondent's letterhead which showed their investments in AIEMIC alongside other securities held with the Respondent. In total, the clients redeemed approximately \$547,440 of their mutual fund holdings with the Respondent to invest in AIEMIC.
23. To date, neither the Respondent nor the MFDA have received any complaints in respect of AIEMIC or Sullivan's involvement with AIEMIC. AIEMIC reports that between March 31, 1998 and December 31, 2005 the average annual yield paid to investors was 10%.

### **Breach of Agreement and Undertaking**

#### **(i) Compliance Deficiencies Detected**

24. In March 2005, MFDA Compliance Staff conducted a routine compliance examination of the Respondent's sales policies, procedures and practices, the findings of

which were reported to the Respondent on July 14, 2005. This was the first MFDA examination of the Respondent's sales policies, procedures and practices.

25. A number of deficiencies were identified, including in particular:

- (a) inadequate, incomplete or undocumented trade review and supervision at both the head office and branch office levels;
- (b) lack of evidence of client trading instructions; and
- (c) untimely or undocumented new account approval practices.

26. The deficiencies were of such a nature that MFDA Compliance Staff referred the results of the examination to MFDA Enforcement Staff for possible disciplinary action.

27. In December 2005, in consideration of the MFDA foregoing disciplinary proceedings in respect of the deficiencies, the Respondent signed an Agreement and Undertaking with the MFDA pursuant to which the Respondent agreed to resolve the deficiencies (the "Agreement and Undertaking"). Under the terms of the Agreement and Undertaking, the Respondent agreed to: (a) to develop and implement a plan to remedy the deficiencies; and (b) retain an independent consultant to determine whether the deficiencies had been rectified, identify any new or continuing deficiencies, and report its findings to the MFDA.

28. On August 21, 2006, MFDA Staff approved the plan developed by the Respondent to remedy the deficiencies.

29. In September 2006, the Respondent retained KPMG LLP ("KPMG") as an independent consultant to test the implementation of the Respondent's plan. KPMG completed its testing in February 2007 and reported its findings to MFDA Staff on March 30, 2007.

(ii) **Repeat Compliance Deficiencies Identified**

30. KPMG's testing confirmed that the Respondent had resolved a large number of the deficiencies in accordance with the terms of the Agreement and Undertaking. However, despite improvements having been made to the Respondent's sales policies, procedures and practices, the testing also revealed that certain deficiencies remained unresolved, meaning that the Respondent had failed to fully carry out the terms of the Agreement and Undertaking.

31. KPMG's testing revealed, among other deficiencies, three principal ongoing deficiencies (the "Deficiencies"):

- (a) inadequate, untimely or undocumented trade review and supervision at the head office level and untimely trade review and supervision at the branch office level;
- (b) incomplete or untimely review of new accounts; and
- (c) inadequate controls to ensure the documenting of client trading instructions.

32. MFDA Compliance Staff referred the Respondent's failure to fully carry out the terms of the Agreement and Undertaking to MFDA Enforcement Staff for possible disciplinary action.

33. Since KPMG reported its findings on March 30, 2007, the Respondent has started to take steps to address the ongoing deficiencies identified by KPMG. The ongoing deficiencies, other than the Deficiencies, are to be resolved between MFDA Compliance Staff and the Respondent without the assistance of the monitor referred to in paragraph 37(c) below.

**V. CONDUCT CONTRARY TO THE PUBLIC INTEREST**

34. The Respondent admits that, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 2, it failed to establish and maintain adequate and effective procedures for the supervision

of Sullivan to ensure that:

- (a) Sullivan complied with the terms of the Sullivan Undertaking; and
- (b) the Respondent complied with its own obligations to the BCSC arising from Sullivan's registration with the Respondent.

35. The Respondent admits that, by virtue of its failure to ensure that Sullivan complied with the terms of the Sullivan Undertaking, the Respondent allowed Sullivan to engage in securities related business which was not carried on for the account of the Respondent or through the facilities of the Respondent, contrary to MFDA Rule 1.1.1(a).

36. The Respondent admits that it failed to fully carry out the terms of the Agreement and Undertaking, thereby engaging the authority of the Hearing Panel to impose a penalty on the Respondent pursuant to s. 24.1.2 of MFDA By-law No. 1.

