



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 Investment Services (Canada) Inc.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Settlement Hearing dated October 6, 2009, the Mutual Fund Dealers Association of Canada (the “MFDA”) announced that it proposed to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the MFDA Prairie Regional Council (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and the Respondent, Professional Investment Services (Canada) Inc. (“PIS Canada”).

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 paragraph 55) 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

PART A – REGISTRATION HISTORY

6. PIS Canada (formerly Generation Financial Corp. (“Generation”)) is registered in the provinces of Alberta, British Columbia, Manitoba, Northwest Territories, Ontario and Saskatchewan as a mutual fund dealer and in Ontario as a limited market dealer. Generation became a Member of the MFDA on June 7, 2002.

7. On November 2, 2006, Generation was acquired by Professional Investment Holdings (Canada) Inc. (“PIS Parent”). Generation was renamed PIS Canada at that time.

8. On July 14, 2009 PIS Parent submitted a request to the MFDA and relevant securities commissions in Canada seeking approval for the sale of PIS Canada to another Canadian mutual fund dealer (the “Acquiring Dealer”).

PART B – HISTORY OF EVENTS

First Round Compliance Examination

9. In August 2004, Staff completed a compliance examination of Generation (the “2004 MFDA Examination”) for the period February 1, 2003 to January 31, 2004. The findings of the 2004 MFDA Examination were reported to Generation in the MFDA Compliance Examination Report dated August 25, 2004, and included the following areas in which Generation’s policies, procedures and practices were deficient:

- (a) The branch review program;
 - (b) Amendments to Know-Your-Client (“KYC”) information;
 - (c) Accuracy of KYC information;
 - (d) KYC and suitability information;
 - (e) Account supervision; and
 - (f) Approval of new accounts
- (referred to collectively as the “Deficiencies”).

Second Round Compliance Examination

10. In the summer of 2006, Staff conducted a compliance examination of Generation (the “2006 MFDA Examination”) for the period February 1, 2004 to April 30, 2006. The findings of the 2006 MFDA Examination were reported to PIS Parent (which by then had closed its purchase of Generation) in the MFDA Compliance Examination Report dated November 14, 2006 (the “2006 Report”).

11. The 2006 Report identified, among other deficiencies, that the Deficiencies that were previously identified in the 2004 MFDA Examination had not been resolved.

12. Staff referred the results of the 2006 MFDA Examination to the MFDA Enforcement Department for possible disciplinary action.

Agreement and Undertaking

13. In March 2007, in consideration of the MFDA foregoing disciplinary proceedings in respect of the Deficiencies, PIS Canada signed an Agreement and Undertaking with the MFDA pursuant to which PIS Canada agreed to resolve the Deficiencies (the “Agreement and Undertaking”). Under the terms of the Agreement and Undertaking, PIS Canada agreed to:

- (a) develop and implement a plan to remedy the Deficiencies (the “2007 PIS Plan”); and
- (b) retain an independent consultant at its own expense to determine whether the Deficiencies had been rectified, identify any new or continuing deficiencies, and report its findings to the MFDA.

14. In March 2007, PIS Canada retained PricewaterhouseCoopers (“PwC”) as its independent consultant to test the implementation of the 2007 PIS Plan. On October 26, 2007, Staff received the final draft of the 2007 PIS Plan developed by PIS Canada to remedy the Deficiencies.

15. PwC completed its testing in January 2008 and reported its findings to Staff on February 29, 2008 (the “PwC Report”). The PwC Report also included PwC’s recommendations on actions PIS Canada should take to resolve the Deficiencies.

16. PwC’s testing revealed that while significant improvements had been made in the compliance structure and processes the Deficiencies remained unresolved. PIS Canada had therefore failed to fully carry out the terms of the Agreement and Undertaking.¹

¹ Under the terms of the Agreement and Undertaking, PIS Canada was also required to take steps to address deficiencies other than the Deficiencies. Those deficiencies were resolved by PIS Canada to the satisfaction of Staff of the MFDA.

