



**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: IOCT Financial Inc. and Michelle Anne Bolhuis**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the Central Regional Council (the “Hearing Panel”) of the MFDA should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondents, IOCT Financial Inc. (“IOCT”) and Michelle Anne Bolhuis (“Bolhuis”) (together, IOCT and Bolhuis are jointly referred to as the “Respondents”).

**II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of the Respondents’ activities. The investigation disclosed that the Respondents had 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.

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

4. Staff and the Respondents 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 Respondents 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 46) 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. IOCT has been registered in Ontario as a mutual fund dealer since December 12, 1997 and as a limited market dealer since August 10, 2001. IOCT has been a Member of the MFDA since April 12, 2002.

7. On October 4, 2005, IOCT notified the MFDA of its intention to resign its membership and transfer its client accounts by way of bulk transfer to BMO Nesbitt Burns Inc. (“BMO”).

8. On November 29, 2005, the MFDA approved the bulk transfer of IOCT’s non-registered client accounts to BMO by way of negative confirmation (each IOCT client

would be notified in writing of the transfer of their account to BMO, which would proceed unless the client objected and directed the accounts elsewhere). IOCT's registered client accounts (i.e. self-directed accounts, such as RRSPs and RRIFs) did not form part of the bulk transfer. Each such account required IOCT to obtain positive client authorization prior to transferring the account, whether to BMO or to such other dealer as the client authorized. This meant that IOCT was required to contact each client individually and obtain their written authorization before transferring their account.

9. During the course of IOCT's resignation process, the MFDA was intermittently informed by IOCT that it was having difficulty locating some of the clients to obtain the required positive authorizations.

10. On April 30, 2007, IOCT reported approximately \$1.4 million in assets under administration ("AUA") remaining on its monthly Financial Questionnaire and Report ("FQR"). The AUA represented self-directed client accounts (i.e. RRSPs and RRIFs) held by M.R.S. Inc. which still required positive client authorization to transfer the accounts from M.R.S. Inc. to BMO.

11. On May 31, 2008, IOCT reported \$305,553 in AUA remaining on its FQR. These accounts represented self-directed accounts for thirteen (13) clients, all of whom IOCT had been unable to locate or contact and thus had been unable to obtain positive client authorizations from them. In June 2008, the MFDA, after having reviewed IOCT's efforts to obtain the required transfer authorizations from its clients, permitted these remaining accounts to continue to be held by IOCT's carrying dealer, M.R.S. Inc., with M.R.S. Inc.'s consent. As a result, on its next FQR filing for June 30, 2008, IOCT reported that it had \$0 in AUA remaining.

12. On July 9, 2008, the Ontario Securities Commission (the "OSC") placed the following terms and conditions on IOCT's registration:

- (i) IOCT and all its directors, officers and employees are restricted to non-trading under the *Securities Act*, R.S.O. 1990, c. S.5;

- (ii) IOCT must not open any new client accounts;
- (iii) IOCT must inform its clients of the terms and conditions placed on the firm.

13. IOCT elected not to renew its registration with the OSC when it was scheduled to terminate on December 31, 2008. Since it was IOCT's intention to resign its membership with the MFDA, the OSC suspended IOCT's registration effective December 31, 2008, pending the resolution of the MFDA's investigation of this matter and any subsequent proceeding.

14. IOCT's rights and privileges of membership in the MFDA were suspended effective February 10, 2009, by order of an MFDA Hearing Panel, and its resignation from MFDA membership remained pending until the resolution of the MFDA's investigation of this matter and any subsequent proceeding.

15. Bolhuis is the controlling shareholder and the President of IOCT. Bolhuis has been registered in Ontario as an officer and a director and the designated compliance officer of IOCT since December 20, 1997.

### **Early Warning Designation**

16. On November 3, 2004, approximately one year before IOCT submitted its application to resign, MFDA staff had designated IOCT in early warning pursuant to MFDA Rule 3.4 IOCT had triggered the liquidity and profitability tests, as referenced in MFDA Rule 3.4.2(a), on its July 31, 2004 annual audited FQR and September 30, 2004 unaudited FQR.

17. After it was designated in early warning in November 2004, IOCT continued to trigger early warning tests based on its monthly unaudited FQR filings and therefore continued in early warning until December 2008, when its registration was suspended and it ceased to make any further FQR filings.

