



**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: Adrian Samuel Leemhuis

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 MFDA By-law No. 1 (the “By-law”), 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, Adrian Samuel Leemhuis.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff conducted an investigation of the Respondent’s activities. The investigation disclosed that the Respondent had engaged in activity for which the Respondent could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of the By-law.

3. Staff and the Respondent recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. The Respondent

agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A”.

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

III. ACKNOWLEDGEMENT

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

IV. AGREED FACTS

Registration History

6. The Respondent has been registered as a mutual fund salesperson in the Province of Ontario and as an officer, director and designated compliance officer of ASL Direct Inc. (“ASL”) since November 18, 1999. He has been registered as a mutual fund salesperson, trading officer and director in the Provinces of British Columbia and Alberta since August 2004 and December 2005 respectively. The Respondent has been the owner and President of ASL since it became a mutual fund dealer. ASL has been a Member of the MFDA since March 4, 2003. The registration of ASL and of the Respondent was suspended by the Ontario Securities Commission (the “OSC”) on May 1, 2008 as a result of a temporary cease trade orders issued against the Respondent and ASL. The registration of the Respondent and of ASL was suspended in British Columbia effective August 7, 2008 and in Alberta effective August 25, 2008.

7. On October 17, 2008, the Respondent submitted a letter to the MFDA on behalf of ASL indicating ASL's intention to resign from membership in the MFDA. ASL did not complete the resignation process.

Regulatory Proceedings

8. On April 22, 2008, the OSC issued a temporary cease trade order against the Respondent and the Future Growth Funds (described below). On May 1, 2008, the OSC issued a temporary cease trade order against ASL. On May 8, 2008, the OSC issued a Statement of Allegations against the Respondent, ASL and the Future Growth Funds in support of an amended notice of hearing to extend the cease trade orders. Between May 2008 and November 2009, the cease trade orders were extended multiple times on consent. On November 6, 2009, the cease trade orders issued against the Respondents were terminated and the OSC's Statement of Allegations against the Respondents was withdrawn.

9. On October 17, 2008, the MFDA Notice of Hearing commencing the disciplinary proceeding that gave rise to this Settlement Agreement was issued and served by Staff.

10. On October 17, 2008, the OSC brought an application for the appointment of a receiver over ASL and by order of the Superior Court of Justice dated November 4, 2008, KPMG Inc. (the "Receiver") was appointed as Receiver without security, over all of the assets and undertaking of ASL pursuant to Section 129 of the *Securities Act*, R.S.O. c. S5 (the "*Ontario Securities Act*").

Financial Compliance Deficiencies

11. From 2003 when ASL became a Member of the MFDA until November 2008 when a Receiver was appointed over ASL, ASL sustained continuous losses and had a consistently increasing retained deficit. ASL was only able to continue operations from a financial perspective during that period as a result of continual subordinated loans from the Respondent which totaled \$766,705 as of March 31, 2008.

12. Between April 30, 2004 and November 4, 2008, ASL frequently triggered early warning tests set out in MFDA Rule 3.4.2(a) for various reasons, including the fact that in some cases ASL did not maintain minimum risk adjusted capital (RAC). Consequently, ASL was designated in early warning during the following periods:

- (a) from April 30, 2004 to June 27, 2006;
- (b) from August 3, 2006 to July 31, 2007; and
- (c) from December 14, 2007 to November 4, 2008 (when the Receiver was appointed).

13. Between June 30, 2003 and April 2008, ASL did not file its financial questionnaires and reports (“FQRs”) on a timely basis 15 times, contrary to MFDA Rules 3.5.1 and 3.4.2(b)(ii)(B). During the same period, ASL was also required to correct and re-submit FQRs on 18 occasions because the FQRs were not appropriately completed.

14. On April 18, 2008, ASL submitted its audited FQR for the year ended December 31, 2007, 12 business days late. As a result of audit adjustments, the calculation of ASL’s RAC according to the audited FQR was \$53,962 lower than the RAC calculation that was submitted on the unaudited FQR for the month ended December 31, 2007. Consequently, ASL had a RAC deficiency of approximately \$42,562 as of December 31, 2007. As of July 3, 2008 when ASL submitted its most recent FQR filing, this capital deficiency had not been rectified. Consequently, ASL did not maintain RAC greater than zero, contrary to MFDA Rule 3.1.1.