2009 Compliance Examination

17. After receiving the results and recommendations from PwC's testing, PIS Canada took additional steps towards resolving the Deficiencies and implementing PwC's recommendations, and advised Staff that it was doing so. Amongst the steps taken by PIS Canada was the retention of Ernst & Young ("E&Y"), over Staff's expressed concerns, to assist it in developing and implementing a revised plan to remedy the deficiencies identified in the PwC Report. Prior to hiring E&Y, Staff cautioned PIS Canada that E&Y did not have personnel with the requisite familiarity with MFDA requirements to resolve the Deficiencies. PIS Canada paid E&Y \$144,600 for this retainer.

18. On January 13, 2009, Staff commenced a compliance examination of PIS Canada (the "2009 MFDA Examination"). Staff reviewed PIS Canada's business for the period September 1, 2008 to December 31, 2008. The findings of the 2009 MFDA Examination were reported to PIS Canada in the MFDA Compliance Examination Report dated June 5, 2009 (the "2009 Report").

19. The 2009 Report identified, among other deficiencies, that the Deficiencies had still not been fully resolved.

PART C – DESCRIPTION OF THE UNRESOLVED DEFICIENCIES

(i) Inadequate Branch Review Program

20. The 2006 MFDA Examination of Generation identified that internal audits of all Approved Persons had not been conducted and an adequate branch review program was not in place. Deficiencies were found, among other deficiencies, in the following areas:

- i. Interviews with branch supervisors and Approved Persons were not being conducted;
- ii. Trade blotters and other supervisory review documentation were not being reviewed;

- iii. Sales communications, advertising and client communications were not being reviewed to confirm that any required approvals had been obtained; and
 - iv. Client complaints were not being reviewed to confirm that they had been recorded and handled in accordance with Generation's procedures and MFDA By-laws, Rules and Policies nor were the nature of the complaints, the timeliness and fairness of resolutions being assessed.
21. In response, PIS Canada provided in the 2007 PIS Plan that:
- i. A compliance auditor would be hired;
 - ii. Audits would begin in April 2007; and
 - iii. Audit program notes and reports would be provided to compliance, branch managers and Approved Persons.
22. PwC's 2008 testing revealed that:
- i. PIS Canada hired a compliance auditor in March 2007;
 - ii. The updated audit procedures template was inadequate in some respects and was not always being adhered to by PIS Canada in that:
 - o the audit procedures did not assess the adequacy of branch manager supervision;
 - o the audit procedures were focused only on Approved Persons and did not include any detailed testing of trades for proper client instructions or timeliness of processing;
 - o deficiencies identified in the working paper files were not always identified in the audit reports;
 - o the compliance auditor was not always reviewing the requisite number of client files; and
 - o branch managers were not provided with copies of the audit reports.
23. The 2009 MFDA Examination identified that this deficiency had not been fully resolved, in that the Respondent had not audited the activity of the branch supervisors.

(ii) Inadequate Review of Amendments to KYC Information

24. The 2006 MFDA Examination identified that amendments to KYC information (KYC update forms) were not in all instances approved by Generation's supervisory staff.

25. In response, PIS Canada provided in the 2007 PIS Plan that:

- i. WebConnect (which, along with Univeris, is part of PIS's back office system) work queues would be reviewed for the timeliness of branch manager reviews of KYC update documentation;
- ii. branch managers would be assigned to other branch managers for account and trade review purposes; and
- iii. branch managers would print and review Univeris reports on KYC updates daily and keep a signed copy as evidence of the review for branch audits.

26. However, PwC's 2008 testing revealed that:

- i. branch managers were not reviewing KYC update reports daily;
- ii. updated accounts were in some instances missing mandatory KYC information; and
- iii. the branch audits did not assess the adequacy of branch manager supervision.

27. The 2009 MFDA Examination identified that this deficiency had not been fully resolved, in that amendments to KYC information did not require client authorization and supervisory reviews of amendments did not include an assessment of whether or not the changes were reasonable or in line with account holdings.

(iii) Failure to Ensure Accuracy of KYC Information

28. The 2006 MFDA Examination identified client files in which the KYC information on Generation's back office system did not correspond to the KYC information in the client file.

