



**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: Yvonne Yat Sim Chan**

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**SETTLEMENT AGREEMENT**

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**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 s. 24.4 of MFDA By-law No. 1, a hearing panel of the MFDA Central Regional Council (the “Hearing Panel”) should accept the settlement agreement entered into between Staff of the MFDA (“Staff”) and Yvonne Yat Sim Chan (“Respondent”) (the “Settlement Agreement”).

**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 Part X) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is accepted by the Hearing Panel.

### **IV. AGREED FACTS**

#### **Registration History**

6. From September 16, 2011 to the present, the Respondent has been registered in Ontario as a dealing representative with Investia Financial Services Inc. (“Investia” or the “Member”), a Member of the MFDA. From October 7, 2011 to the present, the Respondent has acted as the Alternate Branch Manager.

7. The Respondent was employed in an administrative position from April 2001 to August 12, 2009 with Excel Financial Growth Inc. (“Excel”). From August 13, 2009 to September 15, 2011, the Respondent was registered as a dealing representative with Excel.

8. At all material times, the Respondent carried on business from a branch located in Markham, Ontario (the “Branch”).

#### **Background**

9. At all material times, the Respondent was responsible for conducting supervisory activities within the Branch, including monitoring potential breaches of applicable requirements on the part of the Member and its Approved Persons that might raise the possibility of risk to the Member’s

clients or other investors. This included general supervisory duties, and daily tier-one reviews of all trading activity within the Branch.

10. From September 16, 2011 to the present, Approved Person SL (the “AP”) has been registered in Ontario as a dealing representative with Investia at the Branch.

11. From the time the AP became registered at the Branch, the Respondent was responsible for supervision of the AP, as well as daily tier-one reviews of his trading activity.

### **Member’s Policies and Procedures**

12. At all material times, Investia’s policies and procedures stated that “[o]nly Investia prescribed or approved forms may be used when processing your mutual fund business. All non-standard forms must be approved by compliance prior to their use. The use of non-approved Investia forms is prohibited.”

13. At all material times, Investia’s *Branch Manager Manual* required that, among other things, branch managers:

- ensure that the business conducted on behalf of Investia by Approved Persons was in compliance with regulations and Investia’s policies and procedures;
- act as liaison between the Branch and Head Office staff; and
- report to Head Office compliance staff situations that may require further investigation.

### **Inadequate Supervision and Review by the Respondent**

14. On or about September 2, 2016 and February 13, 2017, the AP assisted two of his clients in making redemptions in their leveraged mutual fund accounts.

15. At the time the two clients were signing the various required documents in order to redeem funds from their accounts, the AP also required the two clients to sign a waiver document that he (the AP) had drafted (“Waiver”).

16. Among other things, the Waivers contained the following or substantially similar language:

“My financial advisor, [the AP], has fully discussed the taxation implication, redemption charges of the funds and other alternative strategies, but I decide to go ahead with these redemptions. I understand that there could be impact to any income tested government benefits, while I will have to pay off any shortfall toward the investment loans with my own savings. I understand after these redemptions, all gains or losses from these accounts are finalized and no parties including [the AP], and Investia Financial Services Inc., will be liable for any losses arise from this leveraged plan.”<sup>1</sup>

17. On or about the September 2, 2016 and February 13, 2017, the Respondent conducted a review of the documents the AP had submitted for the redemptions in the two clients’ accounts, including the Waivers.

18. The Respondent asked the AP what the purpose of the Waivers was, and the AP advised that it was to ensure that the two clients were aware of the consequences in making redemptions in their leveraged accounts.

19. The Respondent failed to review the Waivers in detail and filed the document as “AP’s notes”.

## **Conclusion**

20. The Respondent failed to take reasonable supervisory actions to address the Waivers, including:

- i. making inquiries of the AP to find out whether the AP had submitted the Waivers to the Member for approval as required;
- ii. making inquiries of the Member’s head office compliance department to find out whether the AP had submitted the Waivers to the Member for approval as required;
- iii. contacting the affected clients to discuss the circumstances surrounding the Waivers; or
- iv. advising the Member that the AP was using documents purporting to limit liability for suitability without written approval or authorization.

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<sup>1</sup> Errors are present in the original text.

## **Member's Supervisory Actions**

21. In December 2017, after discovering the Waivers, Investia sent a letter to all of the AP's potentially affected clients, which included:

- advising the clients that if they had signed a waiver document, it had not been approved by Investia and was not valid; and
- requesting the clients respond to Investia if they had signed any form of waiver document, or if they had any concerns regarding their leveraged accounts.

