



**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: Investia Financial Services Inc.**

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**SETTLEMENT AGREEMENT**

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**INTRODUCTION**

1. By Notice of Settlement Hearing, the Mutual Fund Dealers Association of Canada (the “MFDA”) will announce that it proposes to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the MFDA Central Regional Council (the “Hearing Panel”) should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of the MFDA (“Staff”) and Investia Financial Services Inc. (the “Respondent”).

**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.

### **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.

### **AGREED FACTS**

#### **Registration History**

6. The Respondent is registered as a mutual fund dealer and an exempt market dealer in all jurisdictions in Canada (except Nunavut). The Respondent has been a Member of the MFDA since June 7, 2002.

#### **Corporate Structure**

7. The Respondent’s head office is located in Quebec City, Quebec (the “Head Office”). The Respondent’s operations include branch offices located in: Rothesay, New Brunswick; Dartmouth, Nova Scotia; Richmond Hill, Ontario; Markham, Ontario; and Calgary, Alberta (collectively, the “Branches”).

## **Acquisition of Aegon**

8. In a transaction that closed on September 30, 2008, the parent company of the Respondent acquired another Member of the MFDA, Aegon Dealer Services Canada Inc. (“Aegon”). Subsequent to the closing, the operations of Aegon were merged with the operations of the Respondent. The deficiencies identified in this Settlement Agreement do not relate to the operations of Aegon.

## **Compliance Examinations**

9. Commencing on June 1, 2009, MFDA Compliance Staff conducted a third round compliance examination of the Respondent’s Head Office and the Branches in order to assess the Respondent’s compliance with MFDA By-laws, Rules and Policies during the period August 1, 2007 to April 30, 2009 (the “2009 Examination”). The results of the 2009 Examination were summarized and delivered to the Respondent in a report dated November 18, 2009 (the “2009 Report”).

10. Prior to the 2009 Examination, MFDA Compliance Staff conducted a second round compliance examination of the Respondent’s Head Office and several of its branch locations in order to assess the Respondent’s compliance with MFDA By-laws, Rules and Policies during the period December 1, 2005 to July 31, 2007 (the “2007 Examination”). The results of the 2007 Examination were summarized and delivered to the Respondent in a report dated February 14, 2008 (the “2008 Report”).

## **Inadequate Supervision of Excessive Trading**

11. During the 2009 Examination, MFDA Compliance Staff determined that the Respondent failed to establish, implement and maintain policies and procedures to detect instances of excessive trading (i.e., “churning”). This item is a repeat deficiency which was originally identified by MFDA Compliance Staff in the 2008 Report.

12. In response to the 2008 Report, the Respondent had previously advised MFDA Compliance Staff that, effective January 1, 2009, its supervisory staff would produce and review

“Trend Analysis Reports” each month in order to detect possible instances of excessive trading.

13. As a result of the conversion of three back-office systems from various merged dealers, the Respondent discontinued its use of the Trend Analysis Reports after a period of two months and did not subsequently implement an alternative procedure to detect excessive trading.

14. As a result of the foregoing deficiency, the Respondent processed trades without conducting adequate supervision to detect instances of excessive trading in client accounts.

### **Inadequate Tier 1 Supervision of Trades**

15. In January 2009, the Respondent implemented policies and procedures requiring Branch Managers and Regional Branch Managers to supervise trading activity by reviewing trade blotters on a daily basis.

16. During the 2009 Examination, MFDA Compliance Staff determined that the Respondent’s supervision of trading activity was deficient in that the Branch Managers and Regional Branch Managers:

- a) failed to sign the daily trade blotters in some instances to evidence trade supervision and suitability review; and
- b) failed to review daily trade blotters in some instances in a timely manner.

17. The Respondent, thereby, failed to ensure that its Branch Managers and Regional Branch Managers adhered to its policies and procedures with respect to the supervision of trading activity at the branch level. As a result, the Respondent processed trades in some instances without evidence of adequate trade supervision and suitability review.