29. In response, PIS Canada provided in the 2007 PIS Plan that:
- i. a Univeris report on changes to KYC information would be produced;
 - ii. NAAF and KYC update forms would be re-designed to match the Univeris entry screen;
 - iii. PIS Canada would hire staff to review KYC forms on WebConnect, update KYC information on Univeris and maintain a record of the clients with KYC updates which would then be compared to PIS Canada's complete client list;
 - iv. branch managers would review the Univeris reports daily and keep a signed copy as evidence of the review for branch audits;
 - v. clients would be sent a copy of the updated KYC information for review.

30. PwC's 2008 testing revealed that:
- i. branch managers were not reviewing KYC update reports daily;
 - ii. in some instances, client files contained KYC forms that were not signed and/or KYC information that did not correspond to the KYC information on Univeris; and
 - iii. the branch audits did not assess the adequacy of branch manager supervision.

31. The 2009 MFDA Examination identified that this deficiency had not been fully resolved, in that there were no procedures in place to reconcile the accuracy of KYC information between the client file and Univeris.

(iv) Inadequate KYC and Suitability Information

32. The 2006 MFDA Examination of Generation identified client files with missing and/or incomplete KYC information forms.

33. In response, PIS Canada provided in the 2007 PIS Plan that it would obtain from WebConnect a report on the clients that do not have NAAFs and/or KYC information

forms and direct its Approved Persons to obtain current KYC information forms from these clients and update the report.

34. PwC's 2008 testing revealed that a letter regarding client files with inadequate KYC information forms was delivered to PIS Canada's Approved Persons in January 2008, but there was no evidence of further correspondence or action on the issue.

35. While this deficiency was not as prevalent as it had been when identified in the 2006 MFDA Examination, it had not been fully resolved at the time of the 2009 MFDA Examination, in that accounts were found without NAAFs on file and with incomplete KYC information on file.

(v) Inadequate Account Supervision

36. The 2006 MFDA Examination of Generation identified:

- i. over 1000 trades queued in WebConnect for suitability review by head office that should have been reviewed within one day had gone unreviewed for several months;
- ii. approximately half of Approved Persons reported directly to the Chief Compliance Officer and were only subject to one level of supervision; and
- iii. trades where there was no evidence of trade supervision by the branch manager.

37. To address these deficiencies, PIS Canada provided in the 2007 PIS Plan that:

- i. PIS Canada would confirm quarterly that information concerning the branches and branch managers on the National Registration Database ("NRD"), Univeris and WebConnect all correspond and retain a report from each system;
- ii. Branch managers would receive a quarterly report on the Approved Persons that they were supposed to be supervising and would notify head office of any discrepancies;

- iii. Head office compliance would review the WebConnect work queues daily to ensure that branch managers were reviewing trades on a timely basis and contact the branch manager if it did not appear that it was being done; and
 - iv. Head office compliance would review daily reports on off-book trades, trade blotter exceptions, transactions resulting in large dollar commissions and compliance warnings and infractions; and retain copies of the reports and notes of any follow up required.
38. PwC's 2008 testing identified that:
- i. head office was reviewing work queues daily;
 - ii. PIS Canada reconciled NRD, Univeris and WebConnect, but did not keep any documentary evidence;
 - iii. in some instances, information regarding Approved Persons on NRD, Univeris and WebConnect did not correspond;
 - iv. there was no evidence of trade supervision being conducted by head office. PIS Canada advised PwC that head office exception reports were reviewed daily, but there were no copies of the reviewed reports retained;
 - v. daily reports did not include off-book trades or trades with compliance warnings or infractions;
 - vi. in some instances, trade blotters were not signed and/or reviewed on a timely basis;
 - vii. WebConnect did not track who approved the document or when it was approved;
 - viii. the maintenance of follow up documentation was inconsistent; and
 - ix. branch managers were not providing head office with confirmation that they had completed their responsibilities on a monthly basis, as required by PIS Canada's procedures.
39. The 2009 MFDA Examination identified that the Respondent was not reviewing off-book trade blotters in detail and not reviewing redemptions.

