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

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: Thomas G. Arseneau

NOTICE OF HEARING

NOTICE is hereby given that a first appearance will take place by teleconference before a hearing panel (the "Hearing Panel") of the Atlantic Regional Council of the Mutual Fund Dealers Association of Canada (the "MFDA") on February 17, 2012 at 10:00 a.m. (Atlantic), concerning a disciplinary proceeding commenced by the MFDA against Thomas G. Arseneau (the "Respondent"). Members of the public who want to listen to the teleconference should contact Marco Wynnyckyj, MFDA Hearings Coordinator, at 416-945-5146 or mwynnyckyj@mfda.ca to obtain particulars. The Hearing on the Merits will take place in Fredericton, New Brunswick at a time and venue to be announced.

DATED this 22nd day of December, 2011.

"Jason D. Bennett"

Jason D. Bennett
Corporate Secretary

Mutual Fund Dealers Association of Canada
121 King Street West, Suite 1000
Toronto, Ontario
M5H 3T9
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NOTICE is further given that the MFDA alleges the following violations of the By-laws, Rules or Policies of the MFDA:

Allegation #1: In about May 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1 when he falsely reported on a loan application, which he submitted to a lender, that client KA owned a cottage property which she did not in fact own in order to increase the likelihood that the lender would provide an investment loan to client KA.

Allegation #2: Between 2004 and 2007, the Respondent misrepresented, or failed to fully and adequately explain, the risks and benefits of leveraged investment recommendations that he made to at least 20 clients, thereby failing to ensure that the leveraged investment recommendations were suitable and appropriate for clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.

Allegation #3: Between 2004 and 2007, the Respondent failed to ensure that his leveraged investment recommendations were suitable and appropriate for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1, when he made leveraged investment recommendations to:

a) at least 14 clients which were not suitable and appropriate having regard to the relevant "Know Your Client" factors including, but not limited to, the clients' ability to afford the costs associated with the investment loans; and
b) at least 12 clients which were not suitable and appropriate having regard to the requirements regarding the use of leveraging set out in Investia's policies and procedures.

Allegation #4: Between 2004 and 2007, the Respondent relied upon the lender's decision to approve the investment loans for 155 clients as the determination that the leveraging recommendations were suitable for those clients, without performing his own assessment of the suitability of the leveraging recommendations that he made to the clients, contrary to MFDA Rules 2.2.1, 2.5.1 and 2.1.1.

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 May 2005 to December 2009, the Respondent was registered in New Brunswick, Nova Scotia, Ontario, and Quebec as a mutual fund salesperson with Investia Financial Services Inc. ("Investia").

2. The Respondent was terminated by Investia on December 21, 2009 as a result of compliance deficiencies detected by Investia during a review of his business practices in response to client complaints.

3. Prior to his registration with Investia, the Respondent was registered, from March 2000 to May 2005, in New Brunswick as a mutual fund salesperson with Armstrong Financial Services Inc. ("Armstrong"), subsequently renamed Gateway Capital Growth Inc.

4. The Respondent resigned from Armstrong after it became aware that the Respondent had failed to process client trades in a timely manner and had made leveraging recommendations which did not comply with Armstrong's policies and procedures regarding the use of leveraging.

5. The Respondent is not currently registered in the securities industry in any capacity.

Allegation #1 – Falsification of an Asset on a Loan Application

6. On May 31, 2007, the Respondent prepared a loan application for client KA in which client KA applied for a "100% no margin call investment loan" in the amount of $25,000 (the "Loan Application").

7. Client KA was a new client to Investia and had not previously been serviced by the Respondent. At the time the Respondent prepared the Loan Application and NAAF, client KA

was 27 years old, employed seasonally at a golf course as an Assistant Golf Pro, and had an annual income of $36,000. Client KA also had existing outstanding personal loans of $27,000, had a net worth of less than $30,000, and had limited investment knowledge and experience.

8. In the assets section of the Loan Application, the Respondent reported that client KA owned a cottage property worth $63,000. The Respondent submitted, directly or indirectly, the Loan Application to a lender, B2B Trust (the "Lender").

9. At all material times, the Respondent knew that client KA did not own a cottage property or other real estate. The Respondent falsely reported on the Loan Application that client KA owned the cottage property in order to increase her net worth so that client KA would appear more credit worthy to the Lender and the Lender would therefore be more likely to approve the loan.