15. On April 24, 2008, Staff discovered an unresolved balance in the amount of \$45,629 in ASL’s “trading” trust account. Between April 24, 2008 and November 4, 2008 (when the Receiver was appointed), ASL did not respond to a number of requests from Staff for an explanation of this unresolved balance in its trust account. ASL was required to charge the amount of this unresolved balance against regulatory capital which had the effect of increasing its capital deficiency.

16. When ASL applied for membership in the MFDA in 2003, ASL indicated its intention to be designated as a Level 3 dealer. Level 3 dealers are not permitted to hold

securities in nominee name for the benefit of their clients.¹ Therefore, in support of ASL's request to be designated as a Level 3 dealer, ASL advised Staff that all client accounts that it held in nominee name had been converted into client name and that all new accounts would be registered exclusively in client name.

17. Between 2003 and 2008, on some occasions when it came to ASL's attention that certain securities were held in ASL's nominee name, ASL took steps to have such securities converted into client name. However, ASL did not take sufficient steps to ensure that all client assets that it held in nominee name were converted into client name.

18. In May 2008, after a cease trade order was imposed on ASL by the OSC, Staff discovered that ASL was holding securities in nominee name for the benefit of some of its clients. On May 5, 2008, Staff requested that ASL identify and report the value of all client assets that ASL was holding in nominee name and informed the Respondent and ASL that ASL was required to comply with the minimum capital and insurance requirements of a Level 4 dealer.

19. After its appointment in November 2008, the Receiver identified asset holdings in 71 individual client accounts that remained registered in ASL's nominee name.

20. Between April 21, 2008 when the MFDA was informed by ASL's auditors that ASL was RAC deficient as at the December 31, 2007 year-end and November 4, 2008 when the Receiver was appointed, ASL did not:

- (a) rectify its capital deficiency according to its most recently filed FQR;
- (b) comply with early warning requirements imposed by the MFDA pursuant to MFDA Rule 3.4.2(b)(ii), (v) and (vii);
- (c) confirm in writing, its willingness to comply with restrictions applicable to it pursuant to MFDA Rule 3.4.3 during its designation in early warning; and

¹ MFDA Rules permit only Level 4 dealers to hold securities in nominee name for the benefit of their clients. However, Level 4 dealers are subject to increased financial compliance oversight and reconciliation requirements and are required to maintain (i) a greater amount of minimum capital (\$200,000 rather than \$75,000) in accordance with MFDA Rule 3.1.1 and (ii) increased insurance coverage in accordance with MFDA Rules 4.4.1 and 4.5(b). Level 4 dealers are also subject to more onerous reporting requirements to clients for whom they hold securities in nominee name.

(d) provide information concerning its financial circumstances in response to requests from MFDA Compliance Staff, contrary to s. 22 of the By-law.

21. On July 3, 2008, ASL submitted its FQR for the month ended April 30, 2008, 29 business days late. Between July 3, 2008 and November 4, 2008 when the Receiver was appointed, ASL did not respond to questions from Staff concerning its April 30, 2008 FQR submission and ASL did not file any FQRs to the MFDA for the months following April 2008, contrary to MFDA Rule 3.5.1.

22. In his capacity as President and designated compliance officer of ASL, the Respondent did not ensure that ASL rectified its capital deficiencies, complied with early warning requirements and provided the information concerning its financial circumstances that was requested by Staff.

The Trailer Fee Rebate Program

23. Prior to the appointment of the Receiver in November 2008, ASL offered its clients the opportunity to participate in a trailer fee rebate program (the “TFRP”) by paying a monthly fee of approximately \$29.95 regardless of the size of their investment account at ASL and in return, ASL promised to pay to them or reinvest all trailer fees received by ASL for investments in their accounts (which would ordinarily be compensation for the Member and Approved Person).

