



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: Professional Investments (Kingston) Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing dated December 22, 2008, 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 MFDA By-law No. 1 (the “By-law”), a hearing panel of the MFDA Central Regional Council (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Professional Investments (Kingston) 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 the Hearing Panel pursuant to s. 24.1 of the By-law.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and the Respondent agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

III. ACKNOWLEDGEMENT

5. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to paragraph 26) 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 MFDA.

IV. AGREED FACTS

Registration History

6. The Respondent has been registered as a mutual fund dealer in Ontario since April 8, 1986 and has been a Member of the MFDA since March 8, 2002.

7. The Respondent has no previous disciplinary history.

Corporate Structure

8. The Respondent's head office is located in Kingston, Ontario. Presently, there are 3 sub-branches affiliated with head office which are located in Addison, Cornwall and Napanee. The Napanee sub-branch was registered after the completion of the MFDA

sales compliance examination described below. The Respondent also has branch offices in Ottawa and Belleville, Ontario.

Failure To Conduct Adequate Trade Supervision

9. In March 2008, MFDA Staff completed a sales compliance examination of the Respondent covering the period from November 1, 2004 to January 31, 2008 (the “SCE”) in order to assess the Respondent’s compliance with MFDA By-laws, Rules and Policies. The results of the SCE were summarized in a report dated May 9, 2008 which was delivered to the Respondent.

10. The SCE identified a number of compliance deficiencies, the most serious of which concerned the failure of the Respondent to conduct adequate trade supervision.

11. At the time of the SCE:

- (a) 27 Approved Persons were affiliated with the Respondent’s head office including
 - 2 Approved Persons who worked at the Respondent’s sub-branch in Addison and
 - 2 Approved Persons who worked at the Respondent’s sub-branch in Cornwall;
- (b) 24 Approved Persons were affiliated with the Respondent’s Ottawa office; and
- (c) 3 Approved Persons were affiliated with the Respondent’s Belleville office;

12. During the SCE, MFDA Staff discovered that the Respondent had not implemented an adequate two-tier supervision structure, contrary to MFDA Rule 2.5.1 and MFDA Policy No. 2, as the Respondent’s policies and procedures were deficient in the following respects:

- (i) *Inadequate Trade Supervision Conducted At Head Office*

13. The Compliance Officer responsible for supervising trading activity by Approved Persons at head office and the Belleville branch office reviewed their trading activity on-line but did not retain any records of his trade reviews, trade inquiries, responses received from Approved Persons and the resolutions achieved as a result of the trade reviews, if any, contrary to MFDA Rule 2.5.4 and MFDA Policy No. 2.

14. The Respondent did not have any procedures in place at its head office to detect unusual trading patterns such as excessive trading, excessive switching or market timing by Approved Persons, contrary to MFDA Policy No. 2 and Member Regulation Notice MR-0065.

(ii) Inadequate Trade Supervision At The Belleville Branch

15. The Branch Manager of the Belleville branch office did not conduct trade supervision in the branch in accordance with MFDA Rules 2.2.1, 2.5.3(b)(ii) and MFDA Policy No. 2.

(iii) Inadequate Trade Supervision At The Ottawa Branch

16. The Respondent did not conduct regular second-tier trade review to detect unusual trading patterns or ensure the suitability of client trading activity at the Ottawa branch office, contrary to MFDA Rule 2.5 and MFDA Policy No. 2.

17. In light of the Respondent's failure to establish, implement and maintain an adequate two-tier supervision structure, the Respondent failed to meet the minimum standards of supervision required by MFDA Rule 2.5 and MFDA Policy No. 2.

CURRENT PRACTICES

18. Since the SCE Report was received by the Respondent, the Respondent has undertaken to revise its Policies and Procedures manual and implement an appropriate two-tier supervision structure in order to comply with MFDA Rules and Policies. The Respondent has commenced use of more extensive back-office computer software modules to facilitate improved trade supervision and other compliance functions. The Respondent has also provided training to branch managers and compliance staff to ensure that they understand their compliance responsibilities and know how to use the compliance functions of the back-office computer software so that appropriate and effective trade supervision will be conducted in the future.

