



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, 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 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 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”, 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 Part IX) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

IV. AGREED FACTS

Registration History

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

7. The Respondent’s head office is located in Kingston, Ontario.

Former Approved Person Patrick Caicco

8. From May 12, 2009 to March 12, 2010, Patrick Caicco (“Caicco”) was registered in Ontario as a mutual fund salesperson / dealing representative¹ with the Respondent. When he was registered with the Respondent, Caicco resided and carried on business in Ottawa, Ontario.

9. Prior to becoming registered with the Respondent, Caicco was registered intermittently in the securities industry in various capacities since approximately 1992. Caicco is not currently registered in the securities industry in any capacity.

Caicco’s Misconduct

10. Caicco was a respondent to a separate but related disciplinary proceeding (MFDA File No. 201503) that was commenced by Notice of Hearing issued on March 6, 2015 and concluded by reasons for decision dated August 4, 2015. In that proceeding, Caicco signed an Agreed Statement of Facts (the “ASF”). The Respondent was not a party to the ASF. In the ASF, Caicco admitted to the following contraventions of MFDA Rules and applicable securities legislation.

- (a) between May 12, 2009 and March 12, 2010, Caicco engaged in securities related business that was not carried on for the account and through the facilities of the [Respondent] by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million² of investment products to at least 33 clients³ and other individuals outside the [Respondent], contrary to MFDA Rules 1.1.1 and 2.1.1 and sections 13.7 and 13.8 of National Instrument 31-103; and
- (b) between May 12, 2009 and March 12, 2010, Caicco had and continued in another gainful occupation which was not disclosed to and approved by the [Respondent] by recommending, selling, facilitating the sale or making referrals in respect of the sale of approximately \$3.35 million of investment products to at least 33

¹ The registration category was changed from mutual fund salesperson to dealing representative on September 28, 2009

² Of the \$3.35 million that was solicited by Caicco for investment in products that were not sold through the facilities of the Respondent, \$822,016 was solicited from clients of the Respondent.

³ 9 clients of the Respondent were among the 33 individuals who were solicited by Caicco to invest money in products that were not sold for the account of the Respondent or processed through the facilities of the Respondent.

clients and other individuals outside the [Respondent], contrary to MFDA Rules 1.2.1(d)⁴ and 2.1.1.

11. Caicco also admitted the following additional material facts:

Advantage Wealth

- (a) on or about February 9, 2009, Caicco incorporated Advantage Wealth Building Strategies Inc. (“Advantage Wealth”) in the province of Ontario. Advantage Wealth purportedly carried on business providing wealth coaching and wealth planning services;
- (b) the Respondent never sought or obtained permission from the Respondent to engage in any outside business activities through Advantage Wealth;

The Skyline REIT

- (c) between March 12, 2009 and May 12, 2010, Caicco recommended, sold, facilitated the sale or made referrals in respect of the sale of at least \$1,343,449 of an investment product known as the Skyline Apartment Real Estate Investment Trust (the “Skyline REIT”) to at least 21 investors including \$232,016 to 4 clients of the Respondent;⁵
- (d) none of the sales or referrals to the Skyline Apartment REIT investment by Caicco were disclosed to or approved by the Respondent nor were these transactions processed through the facilities or for the account of the Respondent;
- (e) the sales or referrals to the Skyline Apartment REIT were processed through the facilities of Advantage Wealth and the 1% referral fees from Skyline that were paid to Caicco as compensation in respect of those sales or referrals were paid directly to Advantage Wealth by Skyline;

⁴ Since December 3, 2010, this provision has been renumbered as MFDA Rule 1.2.1(c)

⁵ Caicco admitted that between February 27, 2009 and March 15, 2010, he referred or facilitated the investment of a total amount of at least \$2,400,000 in the Skyline Apartment REIT to at least 30 investors, however, only a proportion of those investments were made while he was an Approved Person of the Respondent.