24. From approximately July 2006, ASL did not have software that could reliably calculate the amount of trailer fees that were owed to participants in the TFRP. Consequently, between July 2006 and November 2008 when the Receiver was appointed, ASL was unable to make regular quarterly payments and reinvestment of the trailer fees that participants in the TFRP were entitled to receive.

25. ASL did not send a letter to all of its clients explaining the circumstances. However, if clients inquired or complained about unpaid trailer fee rebates, ASL did acknowledge that trailer fee rebates were owing and would be paid when ASL was able to calculate the amounts owed. During the period when trailer fee rebate payments were

suspended, ASL continued charging clients monthly fees to participate in the TFRP, contrary to MFDA Rule 2.1.1.

26. After July 2006 and prior to the appointment of the Receiver in November 2008, ASL did not pay trailer fee rebates to participants in the TFRP except in response to some client inquiries or to resolve client complaints.

27. Prior to the fall of 2007 when Staff first discovered ASL's failure to pay trailer fee rebates to clients, the Respondent and ASL did not:

(a) maintain adequate records with respect to:

(i) the administration of the TFRP;

(ii) its accumulating liability to clients; and

(iii) the basis for the calculations of interim payments of trailer fees to clients who inquired or complained to ASL;

(b) deposit some of the cheques received from fund companies in respect of trailer fees on a timely basis and some cheques became stale-dated; or

(c) take steps to retain required expertise or by other means develop a way to calculate its existing liability to clients and resume regular payment or reinvestment of trailer fees owed to clients in the TFRP;

contrary to MFDA Rules 2.1.1 and 5.

28. In December 2007, ASL entered into an Agreement and Undertaking with the MFDA to secure trailer fees received by ASL in a solicitor's trust account until ASL's liability to clients could be accurately calculated and a system could be implemented to regularly and reliably pay or reinvest trailer fee rebates for clients in the TFRP.

29. Although the Respondent and ASL retained a computer software development company to design software that could reliably calculate the amount of trailer fee rebates that ASL owed to participants in the TFRP, as of November 4, 2008, the software that was developed did not produce accurate and reliable calculations of ASL's TFRP liability.

30. Consequently, on November 4, 2008, the OSC applied for and obtained an order appointing the Receiver. Among other things, as part of its mandate, the Receiver conducted a court supervised claims and distribution process to determine amounts to be paid to participants in the TFRP. As a result of the claims and distribution process, participants in the TFRP were eligible to receive trailer fee rebates owed to them for the period from July 2006 to August 2008.

31. ASL did not have sufficient assets to pay trailer fee rebates owed to clients up to August 2008 after the costs necessitated by the appointment of the Receiver. Consequently, the Receiver had to make a claim against the MFDA Investor Protection Corporation (the “MFDA IPC”) to cover the shortfall.

32. As of May 2009, when the Receiver issued its second report to the Court, the Receiver estimated that \$63,300 would be required from the MFDA IPC to pay 428 admitted trailer fee rebate claims totaling \$776,945.18 after administrative and professional fees necessitated by the appointment of the Receiver were paid. It is anticipated that an additional claim will be made to pay remaining costs associated with discharging the Receiver.

33. The MFDA IPC has not and will not pay any expenses relating to services provided by the Receiver to Staff in connection with this disciplinary proceeding.

Undisclosed Outside Business Activities

34. Commencing not later than March 2003, the Respondent became involved with the operation of the following companies and in some cases served as an officer and/or director of such companies:

- (a) International Financial Capital Limited (“IFCL”);
- (b) International Capital Partners Limited (“ICPL”); and
- (c) Amsterdam Management International Limited (“AMIL”).

35. Commencing not later than March 2003, the Respondent became involved with the operations of off-shore mutual funds called the Future Growth Global Fund Limited

(“FGGF”) and the Future Growth Fund Limited (“FGF”) which was also known as the Future Growth World Fund Limited. On October 16, 2003, the Respondent also established the Future Growth Market Neutral [Equity] Fund Limited (“FGMNF”) (collectively, these three funds are referred to as the “Future Growth Funds”). FGF and the FGGF had been established and operated by the Respondent’s parents prior to his involvement.