V. CONTRAVENTIONS

19. The Respondent admits that prior to March 2008, the Respondent failed to establish, implement and maintain a two-tier compliance structure to:

(a) properly supervise client account activity to:

(i) ensure that each order accepted and each recommendation made for any account of a client is suitable for the client and in keeping with that client's investment objectives; and

(ii) detect unusual trading patterns such as excessive trading, excessive switching and market timing;

(iii) ensure that the handling of the Respondent's business was in accordance with the By-laws, Rules and Policies of the MFDA and applicable securities legislation; and

(b) maintain adequate records of trade supervision undertaken including inquiries made, responses received and follow-up action taken;

contrary to MFDA Rules 2.2.1, 2.5 and MFDA Policy No. 2.

VI. TERMS OF SETTLEMENT

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

(a) the Respondent shall pay a fine in the amount of \$10,000, pursuant to s. 24.1.2(b) of the By-law;

(b) the Respondent shall pay costs of this proceeding in the amount \$2,500, pursuant to s. 24.2 of the By-law;

(c) the Respondent shall retain KPMG Inc. as an independent monitor to assist the Respondent to resolve the deficiencies in its trade supervision structure and review and test the Respondent's recently implemented trade supervision procedures to ensure that the Respondent is complying with its supervision

obligations under MFDA By-laws, Rules and Policies, pursuant to s. 24.1.2(g) of the By-law; and

(d) in accordance with s. 24.4.2 of the By-law, the Respondent agrees that in the future it will comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1 and 2.5 and MFDA Policy No. 2.

VII. STAFF COMMITMENT

21. 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 26 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

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

23. 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.

24. 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.

25. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against it.

26. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

27. 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.

28. 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

29. 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.

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

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: December 18, 2008

“Mark Tavares”

Witness - Signature

“Mark Tavares”

Witness - Print name

“John Oswald Fisher”

Professional Investments (Kingston) Inc.
Per: John Oswald Fisher, President

“Mark Gordon”

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



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

Schedule “A”

**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: Professional Investments (Kingston) Inc.

ORDER

WHEREAS on ●day, ●, 200●, the Mutual Fund Dealers Association of Canada (the “MFDA”) issued a Notice of Settlement Hearing pursuant to section 24.4 of MFDA By-law No. 1 in respect of Professional Investments (Kingston) Inc. (the “Respondent”);

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated ●day, ●, 200● (the “Settlement Agreement”), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of MFDA By-law No. 1;

AND WHEREAS the Hearing Panel accepts the Respondent’s admissions as set out in the settlement agreement that prior to March 2008, the Respondent failed to establish, implement and maintain a two-tier compliance structure to:

(a) properly supervise client account activity to:

- (iv) ensure that each order accepted and each recommendation made for any account of a client is suitable for the client and in keeping with that client’s investment objectives; and

(v) detect unusual trading patterns such as excessive trading, excessive switching and market timing;

(vi) ensure that the handling of the Respondent's business was in accordance with the By-laws, Rules and Policies of the MFDA and applicable securities legislation; and

(b) maintain adequate records of trade supervision undertaken including inquiries made, responses received and follow-up action taken;

contrary to MFDA Rules 2.2.1, 2.5 and MFDA Policy No. 2.

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

1. The Respondent shall pay a fine in the amount of in the amount of \$10,000, pursuant to s. 24.1.2(b) of MFDA By-law No. 1 (the "By-law").

2. The Respondent shall pay costs of this proceeding in the amount \$2,500, pursuant to s. 24.2 of the By-law.

3. The Respondent shall retain KPMG Inc. as an independent monitor to assist the Respondent to resolve the deficiencies in its trade supervision structure and review and test the Respondent's recently implemented trade supervision procedures to ensure that the Respondent is complying with its supervision obligations under MFDA By-laws, Rules and Policies, pursuant to s. 24.1.2(g) of the By-law.

DATED at Toronto this day of , 200 .

Per: " _____"
[Name of Public Representative], Chair

Per: " _____"
[Name of Industry Representative]

Per: " _____"
[Name of Industry Representative]