



**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: Marek Stanislaw Kawka**

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**SETTLEMENT AGREEMENT**

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**I. INTRODUCTION**

1. Staff of the Mutual Fund Dealers Association of Canada (“Staff”) and the Respondent, Marek Stanislaw Kawka (the “Respondent”), consent and agree to settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. Staff conducted an investigation of the Respondent’s activities which disclosed 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.

**II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
4. The Respondent admits to the following violations of the By-laws, Rules or Policies of the Mutual Fund Dealers Association of Canada (“MFDA”):

- a) between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
  - b) between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients, by altering information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.
5. Staff and the Respondent agree and consent to the following terms of settlement:
- a) the Respondent shall pay a fine in the amount of \$11,500 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No.1, in installments as follows:
    - i. \$6,000 upon acceptance of this Settlement Agreement by the Hearing Panel; and
    - ii. \$5,500 on or before the last business day of the second month following the acceptance of the Settlement Agreement by the Hearing Panel;
  - b) the Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No.1;
  - c) the Respondent shall in the future comply with MFDA Rule 2.1.1; and
  - d) the Respondent will attend in person or by teleconference on the date set for the Settlement Hearing.
6. Staff and the Respondent agree to the settlement on the basis of the facts set out in Part III herein and consent to the making of an Order in the form attached as Schedule “A”.

### **III. AGREED FACTS**

#### **Registration History**

7. Since 1991, the Respondent has been registered in Ontario as a mutual fund salesperson (now known as a dealing representative). Since 2003, the Respondent has been registered with Investia Financial Services Inc. (the “Member”), a Member of the MFDA.

8. At all material times, the Respondent conducted business in the Mississauga, Ontario area.

### **Pre-Signed Account Forms**

9. At all material times, the Member's policies and procedures prohibited its Approved Persons from using pre-signed account forms.

10. Between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients.

11. The pre-signed account forms included order forms, Know-Your-Client forms, and transfer authorization forms.

### **Altered Account Forms**

12. Between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients, by altering the following information on the account forms without having the client initial the alterations.

13. The Respondent altered information on the account forms, including order instructions and client information, without having the clients initial the alterations.

### **The Member's Investigation**

14. On February 21 and 26, 2019, during the course of a routine branch review, the Member identified the account forms that are the subject of this Settlement Agreement. As part of this review, the Member reviewed all client files serviced by the Respondent.

15. Between April 25 and August 23, 2019, the Member placed the Respondent under strict supervision.

16. On August 19, 2019, the Member sent audit letters to all clients serviced by the Respondent in order to confirm whether the clients had authorized the transactions in their accounts. No clients raised any concerns in response to this inquiry.

## **Additional Factors**

17. There is no evidence that the Respondent received any financial benefit from the conduct set out above beyond the commissions or fees he would ordinarily be entitled to receive had the transactions been carried out in the proper manner.
18. There is no evidence of client loss or lack of authorization for the underlying transactions.
19. The Respondent has not previously been the subject of MFDA disciplinary proceedings.
20. By entering into this Settlement Agreement, the Respondent has saved the MFDA the time, resources, and expenses associated with conducting a full hearing on the allegations.

## **IV. ADDITIONAL TERMS OF SETTLEMENT**

21. This settlement is agreed upon in accordance with section 24.4 of MFDA By-law No. 1 and Rules 14 and 15 of the MFDA Rules of Procedure.
22. The Settlement Agreement is subject to acceptance by the Hearing Panel which shall be sought at a hearing (the "Settlement Hearing"). At, or following the conclusion of, the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. MFDA Settlement Hearings are typically held in the absence of the public pursuant to section 20.5 of MFDA By-law No. 1 and Rule 15.2(2) of the MFDA Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at [www.mfda.ca](http://www.mfda.ca).
23. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.
24. Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- a) the Settlement Agreement will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter;
- b) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal 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;
- c) Staff will not initiate any proceeding under the By-laws of the MFDA against the Respondent in respect of the contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any contraventions that are not set out in this Settlement Agreement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- d) 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; and
- e) 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 the Respondent.

25. If, for any reason, this Settlement Agreement is not accepted 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 the Settlement Agreement or the settlement negotiations.

26. Staff and the Respondent agree that the terms of the 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.

27. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement. A facsimile copy of any signature shall be effective as an original signature.

**DATED** this 8<sup>th</sup> day of June, 2020.

“Marek Stanislaw Kawka”

\_\_\_\_\_  
Marek Stanislaw Kawka

EP

\_\_\_\_\_  
Witness – Signature

EP

\_\_\_\_\_  
Witness – Print Name

“Charles Toth”

\_\_\_\_\_  
Staff of the MFDA

Per: Charles Toth

Vice-President, Enforcement

**Schedule “A”**

**Order**

**File No. 202033**



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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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 Marek Stanislaw Kawka (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:

- a) between February 2014 and March 2018, the Respondent obtained, possessed, and in some instances, used to process transactions, 15 pre-signed account forms in respect of 9 clients, contrary to MFDA Rule 2.1.1; and
- b) between March 2014 and February 2017, the Respondent altered and used to process transactions, 11 account forms in respect of 6 clients by altering

information on the account forms without having the client initial the alterations, contrary to MFDA Rule 2.1.1.

**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 \$11,500 in certified funds, pursuant to s. 24.1.1(b) of MFDA By-law No.1 in installments as follows:

- i. \$6,000 upon acceptance of this Settlement Agreement by the Hearing Panel; and
- ii. \$5,500 on or before [date to be inserted in accordance with the terms of the Settlement Agreement];

2. The Respondent shall pay costs in the amount of \$2,500 in certified funds upon acceptance of the Settlement Agreement by the Hearing Panel, pursuant to s. 24.2 of MFDA By-law No.1

3. The Respondent shall in the future comply with MFDA Rule 2.1.1; and

4. If at any time a non-party to this proceeding, with the exception of the bodies set out in section 23 of MFDA By-law No. 1, requests production of or access to exhibits in this proceeding that contain personal information as defined by the MFDA Privacy Policy, 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 personal information, pursuant to Rules 1.8(2) and (5) of the MFDA *Rules of Procedure*.

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

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

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

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