### **Inadequate Supervision of New Accounts**

18. In January 2009, the Respondent implemented policies and procedures requiring Branch Managers and Regional Branch Managers to review and approve new accounts. In particular, the Respondent’s policies and procedures required:

- a) Branch Managers to review a “New Account Report” on a daily basis; and
- b) Regional Branch Managers to review and approve New Account Application Forms (“NAAFs”) on a daily basis.

19. During the 2009 Examination, MFDA Compliance Staff determined that the Respondent’s supervision of new accounts openings was deficient in that Branch Managers failed in some instances to review New Account Reports on a daily basis and Regional Branch Managers failed to review and approve NAAF’s on a daily basis.

20. The Respondent thereby failed to ensure that its Branch Managers and Regional Branch Managers adhered to its policies and procedures with respect to the supervision of new accounts. As a result, the Respondent allowed new accounts to be opened without adequate supervision to ensure that the accounts were suitable for clients.

### **Inadequate Supervision of Leveraging**

21. During the 2009 Examination, MFDA Compliance Staff determined that the Respondent failed to establish and maintain adequate internal controls to track leveraged accounts in that the Respondent failed to properly identify leveraged accounts in its back office system. This deficiency prevented the Respondent from conducting adequate supervision of leveraged accounts. As a result of this deficiency, MFDA Compliance Staff was unable to complete a review of the Respondent’s leveraged accounts.

22. During the 2009 Examination, MFDA Compliance Staff also determined that the Respondent’s supervision of the suitability of leveraging recommendations was deficient in that the Respondent’s Head Office compliance staff failed to maintain evidence of their review of leveraging recommendations in some instances. As a result of this deficiency, leveraging recommendations which may have been unsuitable were processed by the Respondent without proper supervision.

## **Additional Deficiencies**

23. In addition to the deficiencies identified during the 2009 Examination, investigations conducted by the MFDA's Enforcement Department identified deficiencies regarding the supervision of referral arrangements and outside business activities during the period August 2003 to July 2010, as particularized below.

### ***DB, KN and MH***

24. The Respondent failed to adequately supervise DB, KN and MH, Approved Persons registered with the Respondent. DB and KN have been registered with the Respondent since February 2007. MH has been registered with the Respondent since June 2003.

25. Between August 2003 and June 2007, DB, KN and MH had a referral arrangement with a third party, RS, whereby DB, KN and MH shared commissions with RS or a corporation that he controlled, in exchange for about 19 client referrals. In many cases, RS discussed with clients the merits of using leveraging to invest in the course of referring the clients to DB, KN and MH. RS is registered in Ontario as a life insurance agent, but has never been registered in the securities industry in any capacity.

26. The Respondent failed to employ adequate supervision to prevent DB, KN and MH from maintaining a referral arrangement with a third party. The Respondent permitted DB, KN and MH to maintain in a referral arrangement with a third party, notwithstanding that:

- a) the referrals were not made pursuant to a referral arrangement between the Respondent and another entity;
- b) there was no written agreement governing the referral arrangement;
- c) the commissions paid pursuant to the referral arrangement did not flow through the Respondent; and
- d) written disclosure of the referral arrangement was not provided to the clients.

27. The MFDA's investigation into these matters has not revealed any client losses.

*ML*

28. The Respondent failed to adequately supervise ML, a former Approved Person who was registered with the Respondent from December 2006 until August 2010.

29. In January 2010, the Respondent became aware that ML had been engaging in an outside business activity that it had not approved. Specifically, ML had been providing consulting services related to corporate restructurings to clients and other individuals. To facilitate the corporate restructurings, ML also referred clients to third parties and received compensation in respect of the referrals which did not flow through the Respondent.

30. The Respondent failed to adequately supervise ML, and adhere to its own policies and procedures regarding outside business activities. In particular::

- a) between January 2010 and July 27, 2010, the Respondent permitted ML to engage in an outside business activity, which it had not approved;
- b) the Respondent failed to take appropriate supervisory action to monitor ML's conduct when it became aware of ML's outside business activity in January 2010; and
- c) the Respondent failed to conduct an adequate review of ML's outside business activity to understand the nature of his activities and whether his activities involved the Respondent's clients, when it became aware of ML's outside business activity in January 2010.