The Assaly Group (Nature's Walk and Villa Montague)

- (f) the Assaly Group of Companies (the "Assaly Group") carried on business as a diversified real estate organization engaged in the development and management of residential and commercial properties in Canada and the United States;
- (g) between 2009 and 2012, the Assaly Group was engaged in several development projects including Nature's Walk Gated Community ("Nature's Walk") and Villa Montague;
- (h) Caicco was the sole promoter of the Nature's Walk investment which was promoted as a development which would include a gated community of 20 condominiums and a golf course in North Grenville, Ontario;
- (i) Caicco solicited the investment of approximately \$1,838,000 in the Nature's Walk investment by 21 investors that included 5 clients of the Respondent;
- (j) the investors in the Nature's Walk project received monthly income from their investment until approximately February 2011 when the payments stopped;
- (k) Villa Montague was structured as a real estate investment pool ("REIP") and involved the redevelopment of an existing retirement residence located in Smith Falls, Ontario;
- (l) Caicco recommended, sold, facilitated the sale of or made referrals in respect of an investment in the amount of \$171,000 in Villa Montague by one investor who was not a client of the Respondent;
- (m) the sales or referrals of investments in Nature's Walk and Villa Montague or other Assaly Group projects were not approved by the Respondent and Approved Persons of the Respondent such as Caicco were not authorized to sell these investments.
- (n) the sales or referrals by Caicco in respect of Nature's Walk and Villa Montague were processed through Advantage Wealth and not through the facilities or for the account of the Respondent;

- (o) Caicco received 3% referrals fees from the Assaly Group relating to sales or referrals of investments in Nature’s Walk and Villa Montague and those fees were paid directly by the Assaly Group to Advantage Wealth;
- (p) after the investors in the Assaly Group projects stopped receiving payments on their investments in February 2011, the investors sued the Assaly Group in an attempt to recover their initial investments and any remaining amounts owing to them. A court appointed inspector in the legal proceedings determined that the Nature’s Walk and Villa Montague projects were “hopelessly insolvent and in stages of abandonment”. Accordingly, there is no reasonable prospect that investors will recover the full amount of their investments; and
- (q) at all material times, the policies and procedures of the Respondent required its Approved Persons to obtain prior approval before commencing involvement in any outside business activities. However, Caicco did not disclose to or obtain approval from the Respondent with respect to his involvement with Skyline REIT, the Assaly Group or Advantage Wealth and omitted reference to the companies from mandatory disclosure documents that he submitted to the Respondent on January 26, 2009 and thereafter.

12. Except to the extent reflected in this Settlement Agreement, there is no evidence that the Respondent was aware of the facts admitted to by Caicco at the time that those events occurred. Although it remains unlikely that investors will recover the full amounts that they invested in Assaly Group products, according to media reports, a court approved settlement of litigation against Assaly Group companies was expected to result in the recovery by investors of approximately 22% of their principal investment. No complaints have ever been submitted to the Respondent concerning Caicco’s conduct.

The Respondent’s Supervision Of Caicco’s Outside Business Activities

Caicco’s Responses to Outside Business Activity Questionnaires

13. On two different occasions, Caicco provided the Respondent with his responses to Approved Person questionnaires dated February 10, 2009 and October 26, 2009. According to Caicco's responses in the questionnaire:

- (a) in addition to his income from the Respondent, Caicco earned income for services he provided in support of a charitable foundation. In the questionnaire response dated October 26, 2009, Caicco characterized the compensation that he received from the charitable foundation as 'referral fees' and reported that he had entered into a 'referral arrangements' in connection with his 'charity work';
- (b) he did not have a website; and
- (c) he did not operate under any name other than the name of the Respondent or "The Financial Shoppe".

