



**Notice of Hearing**

**File No. 200607**

**IN THE MATTER OF A DISCIPLINARY HEARING  
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1  
OF THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Lip Fee Chan (also known as Phillip Chan)**

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**NOTICE OF HEARING**

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**NOTICE** is hereby given that a first appearance will take place by teleconference before a Hearing Panel (the "Hearing Panel") of the Regional Council of the Ontario Region of the Mutual Fund Dealers Association of Canada (the "MFDA"), in the hearing room located at 121 King Street West, Suite 1000, Toronto, Ontario, M5H 3T9 on Tuesday, September 26, 2006 at 10:00 a.m. (Eastern), or as soon thereafter as the hearing can be held, concerning a disciplinary proceeding commenced by the MFDA against Lip Fee Chan a.k.a. Phillip Chan (the "Respondent").

**DATED** at Toronto this 19<sup>th</sup> day of July, 2006.

"Gregory J. Ljubic"

Gregory J. Ljubic  
Corporate Secretary

Mutual Fund Dealers Association of Canada  
121 King St. West  
Suite 1000  
Toronto, Ontario  
M5H 3T9  
Telephone: (416) 943-5836  
Fax: (416) 361-9781  
E-mail: gljubic@mfd.ca

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

**Allegation #1:** Between June 2000 and October 2002, the Respondent engaged in securities related business outside of the accounts and facilities of the Member, by facilitating the participation of a client, WN, in various investments, contrary to MFDA Rule 1.1.1.

**Allegation #2:** In the alternative to Allegation #1, between June 2000 and October 2002, the Respondent engaged in gainful occupation outside the business of the Member without so advising the Member and obtaining approval of the Member, contrary to MFDA Rule 1.2.1(d).

**Allegation #3:** Commencing May 2001, the Respondent failed to invest monies that he received for investment purposes from a client, WN, totaling \$98,000, and in so doing, placed his personal interests above those of his client, WN, contrary to MFDA Rule 2.1.4, and failed to deal fairly, honestly and in good faith with his client, WN, contrary to MFDA Rule 2.1.1(a).

**Allegation #4:** During September 2005, the Respondent offered to settle with a client, WN, without the written consent of the Member and on terms that the settlement between the Respondent and the client would be confidential, contrary to MFDA Policy No. 3 (Handling Client Complaints).

### **PARTICULARS**

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

#### **Registration History**

1. From January 1996 until February 2005, the Respondent was registered as a mutual fund sales representative in Ontario. From September 1999 to February 2005 he

was registered with Investia Financial Services Inc. (“the Member”). Investia became a Member of the MFDA on June 7, 2002.

2. On February 9, 2005, the Respondent was terminated for cause by Investia as a result of complaints arising from the events described herein. The Respondent is not currently registered in the securities industry in any capacity.

### **Outside Securities Business Activity**

3. WN was a client of the Respondent.

4. Between June 2000 and October 2002, the Respondent made investment recommendations and facilitated investments by WN in the total amount of \$477,000, more or less, in investment products that were not mutual funds approved for sale in Ontario and were not known to or approved by the Member. The aforementioned investments were also made outside of the accounts, books and records of the Member. The Respondent earned commissions from the sale of the investments to WN. In the chart below is a summary of the various investments:

<b>Date</b>	<b>Investment Product</b>	<b>Amount</b>
June 2000	Imperial Consolidated	\$20,000
August 2000	Imperial Consolidated	\$30,000
May 2001	Carivest Management	\$52,000
	*Retained by Respondent	\$48,000
October 2001	Carivest Management	\$55,000
April 2002	Bayshore Oil and Gas	\$73,000
May 2002	Bayshore Oil and Gas	\$100,000
	*Retained by Respondent	\$50,000
August 2002	Bayshore Oil and Gas	\$9,040
October 2002	Centurion Developments	\$40,000
<b>TOTAL:</b>		<b>\$477,040</b>
* See paragraphs 10-13		

5. Despite demands by WN, substantially all of the principal amount of \$477,040 remains outstanding.

6. The Respondent engaged in securities related business outside of the accounts and facilities of the Member by facilitating the participation of his client, WN, in the above-referred to investments, contrary to MFDA Rule 1.1.1.