(vi) Improper Approval of New Accounts

40. The 2006 MFDA Examination of Generation identified:
- i. new accounts that were not approved in a timely manner; and
 - ii. new accounts that were opened without approval from a branch manager or head office.
41. In response, PIS Canada proposed in the 2007 PIS Plan that:
- i. head office compliance would review WebConnect work queues daily to ensure that branch managers were reviewing NAAFs in a timely manner and would contact branch managers that were failing to do so; and
 - ii. WebConnect would record when branch managers reviewed and approved (or rejected) a NAAF.
42. PwC's 2008 testing revealed that:
- i. WebConnect did not record who reviewed and approved (or rejected) a NAAF or when it was done;
 - ii. notes on account approvals or rejections were not available on WebConnect;
 - iii. in some instances, accounts were approved with incomplete KYC information;
 - iv. in some instances, trades were processed in accounts that were rejected;
 - v. an account was approved without obtaining a signature from the client;
 - vi. Approved Persons had access to open accounts on Univeris without head office assistance and did not receive notifications of account application approvals or refusals, and as a result trades were processed in accounts that had been refused; and
 - vii. all new accounts were reviewed by branch managers while head office monitored the branch manager work queue to ensure that the branch managers did not fall behind.

43. While this deficiency was not as prevalent as it had been when identified in the 2006 MFDA Examination, it had not been fully resolved at the time of the 2009 MFDA Examination in that accounts had been opened without evidence of written approval and accounts had been signed but not dated by the compliance officer or the branch manager.

(vii) Mitigating Facts

44. PIS Canada has cooperated fully with the MFDA's investigation of the matters that form the subject-matter of the Notice of Hearing.

45. At the time of the acquisition of Generation by PIS Parent in November 2006, the Deficiencies were wholly unresolved both in terms of the development of policies and procedures to address the Deficiencies and the implementation of those policies and procedures. Since that time, PIS Canada has expended time, money and effort in an attempt to rectify the Deficiencies. Those efforts included:

- i. the retention of E&Y at a cost of \$144,600;
- ii. the hiring of new compliance personnel; and
- iii. the implementation of system changes and additional controls.

46. Despite these efforts to resolve the Deficiencies and some improvements that resulted, the Deficiencies remain.

V. CONTRAVENTIONS

47. The Respondent admits that it failed to fully carry out the terms of the Agreement and Undertaking, thereby engaging the authority of the Hearing Panel to impose a penalty on the Respondent pursuant to section 24.1.2 of By-law No. 1.

48. The Respondent admits that between March 2007 and December 2008:
- i. It failed to establish, implement and maintain an adequate branch review program, contrary to MFDA Policy No. 5;

- ii. It failed to review and approve at all or in a timely manner amendments to KYC information, contrary to MFDA Rule 2.2.4 and MFDA Policy No. 2;
- iii. It failed to ensure that the KYC information on the back office system corresponded to the KYC information in the client files, contrary to MFDA Rule 2.2.1;
- iv. It failed to maintain or complete KYC information on client accounts, contrary to MFDA Rule 2.2.1;
- v. It failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to ensure that branch managers were supervising trading activity at the branch office level and failed to retain sufficient evidence of the review of the suitability of client trading activity, contrary to MFDA Rule 2.5 and MFDA Policy No. 2; and
- vi. It failed to review and approve at all or in a timely manner the opening of new client accounts and maintain evidence of such review and approval, and permitted trading in such accounts, contrary to MFDA Rules 2.2.3, 2.5.3 and MFDA Policy No. 2.

VI. TERMS OF SETTLEMENT

49. The Respondent agrees to the following terms of settlement:
- i. The Respondent shall pay a fine in the amount of \$50,000, pursuant to section 24.1.2(b) of By-law No. 1;
 - ii. The Respondent shall retain an independent monitor at the Respondent's expense and in accordance with the terms set out in Schedule "B" to resolve, in all material respects:
 - (i) the Deficiencies;
 - (ii) all other compliance deficiencies identified in the 2009 Report; and
 - (iii) any deficiencies that the independent monitor identifies during its review;pursuant to section 24.1.2(g) of By-law No. 1;

- iii. The Respondent shall pay \$200,000 to PwC as a retainer with such payment to be over and above the \$50,000 already paid by the Respondent to PwC. The retainer is to be applied towards, and used exclusively for the purposes of, paying PwC for services rendered in its capacity as the monitor. Nothing herein is intended to cap or limit the fees charged by PwC or the scope of work to be performed by PwC, which is set out in the Terms of the Independent Monitor attached as Schedule “B” hereto;
- iv. The Respondent shall pay the costs of this investigation and proceeding in the amount of \$25,000, pursuant to section 24.2 of By-law No. 1; and
- v. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.2.3, 2.2.4, 2.5 and MFDA Policies No. 2 and No. 5.