14. Upon receipt of the questionnaires from Caicco, the Respondent did not make any inquiries to Caicco or conduct any other due diligence to determine the nature and extent of Caicco's activities with respect to the charitable foundation, including:

- (a) what charitable foundation the Respondent worked for;
- (b) the activities that he engaged in and services he provided to the charitable foundation;
- (c) the nature or amount of compensation that he received from the charitable foundation that he had referenced on the form;
- (d) whether any conflicts of interest arose in connection with Caicco's involvement with the charitable foundation and whether any disclosure ought to be provided to individuals who Caicco approached in connection with his activities in support of the foundation;
- (e) the 'referral arrangement' that he entered into in connection with his 'charity work'; or
- (f) the 'referral fees' that he was paid.

15. In fact, according to Caicco, the ‘charitable foundation’ that he worked with was actually an investment business promoted and operated by Mr. Assaly, the principal of the Assaly Group, that purported to offer participants the benefits of a tax shelter.

16. Had the Respondent engaged in a reasonable supervisory process when evaluating and approving the disclosed outside business activities that its Approved Persons engaged in, it is likely that the Respondent would have discovered that Mr. Caicco’s disclosed outside business activity potentially constituted securities related business that was not being processed for the account of the dealer.

Caicco’s Involvement With Advantage Wealth

17. On May 22, 2009, the Chief Compliance Officer of the Respondent (the “CCO”) observed that the signature line on e-mails from Caicco identified Caicco as the “President of Advantage Wealth”. The CCO sent Caicco an e-mail inquiry asking about Advantage Wealth.

18. The e-mail address used by Caicco was also an Advantage Wealth e-mail address and not an e-mail address associated with the Respondent.

19. Contrary to MFDA Rules, in the e-mail signature line and elsewhere in the e-mail that the CCO received from Caicco, there was no content that reflected the Respondent’s association and affiliation with the Respondent.

20. In response to the inquiry from the CCO, on May 25, 2009, Caicco informed the CCO that “Advantage Wealth is the Corporate Name I gave myself when I incorporated.”

21. The Respondent failed to make any further inquiries to Caicco or take any other supervisory action to determine the nature and extent of the Respondent’s activities with respect to Advantage Wealth, including:

- (a) what business or services Caicco conducted through Advantage Wealth;

- (b) whether Caicco earned any income or received any compensation paid to or from Advantage Wealth;
- (c) whether any conflicts of interest or disclosure concerns should be addressed if Caicco was carrying on business through Advantage Wealth;
- (d) whether the responses to the Approved Person questionnaire that Caicco had submitted in February 2009 were truthful, complete and accurate in light of the fact that the existence of Advantage Wealth was not disclosed in Caicco's response to the questionnaire;
- (e) whether Caicco operated or intended to operate a website using the name Advantage Wealth that contained content that should be reviewed and approved by the Respondent;
- (f) whether Caicco used the Advantage Wealth name as a trade name that should be approved by the Respondent and used only in compliance with MFDA Rule 1.1.7(c); and
- (g) the manner and extent to which Caicco used the Advantage Wealth name (rather than the Respondent's name) on signage, correspondence and documentation that clients would likely see or receive and whether this could cause any confusion for clients.

22. As it turned out, in July 2009, Caicco registered a domain name to begin operating a website to promote financial services offered through Advantage Wealth. Caicco did not disclose to the Respondent that he was operating an independent website while he was an Approved of Person of the Respondent. By November 2009, the unapproved Advantage Wealth website operated by Caicco indicated that:

- (a) Caicco was offering investment products through Advantage Wealth that had not been disclosed to or approved for sale by the Respondent including REITs, MIC offerings and other real estate investments;
- (b) Caicco was engaged in many additional outside business activities that had not been disclosed to or approved by the Respondent such as estate planning, tax services and insurance;

- (c) Caicco was making representations to investors that appeared to promise a guaranteed rate of return on some product offerings; and
- (d) Caicco was using Advantage Wealth as a tradename that had not been approved by the Respondent and without reference to the Respondent's legal name and was communicating with the public (and potentially with clients) in a manner that was not compliant with MFDA Rule 1.1.7(c).