31. The MFDA's investigation into these matters has not revealed any client losses

*CT*

32. The Respondent failed to adequately supervise CT, an Approved Person registered with the Respondent since August 2, 2005.

33. In September 2009, the Respondent became aware that CT had been providing financial planning services to clients.

34. In December 2009, the Respondent approved CT's financial planning activities notwithstanding that these services were not provided through, or on behalf of, the Respondent or another regulated entity.

35. In May 2010, CT elected to conduct his financial planning services through his insurance registration.

36. The Respondent failed to adequately supervise CT in that:

- a) the Respondent failed to conduct an adequate review of CT's financial planning services to understand the nature of his activities when it became aware of them in September 2009;
- b) between September 2009 and December 2009, the Respondent permitted CT to engage in financial planning services which it had not approved; and
- c) between September 2009 and May 2010, the Respondent permitted CT to provide financial services to clients notwithstanding that the services were not provided through, or on behalf of, the Respondent or another regulated entity.

37. As a result of the foregoing, the Respondent permitted CT to provide financial planning services to clients which were not subject to supervision by the Respondent or another regulated entity.

38. The MFDA's investigation into these matters has not revealed any client losses.

### **Additional Factors**

39. The Respondent has cooperated with the MFDA's investigation of the issues that form the subject matter of this Settlement Agreement.

40. Some of the issues identified in the 2009 Report were aggravated by inconsistencies in the quality of the data of dealers acquired by the Respondent.



## **Addressing Historical Leveraging**

41. The Respondent has revised, and represents that it will continue to revise, its policies and procedures with regard to supervision of excessive trading, trading activity at the branch level, new accounts, and leveraging, and has provided a copy of those policies and procedures to MFDA Staff. The Respondent represents that it has implemented, and will continue to implement, those revised policies and procedures. The Respondent (hereby) undertakes to comply with those policies and procedures in the future.

42. The Respondent has developed a plan, which has been reviewed by MFDA Staff, to address existing leveraged accounts (the "Leverage Review Action Plan"). The Respondent asserts that it will fully carry out the terms of the Leverage Review Action Plan to the satisfaction of MFDA Staff. The Respondent may be subject to further disciplinary action should it fail to adequately implement the Leverage Review Action Plan.

## **CONTRAVENTIONS**

43. By engaging in the conduct described above, the Respondent admits the following:

- a) during the period August 2007 and April 2009, the Respondent failed to establish, implement and maintain policies and procedures to detect instances of excessive trading, contrary to MFDA Rules 2.2.1, 2.5, 2.9, and 2.10, and MFDA Policy No. 2;
- b) during the period January 2009 and April 2009, the Respondent failed to ensure that its supervisory staff adhered to its policies and procedures with respect to the supervision of trading activity at the branch level, contrary to MFDA Rules 2.2.1, 2.5, 2.9, and 2.10, and MFDA Policy No. 2;
- c) during the period January 2009 and April 2009, the Respondent failed to ensure that its supervisory staff adhered to its policies and procedures with respect to the supervision of new accounts, contrary to MFDA Rules 2.2.1, 2.2.2, 2.2.3, 2.5, 2.9, and 2.10, and MFDA Policy No. 2;
- d) during the period January 2009 and April 2009, the Respondent failed to establish and maintain adequate internal controls, and books and records, pertaining to leveraged accounts, contrary to MFDA Rules 2.9, 5.1 and 2.2.1;

- e) during the period August 2003 and June 2007, the Respondent failed to employ adequate supervision to prevent Approved Persons, DB, KN and MH, from maintaining referral arrangements with a third party, contrary to MFDA Rules 2.4.2, 2.5 and 2.9;
- f) during the period January 2010 and July 2010, the Respondent failed to adequately supervise the outside business activities of an Approved Person, ML, contrary to MFDA Rules 1.2.1(d) (now MFDA Rule 1.2.1(c)), 2.4.2, 2.5, and 2.9; and
- g) during the period September 2009 and May 2010, the Respondent failed to adequately supervise the outside business activities of an Approved Person, CT, contrary to MFDA Rules 1.2.1(d) (now MFDA Rule 1.2.1(c)), 2.4.2, 2.5, and 2.9.