VII. COMMITMENTS

50. 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 any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 55 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

51. Acceptance of this Settlement Agreement shall be sought at a hearing of the Prairie Regional Council of the MFDA on a date agreed to by counsel for Staff and the Respondent.

52. 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.

53. 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.

54. 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.

55. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to comply with any of the terms of the Settlement Agreement, including the *Terms of the Independent Monitor*, 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.

56. 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.

57. Whether or not this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available

IX. DISCLOSURE OF AGREEMENT

58. 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.

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

X. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated: October 6, 2009

“James Wahl”

Witness – Signature

“Kenneth Rouselle”

Professional Investment Services (Canada) Inc.
Per: Kenneth Marcel Rouselle, President
and Chief Executive Officer

“Mark Gordon”

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



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 Investment Services (Canada) Inc.

ORDER

WHEREAS on October 6, 2009, 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 Investment Services (Canada) Inc. (the "Respondent");

AND WHEREAS the Respondent entered into a settlement agreement with Staff of the MFDA, dated October 6, 2009 (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 By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that it is appropriate to abridge the time for giving notice of the settlement hearing;

AND WHEREAS the Hearing Panel is of the opinion that the Respondent failed to fully carry out the terms of the Agreement and Undertaking, thereby engaging the authority of the Hearing Panel to impose a penalty on the Respondent pursuant to section 24.1.2 of By-law No. 1;

AND WHEREAS the Hearing Panel is of the opinion that between March 2007 and December 2008:

- i. The Respondent failed to establish, implement and maintain an adequate branch review program, contrary to MFDA Policy No. 5;
- ii. The Respondent failed to review and approve at all or in a timely manner amendments to KYC information, contrary to MFDA Rule 2.2.4 and MFDA Policy No. 2;
- iii. The Respondent failed to ensure that the KYC information on the back office system corresponded to the KYC information in the client files, contrary to MFDA Rule 2.2.1;
- iv. The Respondent failed to maintain or complete KYC information on client accounts, contrary to MFDA Rule 2.2.1;
- v. The Respondent failed to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to ensure that branch managers were supervising trading activity at the branch office level and failed to retain sufficient evidence of the review of the suitability of client trading activity, contrary to MFDA Rule 2.5 and MFDA Policy No. 2; and
- vi. The Respondent failed to review and approve at all or in a timely manner the opening of new client accounts and maintain evidence of such review and approval, and permitted trading in such accounts, contrary to MFDA Rules 2.2.3, 2.5.3 and MFDA Policy No. 2.

IT IS HEREBY ORDERED THAT the time for giving notice of the settlement hearing under MFDA Rule of Procedure 15.2(1) is abridged, pursuant to MFDA Rule of Procedure 2.2(1)(a);

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

1. If at any time a non-party to this proceeding requests production of or access to exhibits in this proceeding that contain intimate financial or personal information, then the MFDA Corporate Secretary shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial or personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*;

2. The Respondent shall pay a fine in the amount of \$50,000, pursuant to s. 24.1.2(b) of By-law No. 1;

3. The Respondent shall retain an independent monitor at the Respondent's expense and in accordance with the terms set out in Schedule "B" to resolve:

- (i) the Deficiencies;
 - (ii) all other compliance deficiencies identified in the 2009 Report; and
 - (iii) any deficiencies that the independent monitor identifies during its review;
- pursuant to section 24.1.2(g) of By-law No. 1;

4. The Respondent shall pay \$200,000 to PwC as a retainer with such payment to be over and above the \$50,000 already paid by the Respondent to PwC. The retainer is to be applied towards, and used exclusively for the purposes of, paying PwC for services rendered in its capacity as the monitor. Nothing herein is intended to cap or limit the fees charged by PwC or the scope of work to be performed by PwC, which is set out in the Terms of the Independent Monitor attached as Schedule "B" hereto;

5. The Respondent shall pay the costs of this investigation and proceeding in the amount of \$25,000, pursuant to s. 24.2 of By-law No. 1; and

6. The Respondent shall in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations made thereunder, including MFDA Rules 2.2.1, 2.2.3, 2.2.4, 2.5 and MFDA Policies No. 2 and No. 5.