10. On June 9, 2007, the Lender approved the loan based upon the information contained in the Loan Application and the funds were used to purchase mutual funds for client KA's account.

11. As a result of the foregoing, the Respondent failed to observe the high standards of ethics and conduct in the transaction of business and be of such character and business repute as is consistent with the standards prescribed by MFDA Rule 2.1.1.

Allegation #2 – Misrepresentations and Failure to Explain the Risk and Benefits of Leveraging

a) The Leveraging Investment Strategy

12. Between about 2004 and 2007, the Respondent recommended and facilitated the implementation of a leveraged investment strategy (the "Leveraged Investment Strategy") whereby clients were directed to obtain investment loans in order to purchase return of capital ("ROC") mutual funds which the Respondent represented would generate proceeds for use by the clients.

13. The Leveraged Investment Strategy was based on the premise that the ROC mutual funds

would generate proceeds each month which would be greater than the costs associated with the investment loans, and clients would therefore not incur any out-of-pocket expenses with the respect to the investment loans.

14. To the extent that the proceeds generated by the ROC mutual funds exceeded the monthly costs associated with the investment loans, the excess amounts would be applied to the principal of the investment loans each month in order to pay down the loans on an accelerated basis.

15. In the course of recommending the Leveraged Investment Strategy to clients, the Respondent represented to clients that.

a) the ROC mutual funds could be relied upon to generate proceeds each month which would be sufficient to pay (or greater than) the costs associated with the investment loans;
b) the investment loans would be paid off by the proceeds from the ROC mutual funds in a period of approximately 10-12 years;
c) the ROC mutual funds purchased with the investment loans would continue to grow in value over time and, once the investment loans were repaid, the clients would own the underlying investments which would continue to generate proceeds for use by the clients; and
d) the Leveraged Investment Strategy was low risk

16. As described in greater detail below, the Respondent's representations with respect to the Leveraged Investment Strategy were false, misleading, omitted material information, and failed to fully and adequately explain the risks inherent in the Leveraged Investment Strategy.

b) Implementation of the Leveraging Investment Strategy

17. Relying upon the Respondent's representations, at least 20 clients applied for and obtained investment loans totaling $2,130,000 in order to implement the Leveraged Investment Strategy, as described below:

Client	Lender	Date of Loan	Loan Amount
DD	AGF	March 2006	$50,000
KD and HD	AGF	July 2006	$100,000
TC and JC	AGF	July 2006	$100,000
MF	AGF	June 2006	$25,000
	B2B	August 2007	$30,000
			$55,000
RS and JS	B2B	April 2005	$50,000
	AGF	July 2005	$50,000
	AGF	July 2005	$50,000
	AGF	July 2005	$50,000
			$200,000
MA and JA	B2B	February 2007	$100,000
	B2B	May 2007	$50,000
	B2B	June 2007	$50,000
	B2B	June 2007	$50,000
			$250,000
SA	AGF	February 2006	$50,000
FS and LS	AGF	August 2005	$50,000
KA	B2B	July 2007	$25,000
PL	AGF	February 2006	$50,000
RF and AF	AGF	June 2006	$50,000
	B2B	August 2007	$50,000
			$100,000
JB	B2B	July 2007	$100,000
SP and KP	AGF	May 2005	$50,000
	AGF	July 2005	$50,000
	AGF	July 2005	$50,000
	B2B	September 2006	$50,000
			$200,000
EB and RB	AGF	April 2006	$50,000
	AGF	April 2006	$50,000
			$100,000
DM	AGF	August 2006	$50,000
CB and MB	AGF	November 2005	$50,000
	AGF	November 2005	$50,000
	AGF	November 2005	$50,000
			$150,000
SP and WP	AGF	September 2005	$50,000
	AGF	September 2005	$50,000
			$100,000
RA and AA	B2B	February 2005	$100,000
	AGF	October 2006	$100,000
			$200,000
JP and WP	LOC[1]	2005	$50,000
JK and RK	AGF	November 2005	$50,000

[1] Clients JP and WP used monies available through an existing line of credit ("LOC"), rather than investment loans obtained from B2B or AGF, to implement the Leveraged Investment Strategy.