Caicco's Involvement In Off-Book Securities Transactions

The Respondent's Discovery Of Off-Book Trades

23. In or about February 2010, the Respondent discovered that trades had been processed on behalf of individuals for whom no client accounts had been opened with the Respondent. The trades appeared to be connected to Caicco.

24. According to the Respondent, when Caicco was confronted and questioned about this trading activity, Caicco stated that:

- (i) the trades in question had been processed by the financial advisor who previously serviced the investment accounts of these clients at a different dealer;
- (ii) the former advisor had given up his license and referred his clients to Caicco;
- (iii) some of the clients whose accounts were being transferred to the Respondent to be serviced by Caicco had previously purchased and continued to hold products that had not been approved for sale by the Respondent including investments in a Mortgage Investment Corporation ("MIC") called Nautical Lands Group ("Nautical Lands") but Caicco claimed that he had not been involved in the sale of Nautical Lands; and
- (iv) Caicco would arrange for appropriate new account application paperwork to be processed for the new clients in due course.

25. The Respondent has no records of any steps taken to verify or seek corroboration of Caicco's account of the facts by for example:

- (a) obtaining the name of the “former advisor”;
- (b) seeking corroboration of the assertion that someone other than Caicco had processed the impugned trades (e.g.; by contacting the clients or the former advisor);
- (c) requesting a list of the clients who held Nautical Lands or other products that had not been approved by the Respondent as products that could be offered to its clients; or
- (d) conducting otherfurther due diligence to evaluate whether Nautical Lands was a suitable product for its clients to hold.

26. Caicco was told by the Respondent that Approved Persons of the Respondent were not permitted to sell investments in MICs such as Nautical Lands unless they received prior authorization from the Respondent’s head office.

27. The Respondent failed to take any action to:

- (a) determine how many clients serviced by Caicco held exempt products;
- (b) find out how the sale of products (such as Nautical Lands) that had not been approved for sale by the Respondent had come about, what the clients were told about such products and by whom; and
- (c) ensure that the products were suitable for the clients who held them and that the clients were aware of the risks associated with the products.

28. In March 2010, Caicco resigned and ceased to be an Approved Person of the Respondent. In July, 2010, Caicco sold his book of business to KH, another Approved Person of the Respondent.

Trades In Client Accounts That Were Reported By Canadian Western Trust

29. In July 2011, KH was contacted by Canadian Western Trust (“CWT”) and informed that new purchase requests had been received by CWT from the MIC called Nautical Lands for two clients of the Respondent whose accounts were serviced by KH (and previously had been serviced by Caicco). In order to process the requested transactions, CWT requested a letter of authorization from the Respondent which CWT stated that it required prior to processing the requested purchases in order to comply with National Instrument 31-103.

30. The Respondent declined the request for a letter of authorization to CWT to permit the purchase transactions in Nautical Lands to be processed, however, the Respondent did not make any inquiries to determine whether CWT held investments for other clients of the Respondent and did not attempt to reconcile CWT statements listing the investments of its clients with its own records of its clients’ investments.

31. The Respondent conducted some due diligence review on the Nautical Lands investment and decided that it was not a product that the Respondent considered appropriate for its Approved Persons to offer to clients.

32. The Respondent did not conduct a reasonable supervisory investigation to determine, among other things:

- (a) how many clients had invested in the Nautical Lands products or other products that had not been approved for sale by the Respondent;
- (b) whether Caicco or other present or former Approved Persons of the Respondent had facilitated the sale of investments in Nautical Lands or other unapproved products;
- (c) whether investors (including clients of the Respondent) had been offered any other investment opportunities by Caicco or other Approved Persons without the knowledge, authorization and approval of the Respondent;
- (d) how the acquisition of investments in Nautical Lands had initially come about; and

- (e) what action should be taken to address any risks or harm to clients or other individuals who had invested in Nautical Lands or other unapproved investment products as a result of the activities of Approved Persons of the Respondent.