DATED this [day] day of [month], 2009.

Per: _____
[Name of Public Representative], Chair

Per: _____
[Name of Industry Representative]

Per: _____
[Name of Industry Representative]



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 Investment Services (Canada) Inc.

TERMS OF THE INDEPENDENT MONITOR

1. In accordance with the terms of the Settlement Agreement dated October 6, 2009 between Professional Investment Services (Canada) Inc. ("PIS Canada" or the "Member") and the Mutual Fund Dealers Association of Canada (the "MFDA") (the "Settlement Agreement"), and the Order of the Hearing Panel dated [date] arising therefrom (the "Order"), the Member:
 - a. Shall resolve the following deficiencies (the "Deficiencies"):
 - i. the failure of the Member to establish, implement and maintain an adequate branch review program in accordance with MFDA Policy No. 5;
 - ii. the failure of the Member to review and approve at all or in a timely manner amendments to KYC information in accordance with MFDA Rule 2.2.4 and MFDA Policy No. 2;
 - iii. the failure of the Member to ensure that the KYC information on the back office system corresponded to the KYC information in the client files in accordance with MFDA Rule 2.2.1;
 - iv. the failure of the Member to maintain or complete KYC information on client accounts in accordance with MFDA Rule 2.2.1;
 - v. the failure of the Member to establish, implement and maintain a two-tier compliance structure to supervise client account activity, in that it failed to ensure that branch managers were supervising trading activity at the branch office level and failed to retain sufficient evidence of the

review of the suitability of client trading activity in accordance with MFDA Rule 2.5 and MFDA Policy No. 2; and

- vi. the failure of the Member to review and approve at all or in a timely manner the opening of new client accounts and maintain evidence of such review and approval, and permitted trading in such accounts in accordance with MFDA Rules 2.2.3, 2.5.3 and MFDA Policy No. 2.
- b. Has retained PwC (the “Monitor”) at the Member’s expense, to assist in resolving all of the Deficiencies on the following terms:
- i. The Member has executed a retainer with the Monitor incorporating the requirements of the *Duties and Standards of the Independent Monitor* attached hereto as Appendix “1” (the “Duties and Standards”) and provided a copy of the retainer to MFDA Staff (“Staff”);
 - ii. The Member will fully co-operate with and provide full disclosure to the Monitor in a timely manner of all matters and information relevant to the activities of the Monitor hereunder and in accordance with the terms and conditions of the Duties and Standards; and
 - iii. Staff has approved the selection of the Monitor and the terms of the Member’s retainer of the Monitor.
- c. Shall resolve all of the Deficiencies in accordance with the terms and conditions of the Duties and Standards and on the following terms:
- i. The Member shall cause the Monitor to develop, in collaboration with the Member, a written plan containing proposed actions (and timeframes for implementation of the actions) to remedy the Deficiencies (the “Action Plan”). The Action Plan shall be delivered to Staff by no later than [insert date 2 months from date of Settlement Agreement];
 - ii. Staff reserves the right to add, delete or change any part of the Action Plan provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change. Any changes made by Staff become part of the Action Plan;
 - iii. The Member, with the assistance and participation of the Monitor, shall fully implement the actions identified in the Action Plan within the time frames set out therein. The Monitor must review and approve all such actions as being consistent with the Action Plan prior to their implementation. The Monitor may consult informally with the MFDA from time to time on any issues arising from the implementation of the Action Plan;
 - iv. The Member shall cause the Monitor to assess the sufficiency of the Member’s compliance department (the “Compliance Department”), including the number, experience and proficiency of staff, and the

internal education and training programs, to ensure that the Member will comply with the implemented Action Plan and the MFDA By-laws, Rules and Policies, and make and provide to the MFDA and the Member its recommendations to address any deficiencies (the “Compliance Department Recommendations”) The Compliance Department Recommendations shall be delivered to Staff by no later than [insert date 2 months from date of Settlement Agreement];