22. Investia did not receive any responses to the letters sent to potentially affected clients.

## **V. ADDITIONAL FACTORS**

23. The Respondent has no previous MFDA disciplinary history.

24. The Respondent did not profit personally in any way from her actions.

25. Neither the Member nor Staff received any client complaints regarding this matter. Staff is not aware of any client harm related to this matter.

26. The Respondent cooperated fully with Staff's investigation, and sought an early resolution in this matter.

27. The Respondent is anticipating significant upcoming financial hardship, as she currently lives on a modest income, intends to retire from the workforce shortly, and expects to start bearing the costs associated with professional care for an elderly family member.

## **VI. CONTRAVENTIONS**

28. The Respondent admits that in September 2016 and February 2017, in her capacity as Branch Manager, she failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight, had required two clients to sign unauthorized documents purporting to waive the suitability requirement, contrary to MFDA Rule 2.5.5(f), Rule 2.1.1, and MFDA Policy No. 2.

## **VII. TERMS OF SETTLEMENT**

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

- i. the Respondent shall be suspended from acting as a Branch Manager or acting in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member for a period of six months commencing from the date of the final Order herein, pursuant to s. 24.1.1(f) of By-law No. 1;
- ii. the Respondent shall pay a fine in the amount of \$2,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
- iii. the Respondent shall pay costs in the amount of \$1,500, pursuant to s. 24.2 of MFDA By-law No. 1;
- iv. the Respondent shall in the future comply with MFDA 2.5.5(f), Rule 2.1.1, and MFDA Policy No. 2; and
- v. the Respondent will attend in person on the date set for the Settlement Hearing.

## **VIII. STAFF COMMITMENT**

30. 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 the contraventions described in this Settlement Agreement, subject to the provisions of Part X 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 this Settlement Agreement or in respect of conduct that occurred outside the specified date ranges of the facts and contraventions, 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.

## **IX. PROCEDURE FOR APPROVAL OF SETTLEMENT**

31. 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. 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).

32. 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 her 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.

33. 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 MFDA 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.

34. 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 her.

#### **X. FAILURE TO HONOUR SETTLEMENT AGREEMENT**

35. 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 section 24.3 of 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.

36. If the Respondent does not comply with the attached Order, Staff and the Respondent shall have the right to appear before the Hearing Panel for additional guidance on fulfilling the terms of the Order.

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

37. 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.

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

#### **XII. DISCLOSURE OF AGREEMENT**

39. 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.

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

#### **XIII. EXECUTION OF SETTLEMENT AGREEMENT**

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



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

**DATED** this 18<sup>th</sup> day of December, 2018.

“Yvonne Yat Sim Chan”

\_\_\_\_\_  
Yvonne Yat Sim Chan

“MC”

\_\_\_\_\_  
Witness – Signature

MC

\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”

\_\_\_\_\_  
Shaun Devlin

Staff of the MFDA

Per: Shaun Devlin

Senior Vice-President,

Member Regulation – Enforcement

**Schedule “A”**

**Order**

**File No. 2018101**



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PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
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**Re: Yvonne Yat Sim Chan**

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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 s. 24.4 of MFDA By-law No. 1 in respect of [Respondent] (the “Respondent”);

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the MFDA, dated December 18, 2018 (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 WHEREAS** the Hearing Panel is of the opinion that the Respondent, in September 2016 and February 2017, in her capacity as Branch Manager, failed to identify regulatory concerns and take adequate supervisory action in response to information which indicated that an Approved Person for whom she had supervisory oversight, had required two clients to sign unauthorized documents purporting to waive the suitability requirement, contrary to MFDA Rule 2.5.5(f), Rule 2.1.1, and MFDA Policy No. 2;

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

1. 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*;
2. the Respondent shall be suspended from acting as a Branch Manager or acting in any other MFDA related supervisory capacity while in the employ of or associated with any MFDA Member for a period of six months commencing from the date of the final Order herein, pursuant to s. 24.1.1(f) of By-law No. 1;
3. the Respondent shall pay a fine in the amount of \$2,500, pursuant to s. 24.1.1(b) of MFDA By-law No. 1;
4. the Respondent shall pay costs in the amount of \$1,500, pursuant to s. 24.2 of MFDA By-law No. 1;
5. the Respondent shall in the future comply with MFDA 2.5.5(f), Rule 2.1.1, 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]