Client	Lender	Date of Loan	Loan Amount
	AGF	November 2005	$50,000
	AGF	November 2005	$50,000
			$150,000

18. The Respondent recommended to the clients, who agreed with the recommendations, to use the monies borrowed by the clients primarily to purchase ROC mutual funds offered by IA Clarington Investments and Stone & Co.

19. At all material times, the clients deferred substantially, or entirely, to the Respondent's recommendations concerning the Leveraged Investment Strategy.

c) Misrepresentations and Failure to Explain the Risks of the Leveraged Investment Strategy

20. The Respondent's representations with respect to the Leveraged Investment Strategy were false, misleading, omitted material information, and failed to fully and adequately explain the risks inherent in the Leveraged Investment Strategy.

21. First, the Respondent misrepresented, or failed to fully and adequately explain, the risk that the ROC mutual funds might reduce or suspend the payment of proceeds, such that the investments could not be relied upon to pay the costs associated with the investment loans, in the event that the ROC mutual funds failed to generate sufficient returns due to market conditions and other reasons.

22. The ROC mutual funds were structured to pay monthly proceeds to investors which consisted of a return of the capital originally invested by the investors. In the event that the value of the underlying investments declined due to deteriorating market conditions or poor performance such that the amount of the monthly proceeds paid to investors exceeded the increase in the value of underlying investments, there was a real and substantial risk that the ROC mutual funds would be required to reduce, or possibly suspend altogether, the monthly proceeds paid to investors.

23. Commencing in about late 2008, the ROC mutual funds purchased by the clients began to reduce the payment of proceeds. In many instances, the proceeds from the ROC mutual funds

were insufficient to pay the costs associated with the investment loans and clients were forced to incur out-of-pocket expenses to cover the amounts owed.

24. Second, the Respondent misrepresented, or failed to fully and adequately explain, the risk that the reduction or suspension of the payment of proceeds would prevent the investment loans from being repaid in the 10-12 year period described by the Respondent.

25. The investment loans were typically amortized over a period of 20 years. However, the Leveraged Investment Strategy was structured, and recommended to clients on the basis that, the monthly proceeds generated by the ROC mutual funds would be sufficient to repay the loans on an accelerated basis (i.e., 10-12 years). The Respondent did not explain to clients that a reduction or suspension in the payment of proceeds would prevent clients from repaying the loans faster than required or at all.

26. Third, the Respondent misrepresented, or failed to fully and adequately explain, the risk that the ROC mutual funds might decline in value over time, particularly if the clients did not reinvest the proceeds paid to them.

27. The proceeds paid by the ROC mutual funds included a return of the capital originally invested. If the returns from the underlying investments within the ROC mutual fund were not sufficient to meet the proceeds paid, the shortfall would reduce the value of the clients' units and the clients could incur investment losses. This potential problem would be compounded because the clients would be using the proceeds to pay the costs associated with the investment loans or other expenses, rather than reinvesting the proceeds in the ROC mutual funds.

28. At about the same time as the ROC mutual funds reduced or suspended the payment of proceeds in about late 2008, the value of the ROC mutual funds declined, in some cases up to 40 percent.

29. As described above, the Respondent misrepresented, or failed to fully and adequately explain, the risks and benefits of leveraged investment recommendations that he made to at least 20 clients, and thereby failed to ensure that the leveraged investment recommendations were suitable and appropriate for clients and in keeping with their investment objectives, contrary to

MFDA Rules 2.2.1 and 2.1.1.

Allegation #3 – Unsuitable Leveraging Recommendations

30. As described in paragraph 21 above, between 2004 and 2007, the Respondent recommended to at least 20 clients that the clients apply for and obtain one or more investment loans in order to purchase mutual funds.

31. The Respondent's leveraged investment recommendations were not suitable and appropriate for at least 14 of the 20 clients[2] having regard to the relevant "Know Your Client" factors including, but not limited to, the clients' ability to afford the costs associated with the investment loans.

32. In addition, the Respondent's leveraged investment recommendations were not suitable and appropriate for at least 12 of the 20 clients[3] having regard to the requirements regarding the use of leveraging set out in Investia's policies and procedures.