36. The Respondent was the sole shareholder of IFCL. The Respondent acquired all of the common shares of FGF and FGGF from the Respondent’s parents. Since the acquisition, the Respondent has been the President of IFCL and the Future Growth Funds and had exclusive authority over the operations of the Future Growth Funds.

37. Prior to the Respondent taking over ownership and control of the Future Growth Funds, the Respondent’s father had selected and appointed a portfolio advisor located in Wilmington, Delaware to assume the primary responsibility for selecting the equity holdings of FGF and FGGF and a British Virgin Island (“BVI”) based Fund Administrator to manage the day to day operations of those funds. The Respondent continued dealing with the portfolio advisor and the Fund Administrator that his father had selected.

38. IFCL is the Investment Manager of FGMNF and initially, assets in FGMNF were primarily invested in the SciVest Offshore Market Neutral Equity Fund. The Respondent appointed the Fund Administrator of FGF and FGGF to assume administrative responsibility for the operations of FGMNF as well.

39. The Respondent’s companies ICPL and AMIL served as the Investment Managers of FGF and FGGF respectively. Subsequently, in 2006, ICPL and AMIL were merged into IFCL.

40. The Respondent:

- (a) oversaw the roles performed by the portfolio advisor² and the Fund Administrator in the administration of the Future Growth Funds;
- (b) established and maintained a Future Growth Funds website;
- (c) directed other third party service providers such as the lawyers and auditors of the Future Growth Funds;
- (d) corresponded with securities regulators such as the BVI Financial Services Commission;
- (e) attended to some of the business requirements of the Future Growth Funds from the ASL office such as correspondence and telephone calls; and
- (f) received management fees paid out by the Future Growth Funds.

41. The Respondent did not report his involvement with any companies other than ASL to Canadian securities regulators, including on the National Registration Database (the “NRD”) and on the Form 33-109F4 document that was submitted in respect of his registration, contrary to his obligations under National Instrument 33-109.

42. The Respondent also failed to properly document information about his involvement in outside business activities on the books and records of ASL contrary to MFDA Rules 1.2.1(d) and 2.1.1(c).

43. During the course of Staff’s investigation into the Respondent’s conduct, Staff discovered documents that revealed the Respondent’s involvement with the companies described above including documents that appeared to indicate that units in the Future Growth Funds were owned by Canadian investors. Staff informed the securities commissions in jurisdictions in which Canadian unit holders of the Future Growth Funds appeared to reside which led to regulatory action including the proceedings described in paragraph 8 above.

² In the case of FGF and FGGF

44. Since Staff discovered the existence of the Future Growth Funds, Staff has not identified any ASL clients who appear to be investors in the Future Growth Funds³ and Staff has not received or been informed of any complaints from investors in the Future Growth Funds.

45. The Respondent states that:

- (a) most of the investors in the Future Growth Funds acquired their investments when the funds were owned and operated by the Respondent's parents and when the investors resided in jurisdictions outside of Canada; and
- (b) since the Respondent became involved with the Future Growth Funds, transactions in the funds have been processed by the Fund Administrator in the BVI and have mostly consisted of redemptions.

Compliance Deficiencies

46. As the President and designated compliance officer of ASL, the Respondent was the primary individual responsible for supervision and regulatory compliance of ASL and he is accountable for ASL's failure to satisfy its regulatory obligations.

Trade Supervision

47. Between January 2004 and May 2006, ASL did not maintain evidence of trade supervision contrary to MFDA Rules 2.5 and 5 and MFDA Policy No. 2 including in particular, records of any inquiries made, responses received or follow up action taken in connection with trade supervision.

48. During the 2006 MFDA Sales Compliance Examination of ASL, MFDA Compliance Staff reviewed ASL records covering the period from January 2004 to May 2006. Among the 60 ASL daily trading summary reports that were reviewed:

- (a) 21 contained no evidence of daily trade supervision and suitability review;

³ With the exception of Sarah Cunynghame (Leemhuis), the Respondent's mother.