18. During the entire period in which it was designated in early warning, IOCT had negative net equity (\$225,073 as at November 30, 2004, the month in which it was designated in early warning; and \$541,583 as at December 2008). Consequently, the positive financial statement capital reported by IOCT throughout this same period was only the result of subordinated loans received from related parties (\$488,362 as at November 30, 2004, the month in which it was designated in early warning; and \$674,330 as at December 2008). This indicates the firm was not profitable throughout the period and it required advances from related parties to finance its continued operations.

#### **Unauthorized Payment of Dividend to Bolhuis by IOCT**

19. In accordance with MFDA Rule 3.4.2(b)(iv)(C), while designated in early warning, IOCT was required to obtain the prior written consent of the MFDA to directly or indirectly make any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, affiliate or associate.

20. On its April 30, 2007 FQR, submitted to the MFDA on May 22, 2007, IOCT reported that \$102,000 as “Dividends paid or partners drawings” during the month of April 2007 (the “Dividend”).

21. IOCT paid the Dividend to Bolhuis. IOCT had not obtained prior written consent from the MFDA to pay the Dividend.

22. Bolhuis has not repaid the \$102,000 to IOCT.

#### **Unauthorized Increase of IOCT’s Non-Allowable Assets**

23. In accordance with MFDA Rule 3.4.2(b)(iv)(D), while designated in early warning, IOCT was required to obtain the prior written consent of the MFDA to increase its non-allowable assets.

24. On its July 31, 2007 FQR, submitted to the MFDA on August 22, 2007, IOCT reported that it had increased its “Fixed assets at depreciated value” from \$28,322 to \$38,245 during the month of July 2007. At the same time, IOCT was experiencing, on average, monthly net losses of approximately \$20,000, while it only had a Risk Adjusted Capital ("RAC") of \$46,000. Consequently, if IOCT continued to incur losses at the same rate going forward, it would have been RAC deficient in less than two and a half months' time.

25. “Fixed assets” are categorized by the MFDA as non-allowable assets for the purposes of calculating a Member’s minimum capital requirements. By increasing the value of its fixed assets in this manner, IOCT decreased the amount of allowable assets available for calculating its minimum capital requirements. IOCT had not obtained prior written consent from the MFDA to increase its non-allowable assets.

26. On October 12, 2007, Bolhuis replied to MFDA Staff’s inquiries as to the reasons behind IOCT’s unauthorized increase in fixed assets, as follows: “We had to replace some pieces of furniture in our offices that were damaged. On the advice of our auditors we increased the fixed assets.”

### **Bolhuis’ Failure to Cooperate**

27. By letter dated January 23, 2008, MFDA staff requested that Bolhuis contact MFDA staff to schedule an interview for the purposes of providing a statement with respect to whether IOCT had breached early warning requirements and whether or not it had failed to respond in a timely manner to the MFDA’s requests for an electronic copy of its July 31, 2007 annual audited FQR (the “Matters Under Investigation”). MFDA staff did not receive a response from Bolhuis to the letter. The letter was returned to the MFDA by Canada Post on February 14, 2008 marked “Unclaimed”.

28. By letter and email dated February 20, 2008, MFDA staff requested that Bolhuis contact MFDA staff to schedule an interview for the purposes of providing a statement to the Matters Under Investigation. By email on March 5, 2008, Bolhuis replied, “We do not

understand the need for a face to face meeting when the MFDA has clearly received the Annual FQR.”

29. By email dated March 13, 2008, MFDA staff advised Bolhuis that the request for her attendance at an interview was for the purpose of providing a statement to the Matters Under Investigation and was made in accordance with section 22 of MFDA By-law No. 1. Bolhuis was asked to contact MFDA staff by March 20, 2008 to arrange an interview.

30. By email dated March 20, 2008, Bolhuis requested information about MFDA Bulletin #104-C (Mandatory Use of the Electronic Filing System (“EFS”)) dated October 29, 2004, but did not agree to a date to be interviewed.

31. By email dated March 27, 2008, MFDA staff advised Bolhuis that she was required to attend an interview on April 10, 2008 and that the Enforcement department of the MFDA would consider initiating disciplinary proceedings against her should she fail to attend. By email dated April 9, 2008, Bolhuis replied, “We spoke with our auditors and have now electronically submitted the annual FQR. Also, since we have completed the [*sic*] initiating the final account transfers that were delaying IOCT shutting down and we are therefore about to complete our resignation, we do not understand the need to attend a meeting at your offices or what questions the MFDA has.”