## **TERMS OF SETTLEMENT**

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

- a) the Respondent shall pay a fine in the amount of \$100,000 upon the acceptance of this Settlement Agreement;
- b) the Respondent shall implement the revised policies and procedures identified in this Settlement Agreement;
- c) the Respondent shall implement the Leverage Review Action Plan identified in this Settlement Agreement;
- d) the Respondent shall pay costs in the amount of \$15,000 pursuant to s. 24.2 of By-law No. 1;
- e) the Respondent acknowledges that any issues pertaining to its obligation to handle client complaints pursuant to MFDA Rule 2.11 and MFDA Policy No. 3 is unaffected by this Settlement Agreement;
- f) 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 1.2.1(d) (now MFDA Rule 1.2.1(c)), 2.2.1, 2.2.2, 2.2.3, 2.4.2, 2.5, 2.9, 2.10, and 5.1 and MFDA Policy No. 2; and
- g) a senior office of the Respondent will attend the settlement hearing in person.

## **STAFF COMMITMENT**

45. 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 facts set out in Part IV and the contraventions described in Part V of this Settlement Agreement, subject to the provisions of Part IX below. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any facts and contraventions that are not set out in Parts IV and V of this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the contraventions set out in Part V, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations, including, for greater certainty, any obligations regarding the handling of client complaints arising out of facts and contraventions set out in Parts IV and V.

## **PROCEDURE FOR APPROVAL OF SETTLEMENT**

46. 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.

47. 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.

48. 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.

49. 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.

#### **FAILURE TO HONOUR SETTLEMENT AGREEMENT**

50. 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, 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.

#### **NON-ACCEPTANCE OF SETTLEMENT AGREEMENT**

51. 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.

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

#### **DISCLOSURE OF AGREEMENT**

53. 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.

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

#### **EXECUTION OF SETTLEMENT AGREEMENT**

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

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

Dated: December 15, 2011

“Kim Lavigne”

Witness – Signature

Kim Lavigne

Witness – Print Name

“Louis H. DeConinck”

Investia Financial Services Inc.  
Per: Louis H. DeConinck, President

“Mark Gordon”

Staff of the MFDA  
Per: Mark 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: Investia Financial Services Inc.**

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**ORDER**

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**WHEREAS** on [date], the Mutual Fund Dealers Association of Canada (the "MFDA") issued a Notice of Settlement Hearing pursuant to section 24.4 of By-law No. 1 in respect of Investia Financial Services Inc. (the "Respondent");

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated [date] (the "Settlement Agreement"), in which the Respondent agreed to a proposed settlement of matters for which the Respondent could be disciplined pursuant to ss. 20 and 24.1 of By-law No. 1;

**AND WHEREAS** the Hearing Panel is of the opinion that the Respondent has failed to comply with or carry out the provisions of MFDA Rules 1.2.1(d) (now MFDA Rule 1.2.1(c)), 2.2.1, 2.2.2, 2.2.3, 2.4.2, 2.5, 2.9, 2.10, and 5.1 and MFDA Policy No. 2;

**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 \$100,000 upon the acceptance of the Settlement Agreement.
2. The Respondent shall implement the revised policies and procedures identified in the Settlement Agreement.
3. The Respondent shall implement the Leverage Review Action Plan identified in the Settlement Agreement.
4. The Respondent shall pay the costs of this proceeding in the amount of \$15,000 upon the acceptance of the Settlement Agreement.
5. 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 1.2.1(d) (now MFDA Rule 1.2.1(c)), 2.2.1, 2.2.2, 2.2.3, 2.4.2, 2.5, 2.9, 2.10, and 5.1 and MFDA Policy No. 2.

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

Per: \_\_\_\_\_  
[Name of Public Representative], Chair

Per: \_\_\_\_\_  
[Name of Industry Representative]

Per: \_\_\_\_\_  
[Name of Industry Representative]