- (b) 22 of the trading summary reports were signed by a compliance officer but were not dated;
- (c) None contained evidence of inquiries made, responses received or follow up action taken in connection with trading shown on the reports.

49. Similar deficiencies were identified in the 2003 Sales Compliance Examination of ASL but the Respondent and ASL did not correct the deficiencies.

New Accounts

50. During the 2006 MFDA Compliance Examination of ASL, MFDA Compliance Staff examined 60 client files in which trading had occurred between January 2004 and May 2006 and identified:

- (a) 13 client accounts for which there was no NAAF on file;
- (b) 24 client files with missing or incomplete KYC information; and
- (c) 4 NAAFs that had not been signed and dated by the client,

contrary to MFDA Rules 2.2.1 and 2.2.2; and

- (d) 6 NAAFs that contained no evidence of review or approval by a compliance officer, contrary to MFDA Rules 2.2.3 and 5 and MFDA Policy No. 2.

51. Similar deficiencies were identified in the 2003 MFDA Sales Compliance Examination of ASL but the Respondent and ASL did not correct the deficiencies.

Securities Related Business Conducted By A Non-Registrant

52. Between the summer of 2004 and September 2007, the Respondent and ASL permitted an individual named Anil Jain to conduct securities related business for clients of ASL without registration contrary to MFDA Rule 1.1.5(a).

Trust Account Interest

53. The Respondent and ASL did not implement a system to calculate or pay interest earned on client money held in ASL's mutual fund trust account contrary to MFDA Rule 3.3.2(h), MFDA Policy No. 4 and National Instrument 81-102.

54. This deficiency was identified during the 2003 and 2006 MFDA Sales Compliance Examinations of ASL but the Respondent and ASL did not correct the deficiencies.

Referral Arrangements

55. On behalf of ASL, the Respondent entered into referral arrangements with third party entities such as Maypoint Investments Inc. and Kenartha Oil & Gas which were not permitted arrangements because the companies were not licensed, registered or regulated entities eligible to be parties to a referral arrangement with an MFDA Member according to MFDA Rule 2.4.2(b)(i).

Timely Processing Of Trades & Approval Of New Accounts

56. Between June and December 2007, on at least 15 occasions, the Respondent and ASL did not process trades for its clients to purchase securities in a timely manner contrary to National Instrument 81-102 and MFDA Policy No. 2. 12 of the 15 purchase orders were processed between 7 and 17 days after the order was placed and in one of those cases, the note offering closed before the purchase order was processed.

57. Between July 2007 and January 2008, on at least 6 occasions, the Respondent and ASL did not process redemptions for its clients on a timely basis contrary to National Instrument 81-102 and MFDA Policy No. 2. These redemption requests were processed between 5 and 17 days after the requests were made.

V. CONTRAVENTIONS

58. The Respondent admits that, in his capacity as the President and Chief Compliance Officer of ASL, he did not operate ASL in a compliant manner in accordance with its regulatory obligations as particularized below:

(a) commencing in March 2003, ASL did not comply with the requirements of a Level 3 dealer to:

- (i) consistently maintain minimum capital and risk adjusted capital; and
- (ii) convert all client assets that it held in nominee name into client name; contrary to MFDA Rule 3.1.1;

(b) commencing in March 2004, ASL did not:

- (i) consistently maintain RAC and frequently triggered early warning tests set out in MFDA rule 3.4.2(a); and
- (ii) file monthly and annual financial questionnaires and reports on a timely basis as required by MFDA Rule 3.5.1;

(c) commencing in April 2008, ASL did not:

- (i) comply with early warning requirements that were applicable pursuant to MFDA Rule 3.4.2(b); and
- (ii) respond to requests for information from the MFDA Compliance Department concerning its financial circumstances, contrary to s. 22 of the By-law;

(d) the Respondent and ASL did not maintain adequate records of trade supervision, contrary to MFDA Rules 2.5 and 5 and MFDA Policy No. 2;

(e) the Respondent and ASL permitted trading by mutual fund clients of ASL without first obtaining appropriately completed and approved New Account Application Forms (“NAAF”) for such clients, contrary to MFDA Rule 2.2;