## **VI. TERMS OF SETTLEMENT**

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

- (a) the Respondent shall pay a fine in the amount of \$100,000 upon the acceptance of this Settlement Agreement;
- (b) the Respondent shall pay the costs of the MFDA's investigation and of this proceeding in the amount of \$7,500 upon the acceptance of this Settlement Agreement; and
- (c) the Respondent shall retain an independent monitor to address the Deficiencies in accordance with the terms set out in Schedule "B" hereto upon the acceptance of this Settlement Agreement.



## **VII. STAFF COMMITMENT**

38. 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 or any of its officers or directors in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 43 below.

## **VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT**

39. Acceptance of this Settlement Agreement shall be sought at a hearing of the Pacific Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

40. 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.

41. 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.

42. 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 proceeding against it.

43. 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 in Part VI herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent or 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.

44. 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.

45. 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.

## **IX. DISCLOSURE OF AGREEMENT**

46. 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.

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

**X. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated: May 18, 2007

“James E. Ross”

IQON Financial Inc.  
James E. Ross  
Senior Vice-President, Risk Management

“Mark T. Gordon”

Staff of the MFDA  
Mark T. Gordon  
Executive Vice-President



**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: IQON FINANCIAL INC.**

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**ORDER**

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**WHEREAS** on May 14, 2007, 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 IQON Financial Inc. (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated May 18, 2007 (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined as a Member of the MFDA, pursuant to ss. 20 and 24.1.2 of By-law No. 1;

**AND UPON** reviewing the Settlement Agreement and the Notice of Settlement Hearing, and upon hearing submissions from counsel for the Respondent and for Staff of the MFDA;

**AND WHEREAS** the Hearing Panel is of the opinion that the Respondent's conduct was contrary to the public interest;

**THE HEARING PANEL** accepts the Settlement Agreement, and hereby orders that:

1. The Respondent shall pay a fine in the amount of \$100,000, pursuant to s. 24.1.2 of MFDA By-law No. 1;
2. The Respondent shall pay the costs of the MFDA's investigation and of this proceeding in the amount of \$7,500, pursuant to s. 24.2 of MFDA By-law No. 1; and
3. A monitor shall be imposed to oversee and report on the Respondent's activities in accordance with the *Terms of the Independent Monitor* attached as Schedule "B" to the Settlement Agreement, pursuant to s. 24.1.2 of MFDA By-law No. 1.

**DATED** at Vancouver, British Columbia, this     day of     , 2007.

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The Hon. Roger P. Kerans  
Chair

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Tina Coulson  
Panel Member

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David B. Webb  
Panel Member



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**RE: IQON FINANCIAL INC.**

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**TERMS OF THE INDEPENDENT MONITOR**

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1. In accordance with the terms of the Settlement Agreement dated May 18, 2007, and the Order of the Hearing Panel dated May 24, 2007, IQON Financial Inc. (the "Member") shall:
  - a. Retain an independent monitor at the Member's expense, which shall be KPMG LLP ("KPMG"), to assist in resolving the following deficiencies as identified in paragraph 31 of the Settlement Agreement (the "Deficiencies"):
    - i. inadequate, untimely or undocumented trade review and supervision at the head office level and untimely trade review and supervision at the branch office level;
    - ii. incomplete or untimely review of new accounts; and
    - iii. inadequate controls to ensure the documenting of client trading instructions.
  - b. Resolve the Deficiencies on the following terms:
    - i. Staff of the MFDA ("Staff") must approve the terms of the Member's retainer with KPMG;