32. Bolhuis did not attend at the offices of the MFDA on April 10, 2008 for the interview.

33. By letter and email dated April 11, 2008, MFDA staff advised Bolhuis that she was required to attend an interview on May 6, 2008 to provide a statement and that MFDA staff were prepared to rely on the Investigatory Powers as stated in section 22.1 of MFDA By-law No.1, a copy of which was attached.

34. Bolhuis did not attend at the offices of the MFDA on May 6, 2008 for the interview.

## V. CONTRAVENTIONS

35. IOCT admits that:

- (a) in or about April 2007, it made a dividend payment in the amount of \$102,000 to Bolhuis, who was the controlling shareholder, president, designated compliance officer and a director of IOCT, while IOCT was designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rule 3.4.2(b)(iv)(C) (“Contravention #1”); and
- (b) in or about July 2007, it increased its non-allowable assets by \$9,923 while designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rule 3.4.2(b)(iv)(D) (“Contravention #2”)

36. Bolhuis admits that:

- (a) in or about April 2007, she, as the controlling shareholder, president, designated compliance officer and a director of IOCT, authorized or permitted the payment of a dividend in the amount of \$102,000 to herself while IOCT was designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rules 3.4.2(b)(iv)(C) and 1.1.2, and MFDA Rule 2.1.1 (“Contravention #3”);
- (b) in or about July 2007, she, as the controlling shareholder, president, designated compliance officer and a director of IOCT, authorized or permitted IOCT to increase its non-allowable assets by \$9,923 while IOCT was designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rules 3.4.2(b)(iv)(D), and 1.1.2, and MFDA Rule 2.1.1 (“Contravention #4”); and



- (c) commencing on or about January 23, 2008, she has failed to cooperate with the MFDA by failing to attend an interview to provide a statement as requested by MFDA staff during the course of its investigation, contrary to section 22.1 of MFDA By-law No. 1 (“Contravention #5).

**VI. TERMS OF SETTLEMENT**

37. IOCT agrees to the following terms of settlement:

- (a) IOCT’s membership in the MFDA, including all of the rights and privileges associated therewith, shall be terminated upon the acceptance of this Settlement Agreement, pursuant to section 24.1.2(d) of MFDA By-law No. 1.

38. Upon the acceptance of this Settlement Agreement, Bolhuis agrees to the following terms of settlement:

- (a) Bolhuis shall be prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member for a period of three (3) years, pursuant to section 24.1.1(c) of MFDA By-law No. 1;
- (b) Bolhuis shall pay a fine in the amount of \$5,000.00 in respect of Contravention #3, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (c) Bolhuis shall pay a fine in the amount of \$5,000.00 with respect to Contravention #4, pursuant to section 24.1.1(b) of MFDA By-law No. 1;
- (d) Bolhuis shall pay a fine in the amount of \$10,000.00 with respect to Contravention #5, pursuant to section 24.1.1(b) of MFDA By-law No. 1;  
and

(e) Bolhuis shall pay the costs of this investigation and hearing of this matter in the amount of \$5,000.00, pursuant to section 24.2 of MFDA By-law No. 1.

39. Bolhuis agrees that the fines and costs as prescribed in paragraph 38 are payable by Bolhuis as follows:

- (a) \$10,000 in fines and \$5,000 in costs upon the acceptance of this Settlement Agreement; and
- (b) The remaining \$10,000 in fines on or before March 1, 2010.

40. Bolhuis further agrees that if she fails to pay the remaining \$10,000 in fines as prescribed in paragraph 39(b), then automatically and without further notice, and without Staff having to again appear before a Hearing Panel or commence any further proceeding, Bolhuis shall be permanently prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member, pursuant to section 24.1.1(c) of MFDA By-law No. 1.

## **VII. STAFF COMMITMENT**

41. 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 Respondents in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of paragraph 46 below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in Part V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

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

42. 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.

43. Staff and the Respondents may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and the Respondents 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 Respondents in this matter, and the Respondents agree to waive their 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.