- (f) between the summer of 2004 and September 2007, the Respondent and ASL permitted an unregistered individual named Anil Jain to conduct securities related business for clients of ASL, contrary to MFDA Rule 1.1.5(a);
 - (g) the Respondent and ASL did not implement a system to properly distribute on a cash basis, interest earned in the Member's mutual fund trust account contrary to MFDA Rule 3.3.2(h), MFDA Policy No. 4 and National Instrument 81-102;
 - (h) the Respondent and ASL engaged in referral arrangements that did not comply with MFDA Rule 2.4.2(b); and
 - (i) the Respondent and ASL failed to process trade orders on a timely basis, contrary to National Instrument 81-102 and MFDA Policy No. 2;
- and thereby engaged in conduct contrary to MFDA Rules 2.1.1(c) and 2.5.1

59. The Respondent admits that commencing in July 2006, the Respondent and ASL did not maintain sufficient records or properly administer a trailer fee rebate program for which clients were charged monthly fees and prior to the appointment of a Receiver in November 2008, the Respondent and ASL did not accurately quantify its liability to clients or pay trailer fee rebates that were owed for periods after July 2006, contrary to MFDA Rules 2.1.1 and 5.

60. The Respondent admits that between March 2003 and April 2008, the Respondent was engaged in outside business activities that were not disclosed in Form 33-109F4 or on the National Registration Database ("NRD") as required, contrary to MFDA Rules 1.2.1(d), 2.1.1(c) and National Instrument 33-109.

VI. TERMS OF SETTLEMENT

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

- (a) The Respondent shall pay a fine in the amount of \$50,000;
- (b) The Respondent shall be prohibited from being registered or acting in the capacity of Ultimate Designated Person, Chief Compliance Officer, Compliance Officer or

Branch Manager for a Member of the MFDA for a period of 5 years from the date that this Settlement Agreement is accepted by a Hearing Panel of the MFDA;

- (c) The Respondent shall pay costs in the amount of \$25,000;
- (d) The Respondent agrees that the fine and costs shall be payable as follows:
 - (i) \$25,000 of the fine and \$25,000 in costs shall be payable immediately upon acceptance of the Settlement Agreement; and
 - (ii) the remaining \$25,000 of the fine shall be paid on or before Friday, October 22, 2010;
- (e) The Respondent agrees that if he fails to pay all or part of the fine by the date when it is due in accordance with sub-paragraph 61(d) above, then automatically and without further notice, and without Staff having to again appear before a Hearing Panel or commence any further proceeding, the Respondent 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; and
- (f) The Respondent agrees that notwithstanding the imposition of a permanent prohibition on the Respondent in accordance with sub-paragraph 61(e) above, the Respondent shall remain required to pay the outstanding unpaid portion of the fine.

VII. STAFF COMMITMENT

62. 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 in respect of the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

63. 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.

64. 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 his 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.

65. 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 the By-law for the purpose of giving notice to the public thereof in accordance with s. 24.5 of the By-law.

66. 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 him.

IX. FAILURE TO HONOUR SETTLEMENT AGREEMENT

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

68. 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 the By-law, unaffected by this Settlement Agreement or the settlement negotiations.

69. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that he 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

70. 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.

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

XII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: Friday, April 16, 2010

“Ari Kulidjian”

Witness - Signature

“Adrian Leemhuis”

Adrian Samuel Leemhuis

Ari Kulidjian

Witness - Print name

“Mark Gordon”

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

DM 189929



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: Adrian Samuel Leemhuis

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 MFDA By-law No. 1 in respect of Adrian Samuel Leemhuis (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated Friday, April 16, 2010 (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 UPON READING the Settlement Agreement, the Notice of Settlement Hearing, the previously issued Amended Amended Notice of Hearing, the written submissions of Staff of the MFDA and upon hearing the oral submissions of Staff of the MFDA and counsel for the Respondent;

AND WHEREAS the Hearing Panel is of the opinion that:

The Respondent, in his capacity as the President and Chief Compliance Officer of ASL, did not operate ASL in a compliant manner in accordance with its regulatory obligations as particularized below:

- (a) commencing in March 2003, ASL did not comply with the requirements of a Level 3 dealer to:
 - (i) consistently maintain minimum capital and risk adjusted capital; and
 - (ii) convert all client assets that it held in nominee name into client name;contrary to MFDA Rule 3.1.1;
- (b) commencing in March 2004, ASL did not:
 - (i) consistently maintain RAC and frequently triggered early warning tests set out in MFDA rule 3.4.2(a); and
 - (ii) file monthly and annual financial questionnaires and reports on a timely basis as required by MFDA Rule 3.5.1;
- (c) commencing in April 2008, ASL did not:
 - (i) comply with early warning requirements that were applicable pursuant to MFDA Rule 3.4.2(b); and
 - (ii) respond to requests for information from the MFDA Compliance Department concerning its financial circumstances, contrary to s. 22 of MFDA By-law No. 1;
- (d) the Respondent and ASL did not maintain adequate records of trade supervision, contrary to MFDA Rules 2.5 and 5 and MFDA Policy No. 2;
- (e) the Respondent and ASL permitted trading by mutual fund clients of ASL without first obtaining appropriately completed and approved New Account Application Forms (“NAAF”) for such clients, contrary to MFDA Rule 2.2;
- (f) between the summer of 2004 and September 2007, the Respondent and ASL permitted an unregistered individual named Anil Jain to conduct securities related business for clients of ASL, contrary to MFDA Rule 1.1.5(a);

(g) the Respondent and ASL did not implement a system to properly distribute on a cash basis, interest earned in the Member's mutual fund trust account contrary to MFDA Rule 3.3.2(h), MFDA Policy No. 4 and National Instrument 81-102;

(h) the Respondent and ASL engaged in referral arrangements that did not comply with MFDA Rule 2.4.2(b); and

(i) the Respondent and ASL did not process trade orders on a timely basis, contrary to National Instrument 81-102 and MFDA Policy No. 2.

and thereby engaged in conduct contrary MFDA Rules 2.1.1(c) and 2.5.1.

AND WHEREAS the Hearing Panel is of the opinion that commencing in July 2006, the Respondent and ASL failed to maintain sufficient records or properly administer a trailer fee rebate program for which clients were charged monthly fees and prior to the appointment of a Receiver in November 2008, the Respondent and ASL did not accurately quantify its liability to clients or pay trailer fee rebates that were owed for periods after July 2006, contrary to MFDA Rules 2.1.1 and 5.

AND WHEREAS the Hearing Panel is of the opinion that between March 2003 and April 2008, the Respondent was engaged in outside business activities that were not disclosed in Form 33-109F4 or on the National Registration Database ("NRD") as required, contrary to MFDA Rules 1.2.1(d), 2.1.1(c) and National Instrument 33-109.

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

1. The Respondent shall pay a fine in the amount of \$50,000, pursuant to section 24.1.1(b) of MFDA By-law No. 1.
2. The Respondent is prohibited from being registered or acting in the capacity of Ultimate Designated Person, Chief Compliance Officer, Compliance Officer or Branch Manager for a Member of the MFDA for a period of 5 years from the date that this Order , pursuant to section 24.1.1(e) of MFDA By-law No. 1.

3. The Respondent shall pay costs of the investigation and prosecution in the amount of \$25,000, pursuant to section 24.2 of MFDA By-law No. 1.
4. The fine and costs prescribed in this Order are payable as follows:
 - (a) \$25,000 of the fine and \$25,000 in costs is payable immediately; and
 - (b) \$25,000 of the fine shall be paid on or before Friday, October 22, 2010.
5. If the Respondent fails to pay all or part of the fine by the date when it is due in accordance with paragraph 4 of this Order, then the unpaid portion of the fine shall remain payable in accordance with this Order and in addition, automatically and without further notice, and without Staff having to again appear before a Hearing Panel or commence any further proceeding, the Respondent 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 this [day] day of [month], 200[].

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]

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