- v. Staff reserves the right to add, delete or change any part of the Compliance Department Recommendations provided that the Member is given a reasonable opportunity to comment on any such addition, deletion or change. Any changes made by Staff become part of the Compliance Department Recommendations;
- vi. The Member, with the assistance and participation of the Monitor, shall fully implement the actions identified in the Compliance Department Recommendations within the time frames set out therein. The Monitor must review and approve all such actions as being consistent with the Compliance Department Recommendations prior to their implementation. The Monitor may consult informally with the MFDA from time to time on any issues arising from the implementation of the Compliance Department Recommendations;
- vii. The Monitor shall discuss with the MFDA and the Member its proposed procedures for testing the Member’s implementation of the Action Plan and thereafter submit written proposals for testing procedures, time frame for completion of testing and format for a report to the MFDA on the Member’s completion of the implementation of the Action Plan and resolution of the Deficiencies (the “Completion Report”).
- viii. The MFDA reserves the right to add, delete or change any aspect of the proposed testing procedures, time frame or Completion Report format, provided that the Member will be given a reasonable opportunity to comment on any such addition, deletion or change;
- ix. Once the testing procedures, time frame and Completion Report format have been approved by the MFDA, the Monitor shall complete the testing procedures and provide the Completion Report to the MFDA in the format and within the time frame approved by the MFDA in subparagraph 1(c)(vii);
- x. Where the Completion Report identifies any continuing Deficiencies, or where prior to the determination by the MFDA that the Deficiencies have been resolved (but after the Completion Report has been provided to the MFDA) the MFDA becomes aware from other sources that there are continuing Deficiencies, the MFDA may in its sole discretion do either or both of the following:

1. Make recommendations to resolve the continuing Deficiencies identified in the Completion Report and direct the Member to implement all such recommendations and have the Monitor conduct any additional testing within a reasonable time period to be determined by the MFDA;
2. Pursue additional enforcement action pursuant to Section 24 of MFDA By-law No. 1 with regard to the Member's failure to resolve the Deficiencies.

- xi. The Member shall provide a copy of this Settlement Agreement and *Terms of the Independent Monitor* to all members of its Board of Directors and provide written confirmation of the same to the MFDA within four (4) weeks of the date of signing of this Settlement Agreement.
- xii. The Member shall provide its Board of Directors with copies of the Action Plan and the Completion Report; and
- xiii. The MFDA shall in its sole discretion and acting reasonably, determine whether it is satisfied that the Deficiencies have been resolved and the Member shall not consider the MFDA satisfied until it has received express written confirmation from the MFDA that the MFDA is satisfied that the Deficiencies have been resolved;

2. Varying of the terms of the *Terms of the Independent Monitor*:

- a. To the extent that there are fixed timelines in these *Terms of the Independent Monitor* or the Action Plan, the MFDA may abridge or extend any time frame as may reasonably be required and with the provision of reasonable notice to the Member;
- b. Other exceptions to the *Terms of the Independent Monitor* are permissible only with the prior express written consent of Staff.

I confirm that by my signature, I am authorized to bind the Member to these *Terms of the Independent Monitor* as part of the implementation of the Settlement Agreement and the Order.

"Kenneth Rousselle"
 Name: Kenneth Marcel Rousselle
 Title: President and Chief Executive Officer
 Professional Investment Services (Canada)
 Inc.

10/06/2009 "James Wahl"
 Date Witness
 Name: James Wahl

Mutual Fund Dealers Association of Canada

“Shaun Devlin”

Shaun Devlin
Vice-President, Enforcement

10/06/2009

Date



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 Investment Services (Canada) Inc.

**DUTIES AND STANDARDS OF
THE INDEPENDENT MONITOR**

A. Defined Terms

1. Terms defined in the *Terms of the Independent Monitor* shall have the same meaning in these *Duties and Standards of the Independent Monitor*.