44. Staff and the Respondents agree that if this Settlement Agreement is accepted by the Hearing Panel, then the Respondents 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.

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

46. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondents fail 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 Bolhuis and IOCT, 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.

47. 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 Respondents 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.

48. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree that they 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**

49. 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 Respondents and Staff or as may be required by law.

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

#### **X. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated: November 25, 2009

“Cheryl Decker”

Witness- Signature

“Michelle Bolhuis”

Michelle Anne Bolhuis

“Cheryl Decker”

Witness- Signature

“Michelle Bolhuis”

IOCT Financial Inc.  
Per: Michelle Anne Bolhuis, President

“Shaun Devlin”

Staff of the MFDA  
Per: Shaun Devlin  
Vice President, Enforcement



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**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: IOCT Financial Inc. and Michelle Anne Bolhuis**

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**ORDER**

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**WHEREAS** the Mutual Fund Dealers Association of Canada (the "MFDA") has issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of IOCT Financial Inc. ("IOCT") and Michelle Anne Bolhuis ("Bolhuis") (together, IOCT and Bolhuis are jointly referred to as the "Respondents");

**AND WHEREAS** the Respondents entered into a settlement agreement with Staff of the MFDA, dated November 19, 2009 (the "Settlement Agreement"), in which the Respondents agreed to a proposed settlement of matters for which the Respondents could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that:

1. In or about April 2007, IOCT made a dividend payment in the amount of \$102,000 to Bolhuis, who was the controlling shareholder, president, designated compliance officer and a director of IOCT, while IOCT was designated in early warning without the prior

written consent of the MFDA, contrary to MFDA Rule 3.4.2(b)(iv)(C) (“Contravention #1”);

2. In or about July 2007, IOCT increased its non-allowable assets by \$9,923 while designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rule 3.4.2(b)(iv)(D) (“Contravention #2”);
3. In or about April 2007, Bolhuis, the controlling shareholder, president, designated compliance officer and a director of IOCT authorized or permitted the payment of a dividend in the amount of \$102,000 to herself while IOCT was designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rules 3.4.2(b)(iv)(C) and 1.1.2, and MFDA Rule 2.1.1 (“Contravention #3”);
4. In or about July 2007, Bolhuis, the controlling shareholder, president, designated compliance officer and a director of IOCT authorized or permitted IOCT to increase its non-allowable assets by \$9,923 while IOCT was designated in early warning without the prior written consent of the MFDA, contrary to MFDA Rules 3.4.2(b)(iv)(D), and 1.1.2, and MFDA Rule 2.1.1 (“Contravention #4”); and
5. Commencing on or about January 23, 2008, Bolhuis has failed to attend an interview to provide a statement as requested by MFDA staff during the course of its investigation, contrary to section 22.1 of MFDA By-law No. 1 (“Contravention #5”).

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

1. IOCT’s membership in the MFDA, including all of the rights and privileges associated therewith, is hereby terminated;
2. Bolhuis shall be prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member for a period of three (3) years from the date of this Order;

3. Bolhuis shall pay a fine in the amount of \$5,000.00 in respect of Contravention #3;
4. Bolhuis shall pay a fine in the amount of \$5,000.00 with respect to Contravention #4;
5. Bolhuis shall pay a fine in the amount of \$10,000.00 with respect to Contravention #5;
6. Bolhuis shall pay the costs of this investigation and hearing of this matter in the amount of \$5,000.00.
7. The fines and costs as prescribed in paragraphs 3 to 6 of this Order are payable by Bolhuis as follows:
  - a. \$10,000 in fines and \$5,000 in costs on November 27, 2009; and
  - b. \$10,000 in fines on or before March 1, 2010.
8. If Bolhuis fails to pay the remaining \$10,000 in fines as prescribed in paragraph 7(b) of this Order, then automatically and without further notice, and without MFDA Staff having to again appear before a Hearing Panel or commence any further proceeding, Bolhuis shall be permanently prohibited from conducting securities related business while in the employ of, or sponsored by, any MFDA Member, pursuant to section 24.1.1(c) of MFDA By-law No. 1.

**DATED** at Toronto, Ontario this        day of November, 2009.

Per: \_\_\_\_\_

Hon. John Webber, Chair

Per: \_\_\_\_\_

Jeanne Beverly

Per: \_\_\_\_\_

Petra Sandori