33. At all material times, Investia's policies and procedures stated that leveraging was only suitable for those clients with:

a) investment knowledge of "good" or greater;
b) a time horizon of at least 7 years;
c) a high risk tolerance;
d) growth or aggressive growth objectives;
e) "sufficient" cash flow;
f) debt load (i.e., debt service ratio) of less than 35 percent; and
g) net worth of not less than 60 percent of the leveraged investment.

34. In respect of at least 12 of the 20 clients, the Respondent's leveraging recommendations

[2] This paragraph refers to the following clients: client KA; client SA; clients RA and AA; client JB; clients CB and MB; clients EB and RB; client KD; client BF; clients JK and RK; clients SP and KP; clients WP and JP; clients SP and WP; client FS; clients RS and JS.
[3] This paragraph refers to the following clients : client SA; client KA; client PL; clients RF and AF; client JB; clients EB and RB; client DM; clients CB and MB; clients SP and WP; clients RA and AA; clients JP and WP; and clients JK and RK.

did not meet one or more of the requirements specified in Investia's policies and procedures as follows:

a) in 10 instances, clients had a debt load (i.e., debt service ratio) of more than 35 percent;
b) in 2 instances, clients had a net worth which was less than 60 percent of the leveraged investment;
c) in 3 instances, clients did not have investment knowledge which was "good" or greater; and
d) in 1 instance, the client did not have a time horizon of at least 7 years.

35. By virtue of the foregoing, the Respondent made leveraged investment recommendations to clients without performing the necessary due diligence to learn the essential facts relative to the clients and without ensuring that the leveraged investment recommendations were suitable and appropriate for the clients and in keeping with their investment objectives, contrary to MFDA Rules 2.2.1 and 2.1.1.[4]

Allegation #4 – Relying Upon the Lender to Determine Suitability

36. Between 2004 and 2007, the Respondent recommended to approximately 155 clients, or 65 percent of the clients that he serviced, that they obtain one or more investment loans. Based upon the Respondent's recommendations, these clients applied for, and obtained, about 225 investment loans in the total amount of least $11.5 million for the purchase of mutual funds. The Respondent earned sales commissions in excess of $600,000 from these mutual fund purchases.

37. At all material times, Investia's policies and procedures required its Approved Persons, including the Respondent, to assess and determine whether investment loans were suitable for clients based upon the criteria described in paragraph 33 above.

38. The Respondent admitted during an interview with MFDA Staff that he recommended that clients obtain investment loans without assessing and determining whether the clients satisfied the criteria identified in Investia's policies and procedures.

[4] Investia is the subject of an MFDA proceeding with respect to its supervisory procedures and practices during the period at issue in this proceeding. The proceeding includes an allegation that Investia failed to establish and maintain adequate internal controls, and books and records, pertaining to leveraged accounts.

39. Instead, the Respondent relied upon the lender's decision to approve the loans based upon the lender's review of the credit worthiness of the borrowers. The Respondent did not perform his own assessment of the suitability of the leveraging recommendations from an investment perspective, as he was required to do in accordance with MFDA Rule 2.2.1.

40. In addition, the Respondent recommended that clients apply for loans in increments of $50,000 or less to avoid scrutiny of the client's financial situation by the lenders, and thereby increase the likelihood that the lenders would approve the loans. At all material times, loans of $50,000 or less were subject to an abbreviated review and approval process by the lenders.

41. By virtue of the foregoing, the Respondent failed to perform his own assessment of the suitability of the leveraging recommendations that he made to the clients, contrary to MFDA Rules 2.2.1, 2.5.1 and 2.1.1.

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:

(a) has failed to carry out any agreement with the MFDA;

(b) 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;

(c) has failed to comply with the provisions of any By-law, Rule or Policy of the MFDA;

(d) has engaged in any business conduct or practice which such Regional Council in its discretion considers unbecoming or not in the public interest; or

(e) 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) 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;

e) revocation of the authority of such person to conduct securities related business;

f) prohibition of the authority of the person to conduct securities related business in any capacity for any period of time;

g) 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, Ontario
M5H 3T9
Attention: Charles Toth, Enforcement Counsel
Facsimile: 416-361-9073
Email: ctoth@mfda.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:

   Mutual Fund Dealers Association of Canada

121 King Street West, Suite 1000
Toronto, Ontario
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@mfda.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.

Doc 276802