B. Duties of the Independent Monitor

1. The Monitor shall perform its duties with unimpaired professional judgment and objectivity, and shall be seen to be doing so by a reasonable observer.
2. The Monitor shall be retained and remunerated by the Member.
3. The Monitor shall perform its services in accordance with these *Duties and Standards of the Independent Monitor*.
4. The Monitor:
 - i. Shall notify the MFDA of any disagreement, dispute or other limitation encountered with the Member that may result in the Terms of the Independent Monitor not being satisfied. This includes but is not limited to situations where there is a difference of opinion between the Monitor and the Member with regard to:
 1. The detailed nature of the Deficiencies;
 2. The actions necessary to remedy the Deficiencies;

3. The procedures to be used to test the Member's implementation of the Action Plan.
- ii. May advise the Member of the results during the testing process;
- iii. Shall prepare the Completion Report in an independent manner without consultation with the Member as to the content of the report; and
- iv. Shall provide the Completion Report directly to Staff, with a copy to the Member.

C. Qualifications of the Independent Monitor

1. The Monitor must exhibit and apply:
 - i. An understanding of MFDA requirements (i.e. By-laws, Rules, Policies, Notices and Bulletins);
 - ii. Familiarity with mutual fund dealer operations and compliance issues; and
 - iii. Familiarity with adequate Member compliance procedures (i.e. the Monitor should not be proposing procedures it develops at first instance without an understanding of procedures compliant Members have instituted to meet MFDA requirements).

D. Action Plan

1. The Action Plan must outline the actions that will remedy the Deficiencies and specific time frames for the completion of those actions.

E. Implementation of the Action Plan

1. The Monitor shall supervise the implementation of the Action Plan and provide necessary recommendations so that the plan is implemented to the satisfaction of the Monitor. The Monitor's supervision shall include review of the implementation of any components of the Action Plan. This shall include but not be limited to:
 - i. Changes to compliance department staffing;
 - ii. Newly developed processes or written procedures;
 - iii. Training provided to supervisory staff and Approved Persons;
 - iv. Newly developed client account forms or disclosure documents;
 - v. Changes to branch and sub-branch review procedures;
 - vi. Results of any branch or sub-branch reviews;
 - vii. Reports used for branch or head office supervision; and
 - viii. Changes to back-office systems.

F. Compliance Department Recommendations

1. When assessing and making its recommendations with regard to the Member's Compliance Department, the Monitor shall:
 - i. Specify the measurements and criteria used in the assessment;
 - ii. Specifically reference staffing and training with relation to the major compliance processes within the Member, including, Approval of new accounts, Branch Office Supervision of Trading and Leveraging, Head Office

Supervision of Trading and Leveraging, Complaint Handling, Registration, and Branch Reviews;

G. Testing Procedures

1. The testing procedures determined by the Monitor shall:
 - i. Be sufficient to determine whether the Deficiencies have been resolved or remain unresolved;
 - ii. Specify the objective of the testing procedures, including citing which of the Deficiencies the testing will address; and
 - iii. Specify the sampling methodology, including the size of samples to be tested.
2. The Monitor shall prepare and maintain a file of its working papers regarding the testing, which shall be made available to Staff upon request. The file must contain sufficient information to enable an experienced individual, having no previous connection to the engagement, to re-perform the testing procedures and come to the same conclusions. The file must include appropriate documentation of the procedures performed and the evidence obtained, including copies of documents reviewed or sufficiently detailed information to identify the specific documents reviewed.

H. Completion Report

1. When reporting on the results of testing, the Monitor must:
 - i. Specify the procedures performed and the details of the samples selected;
 - ii. State the factual results of performing the procedures and not express an opinion on the results;
 - iii. Link the factual findings to the Deficiency being tested;
 - iv. List any new deficiencies in compliance with MFDA requirements that are noted during the testing on the original Deficiencies;
 - v. Indicate any restrictions or limitations on the Monitor's ability to perform the procedures; and
 - vi. Provide recommendations to remedy any new deficiencies or any continuing Deficiencies.

ACKNOWLEDGEMENT

PricewaterhouseCoopers, the Independent Monitor retained by the Member and approved by Staff to provide services to the Member in accordance with the *Terms of the Independent Monitor*, hereby acknowledges that the terms of its retainer with the member requires it to provide those services in accordance with the *Terms of the Independent Monitor* and these *Duties and Standards of the Independent Monitor*.

Date: _____

Name: _____