The Respondent's Discovery Of Investments With The Assaly Group

33. On or before January 11, 2012, the Respondent became aware that Caicco, in addition to facilitating investments in the Nautical Lands products, had facilitated investments by clients of the Respondent in projects of the Assaly Group.

34. The Respondent failed to conduct a reasonable supervisory investigation to determine:

- (a) whether all of these investments had been facilitated by Caicco or whether other Approved Persons had also facilitated such investments;
- (b) how many investors (including clients of the Respondent) had made investments in projects of the Assaly Group that had been facilitated by Caicco or other Approved Persons of the Respondent;
- (c) when investments in Assaly Group products facilitated by Caicco or other Approved Persons of the Respondent had been made;
- (d) how much money had been invested in these products as a result of the conduct of Caicco or other Approved Persons of the Respondent;
- (e) how the investments in the Assaly Group projects had come about;
- (f) whether investors (including clients of the Respondent) had been offered any other investment opportunities by Caicco or other Approved Persons without the knowledge, authorization and approval of the Respondent; and
- (g) what action should be taken to address any risks or harm to clients or other individuals who had invested in Assaly Group projects or other unapproved investment products as a result of the activities of Approved Persons of the Respondent.

Newspaper Article Regarding Caicco's Misconduct

35. On or about April 27, 2013, the Ottawa Citizen newspaper published an article in which Caicco was named as the financial advisor who had, between 2009 and 2010, facilitated the investment of approximately \$3.3 million into two real estate development projects promoted by the Assaly Group.

36. When the Respondent became aware of the newspaper article, it reported the information described in the newspaper article to the MFDA by filing a METS report.

37. Subsequently, both the Respondent and the MFDA enforcement department conducted detailed investigations into Caicco's involvement in unauthorized outside business activities and securities related business which later gave rise to the enforcement action against Caicco.

38. By failing to adequately supervise Caicco's involvement in outside business activities and securities related business that was not carried on for the account of the Respondent or processed through the facilities of the Respondent, the Respondent contravened MFDA Rules 1.1.5, 2.5, 2.2.1 and 2.1.1 and MFDA Policy No. 2.

Caicco's Conduct Was Not Known To The Respondent Prior To April 2013

39. Prior to April 2013 when the conduct of Caicco was published in the Ottawa Citizen and subsequently reported to the MFDA by the Respondent, the Respondent:

- (a) did not authorize Caicco or other Approved Persons to sell any of the exempt products that were offered by the Skyline REIT, the Nautical Lands Group or the Assaly Group;
- (b) did not receive any complaints, inquiries or reports from clients about unapproved products that had been sold to the clients by Caicco; and
- (c) was not informed by Caicco or any other individual that Caicco or any other Approved Person of the Respondent had offered or otherwise facilitated the sale of unapproved investments products to clients of the Respondent.

Current Practices

40. Since Caicco ceased to be an Approved Person of the Respondent in March 2010, the Respondent has amended and enhanced its supervisory procedures in several respects including the following:

- (a) the Respondent conducts quarterly reconciliations of assets held by its clients in the accounts of intermediaries such as CWT;
- (b) the Respondent has developed a more robust questionnaire to obtain information about outside business activities engaged in by its Approved Persons;
- (c) the Respondent ensures that trade names used by its Approved Persons are approved by the Respondent and used in a manner that is compliant with MFDA Rule 1.1.7;
- (d) the Respondent conducts annual reviews and internet searches to review the content of websites operated by or referencing its Approved Persons and their trade names to monitor the social media activity of its Approved Persons;
- (e) the Respondent schedules interviews with all of its Approved Persons on a set schedule as part of its branch review process in order to learn about their activities and evaluate compliance with regulatory requirements; and
- (f) the Respondent documents the supervisory steps that it takes to address compliance issues and the results and responses obtained as a result of its supervisory processes more extensively than it did in the past.