- ii. The Member will fully cooperate with, and provide full disclosure in a timely manner to, KPMG in all matters relevant to the activities of KPMG under these *Terms of the Independent Monitor*;
- c. Resolve the Deficiencies in accordance with the terms and conditions of the *Duties and Standards of the Independent Monitor* attached as Schedule “1” and on the following terms:
  - i. The Member shall, in collaboration with KPMG, develop a written plan containing proposed actions to remedy the Deficiencies (the “Action Plan”). The Action Plan shall be completed and delivered to Staff by no later than June 30, 2007 and KPMG shall meet the requirements of Schedule “1”;
  - ii. Staff reserves the right to add, delete or change any part of the Action Plan that the Member is required to implement provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change;
  - iii. The Member shall fully implement the actions identified in the Action Plan within the time frames set out therein;
  - iv. KPMG shall deliver a report to Staff every two months detailing the status of the implementation of the Action Plan based upon independent verification of actions taken to remedy the Deficiencies;
  - v. KPMG shall complete its final testing of actions implemented under the Action Plan by no later than November 30, 2007;
  - vi. KPMG shall provide a final written report to Staff summarizing the status of the implementation of the Action Plan and the results of its independent verification and testing (the “Final Report”) by no later than December 31, 2007;
  - vii. KPMG shall provide the Member’s Board of Directors with copies of the status reports every two months and the Final Report;
  - viii. Exceptions to any terms of these *Terms of the Independent Monitor* are permissible only with the prior express written consent of Staff.



IN THE MATTER OF A SETTLEMENT HEARING  
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RE: IQON FINANCIAL INC.

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DUTIES AND STANDARDS OF  
THE INDEPENDENT MONITOR

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**A. Defined Terms**

1. Terms defined in the *Terms of the Independent Monitor* shall have the same meaning in these *Duties and Standards of the Independent Monitor*.

**B. Duties of the Independent Monitor**

1. KPMG shall perform its duties with unimpaired professional judgment and objectivity, and shall be seen to be doing so by a reasonable observer.
2. KPMG shall be retained and shall be remunerated by the Member.
3. KPMG shall perform its services in accordance with these *Duties and Standards of the Independent Monitor*.
4. KPMG:
  - i. May advise the Member of the results during the testing process;
  - ii. Shall prepare the Final Report of the results of the testing in an independent manner without consultation with the Member as to the content of the report; and
  - iii. Shall provide the Final Report directly to Staff, with a copy to the Member



### **C. Qualifications of the Independent Monitor**

1. Knowledge and Experience - KPMG must exhibit and apply:
  - i. An understanding of MFDA requirements (i.e. By-laws, Rules, Policies, Notices and Bulletins);
  - ii. Familiarity with mutual fund dealer operations and compliance issues; and
  - iii. Familiarity with adequate Member compliance procedures (i.e. KPMG should not be proposing procedures it develops at first instance without an understanding of procedures compliant members have instituted to meet MFDA requirements).

### **D. Action Plan**

1. The Action Plan must outline the actions that will remedy the Deficiencies and specific time frames for the completion of those actions.

### **E. Testing Procedures**

1. The testing procedures determined by KPMG shall:
  - i. Be sufficient to determine whether a Deficiency has been resolved or remains outstanding;
  - ii. Specify the objective of the procedures, including citing the Deficiency which the testing will address; and
  - iii. Specify the sampling methodology, including the size of samples to be tested.
2. KPMG shall prepare and maintain a file of its working papers regarding the testing, which shall be made available to Staff upon request. The file must contain sufficient information to enable an experienced individual, having no previous connection to the engagement, to re-perform the test procedures and come to the same conclusions. The file must include appropriate documentation of the procedures performed and the evidence obtained, including copies of documents reviewed or sufficiently detailed information to identify the specific documents reviewed.

### **F. Final Report**

1. When reporting on the results of testing, KPMG must:
  - i. Specify the procedures performed and the details of the samples selected;
  - ii. State the factual results of performing the procedures and not express an opinion on the results;
  - iii. Link the factual finding to the Deficiency being tested;
  - iv. List any new deficiencies in compliance with MFDA requirements that are noted during the testing on the original Deficiencies;
  - v. Indicate any restrictions or limitations in the ability to perform the procedures; and
  - vi. Provide recommendations to remedy any new or continuing deficiencies identified.

## ACKNOWLEDGEMENT

KPMG LLP, the independent monitor retained by the Member and approved by Staff to provide services to the Member in accordance with the *Terms of the Independent Monitor*, hereby acknowledges that the terms of its retainer with the Member requires it to provide those services in accordance with the *Terms of the Independent Monitor* and these *Duties and Standards of the Independent Monitor*.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**End.**

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