7. Alternatively, by facilitating the participation of his client, WN, in the aforementioned business activities, the Respondent engaged in a gainful occupation without the knowledge or approval of the Member, contrary to MFDA Rule 1.2.1(d)(iii).

### **Retention of Investment Funds From Client**

8. In May of 2001, WN paid to the Respondent by cheque the amount of \$100,000. WN paid that money to the Respondent for the purpose of investment in an investment known as Carivest Management. The Respondent invested \$52,000 of the \$100,000 in Carivest Management. The Respondent failed to invest the remaining \$48,000 (see chart at para. 4).

9. In May of 2002, WN paid to the Respondent by cheque the amount of \$150,000. WN paid that money to the Respondent for the purpose of investment in an investment known as Bayshore Oil and Gas. The Respondent invested \$100,000 of the \$150,000 in Bayshore Oil and Gas. The Respondent failed to invest the remaining \$50,000 (see chart at para. 4).

10. The Respondent admitted that the aforementioned funds totaling \$98,000 were not invested and that he was indebted to WN with respect to same, in the amount of \$98,000.

11. The Respondent preferred his own interest to that of his client, WN, by receiving money for investment purposes and failing to invest said funds, thereby becoming indebted to his client, WN, contrary to MFDA Rule 2.1.4, and further, in so doing, failed to deal fairly, honestly and in good faith with a client, contrary to MFDA Rule 2.11(a).

### **Settlement With WN**

12. On or about September 25, 2005, the Respondent provided to WN a "Letter of Intent", respecting a proposed settlement of the outstanding issues between the Respondent and WN. Among other things, the letter of intent provided the Respondent's

“promise to pay” to WN, the total amount of \$481,040. The “Letter of Intent” also provided that WN would:

*“consent that there will be a publication ban (gag order) on the above agreement and that it is a confidential transaction between two parties.”*

13. The respondent did not seek the consent of the Member to the proposed settlement. The Member did not consent in writing to the proposed settlement.

14. The Respondent, by proposing a settlement without the written consent of the Member, and by proposing confidentiality restrictions on WN, engaged in conduct in breach of the provisions of MFDA Policy No. 3 (Handling Client Complaints).

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

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

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

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

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
  - (i) \$5,000,000.00 per offence; and
  - (ii) an amount equal to three times the profit obtained or loss avoided by such person as a result of committing the violation;
- (c) suspension of the authority of the person to conduct securities related business for such specified period and upon such terms as the Hearing Panel may determine;
- (d) revocation of the authority of such person to conduct securities related business;
- (e) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;
- (f) such conditions of authority to conduct securities related business as may be considered appropriate by the Hearing Panel.

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

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

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

Mutual Fund Dealers Association of Canada  
121 King Street West  
Suite 1000  
Toronto, ON M5H 3T9

Attention: William Donegan  
Fax: (416) 361-9073  
Email: wdonegan@mfd.ca

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

- (a) providing 4 copies of the **Reply** to the Corporate Secretary by personal delivery, mail or courier to:  
  
The Mutual Fund Dealers Association of Canada  
121 King Street West  
Suite 1000  
Toronto, ON M5H 3T9  
Attention: Office of the Corporate Secretary; or
- (b) transmitting 1 copy of the **Reply** to the Corporate Secretary by fax to fax number (416) 361-9781, provided that the Reply does not exceed 16 pages, inclusive of the covering page, unless the Corporate Secretary permits otherwise; or
- (c) transmitting 1 electronic copy of the **Reply** to the Corporate Secretary by e-mail at CorporateSecretary@mfd.ca.

A **Reply** may either:

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

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

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

(a) to **serve** and **file a Reply**; or

(b) attend at the hearing specified in the Notice of Hearing, notwithstanding that a **Reply** may have been served,

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

**End.**