V. CONTRAVENTIONS

41. The Respondent admits that between February 2009 and March 2010, the Respondent failed to adequately supervise the activities of former Approved Person, Patrick Caicco to ensure that the Respondent was aware of and had approved all outside business activities that Caicco was engaged in and to ensure that all securities related business that Caicco engaged in was

being conducted for the account of the Respondent and through the facilities of the Respondent, contrary to MFDA Rules 1.1.5, 2.5, 2.1.1 and MFDA Policy No. 2.

42. The Respondent admits that between May 2009 and April 2013, it failed to conduct a reasonable supervisory investigation after receiving information that ought to have raised concerns that Caicco was engaged in unapproved outside business activities and had engaged in securities related business that was not carried on for the account of the Respondent or processed through the facilities of the Respondent, contrary to MFDA Rules 1.1.5, 2.5 and 2.1.1.

VI. TERMS OF SETTLEMENT

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

- (a) the Respondent shall pay a fine in the amount of \$60,000 on the date when this Settlement Agreement is accepted by the Hearing Panel;
- (b) the Respondent shall pay costs to the MFDA in the amount of \$10,000 on the date when this Settlement Agreement is accepted by the Hearing Panel;
- (c) the Respondent shall in the future comply with its supervisory obligations in accordance with MFDA Rules 1.1.5, 2.5 and 2.1.1 and MFDA Policy No. 2;
- (d) a senior officer of the Respondent will attend in person, on the date set for the Settlement Hearing.

VII. STAFF COMMITMENT

44. 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 the facts set out in Part IV and the contraventions admitted to in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and

contraventions set out in Parts IV and 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

45. 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.

46. 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.

47. 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.

48. 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.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

49. 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 section 24.3 of 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. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a hearing panel comprised of all or some of the same members of the hearing panel that accepted the Settlement Agreement, if available.

X. NON-ACCEPTANCE OF SETTLEMENT AGREEMENT

50. 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.

51. 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.

XI. DISCLOSURE OF AGREEMENT

52. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 21st day of December, 2016.

“John Oswald Fisher”

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

“MT”

Witness – Signature

MT

Witness – Print Name

“Shaun Devlin”

Shaun Devlin
Staff of the MFDA
Per: Shaun Devlin
Senior Vice-President,
Member Regulation – Enforcement



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.

ORDER

WHEREAS on [date], 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 Professional Investments (Kingston) Inc. (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (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 on the basis of the admissions made by the Respondent in the Settlement Agreement, the Hearing Panel is of the opinion that:

- a) between February 2009 and March 2010, the Respondent failed to adequately supervise the activities of former Approved Person, Patrick Caicco to ensure that the Respondent was aware of and had approved all outside business activities that

Caicco was engaged in and to ensure that all securities related business that Caicco engaged in was being conducted for the account of the Respondent and through the facilities of the Respondent, contrary to MFDA Rules 1.1.5, 2.5, 2.1.1 and MFDA Policy No. 2; and

- b) between May 2009 and April 2013, it failed to conduct a reasonable supervisory investigation after receiving information that ought to have raised concerns that Caicco was engaged in unapproved outside business activities and had engaged in securities related business that was not carried on for the account of the Respondent or processed through the facilities of the Respondent, contrary to MFDA Rules 1.1.5, 2.5 and 2.1.1.

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

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

1. the Respondent shall immediately pay a fine to the MFDA in the amount of \$60,000, pursuant to section 24.1.2(b) of MFDA By-law No. 1; and
2. the Respondent shall immediately pay costs to the MFDA in the amount of \$10,000, pursuant to section 24.2 of MFDA By-law No. 1.

DATED this [day] day of [month], 20[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

DM 521632 v1